Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
	)	MB Docket No. 08-253
Amendment of Parts 73 and 74 of the	)	
Commission's Rules to Establish Rules	)	
for Replacement Digital Low Power	)	
Television Translator Stations	)	

OPPOSITION OF THE ASSOCIATION OF PUBLIC TELEVISION STATIONS TO PETITION FOR RECONSIDERATION

The Association of Public Television Stations ("APTS")[1] hereby submits this opposition to the Petition for Reconsideration filed by KMCE, Inc., in the above-referenced proceeding.[2] The replacement digital television translator service is an important option for noncommercial educational television stations to continue to serve viewers within their coverage areas who have lost service as a result of the digital transition. At least 16 noncommercial educational television licensees across the country have applied for or received permission to install at least 22 replacement translators. Though there exist other technological possibilities for restoring service to loss areas, for many stations a replacement translator service is the only feasible option. Furthermore, an examination of the applications of noncommercial educational television stations shows none of the "egregious abuses" that KMCE alleges. For these reasons, APTS strongly opposes a stay of all pending applications and authorizations, and supports the

[1] APTS is a non-profit organization whose membership comprises the licensees of nearly all of the nation's CPB-qualified noncommercial educational television stations. The APTS mission is to support the continued growth and development of a strong and financially sound noncommercial television service for the American public.

[2] Petition for Reconsideration of KMCE, Inc., *In re Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations*, MB Docket No. 08-253 (June 19, 2009) ("Petition").

maintenance of a priority for replacement translator applications for full-power television stations until at least June 12, 2011.

I. COMMISSION SHOULD NOT GRANT STAY OF PENDING APPLICATIONS AND AUTHORIZATIONS FOR REPLACEMENT TRANSLATOR SERVICE.

KMCE in its Petition seeks a stay of pending authorizations for replacement digital translator service, and asks that the filing opportunity for replacement translators be rolled into a generalized filing opportunity for new low-power television digital stations and digital translators, in which replacement translators for full-power stations would receive no priority.[3] KMCE apparently cites two justifications: (1) The fact that full-power broadcasters sought a three-year construction period for replacement translators indicates that the service is merely a pretext for a spectrum grab by full-power broadcasters; and (2) Full-power broadcasters have abused their privilege by failing to demonstrate how replacement translators will serve loss areas and by attempting to use replacement translators to expand their coverage areas. KMCE does not cite any applications from noncommercial educational stations as examples of the alleged "egregious abuses," and with respect to public television stations, APTS rejects KMCE's assertions and opposes its request for a stay.

Regarding the construction period, APTS understands that expedited construction of replacement translators is crucial, but APTS supported a three-year construction period—the usual period for construction of translators—because it is impracticable for many local public television stations to build translators in just six months. As APTS noted in its January 12, 2009, comments in this rulemaking, the state and federal grant programs upon which many public television stations depend do not operate quickly or often enough to support a six-month construction period, and in the case of some grant programs, stations that already are strapped for

[3] Petition at 6.

money in this difficult economy must come up with matching contributions before grant money can be released. Furthermore, the equipment purchase, delivery, and installation process will exceed six months for many public television licensees, particularly those government and public university licensees that are required to conduct competitive bid processes for equipment purchases. In addition, many licensees must receive zoning approvals and work with federal and state governments to secure permission to place translators, a process that can be time-consuming. Finally, for those stations in cold-weather climates, there is only a short season during which construction is feasible. Thus, it might take stations more than six months to act upon a permit granted in late autumn.

APTS noted in its January comments that a short construction period is not necessary to incentivize public television licensees to implement replacement translators to restore service to existing analog viewers as soon as possible. Indeed, the seven public television licensees of which APTS is aware whose authorizations have already been granted are all working toward installation of their replacement translators. APTS is not aware of any public television licensee that is "in no rush" to build its facilities now that its "free spectrum is locked down," as KMCE alleges.[4]

With regard to KMCE's assertions of "egregious abuses" in stations failing to demonstrate that they will provide service to loss areas, or stations using replacement translators to expand their service area beyond their analog contours, APTS sees no evidence of this in the public television applications submitted so far. The vast majority of the applications include extensive technical exhibits, often with maps indicating the predicted service areas of the

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[4] *Id*.

replacement translators in relation to the Grade B and digital contours of the full-service station.[5] Only a few applications lack extensive exhibits, because the translators sought are intended to cover loss areas that are well within the stations' contours.[6] In such cases, it would defy logic for a licensee to seek a replacement translator for any other reason than to provide service to an area where service has been lost. A translator by definition may only retransmit the programs and signals of a television broadcast station, so a station has nothing to gain by placing a translator in an area that is already adequately served by the full-power transmitter.

Of the 22 applications from noncommercial educational stations of which APTS is aware, in only one case does the requested replacement translator serve an area that extends outside either the station's former Grade B analog or existing digital contour.[7] In this case, the station explained in a technical exhibit that the excursion of the proposed replacement translator outside the 41 dBu digital contour is a total of only 0.49 percent of the station's total coverage area.[8] This hardly constitutes the widespread abuse that KMCE is alleging.

Furthermore, there is no evidence that licensees are exploiting the replacement translator service excessively, to the exclusion of more spectrally efficient solutions. Fewer than 10 percent of noncommercial educational television licensees have sought a replacement translator. Many others are utilizing different options, including distributed transmission systems (DTS), maximization, and channel changes, to resolve any service deficiencies. However, where other

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[5] *See, e.g.*, BDRTEDT-20090820AAF; BDRTEDT-20090817ACK; BDRTEDT-20090811ACE; BDRTET-20090428AAE; BDRTET-20090428AAD; BDRTET-20090114ACC; BDRTET-20090107AIL.

[6] *See* BDRTEDT-20090902ACG; BDRTEDT-20090825BMP; BDRTEDT-20090825BMR; BDRTET-20090604ABB; BDRTET-20090604ABA; BDRTET-20090224ABL; BDRTET-200-0224ABJ.

[7] BDRTEDT-20090824ACM.

[8] *Id.*, Exhibit 11 at 6.

options would be impracticable because of interference issues or cost, replacement translators are a valuable solution for stations seeking to fill service gaps. We urge the Commission not to stay pending authorizations and to grant pending applications expeditiously.

II. THE COMMISSION SHOULD NOT INSTITUTE THE SUGGESTED SAFEGUARDS.

KMCE in its Petition also suggests, in the alternative, several safeguards that should be applied to the current rule. One, a new filing opportunity for new low-power television digital stations and new translator stations, has been implemented since KMCE submitted its Petition. The Commission has lifted the freeze on the filing of applications for new low-power television digital stations and digital translators in rural areas, and has announced that it will begin accepting applications on a nationwide basis on January 25, 2010. In light of this development, and the fact that KMCE's other suggested safeguards are problematic, the Commission should not alter the existing rules.

First, KMCE proposes that the Commission should adopt a service rule restricting the use of replacement translator facilities to exact replication of the primary station's program services.[9] APTS does not understand the need for this, given that translators by definition "retransmit[]the programs and signals of a television broadcast station, without significantly altering any characteristic of the original signal other than its frequency and amplitude . . . ."[10] In addition, the Commission already required that replacement translators be associated with the full-service station's main license, in part to prevent a replacement translator from being converted to an

[9] Petition at 7.

[10] 47 C.F.R. § 74.701(a).

LPTV station that could air alternative programming.[11] Thus, adoption of this recommendation is unnecessary.

Second, KMCE proposes that stations should not be permitted to apply for replacement translator facilities unless they have built out maximum facilities on their primary channel.[12] Many stations are unable to maximize their facilities, either because the cost is prohibitive or because they are unable to do so without causing impermissible levels of interference to other stations. For example, WETA in the Washington, D.C., area has sought a replacement translator to reach parts of the northwestern quadrant of its contour because it is unable, due to conflicts with other stations, to expand service on its full-power channel.[13] Furthermore, maximization does not resolve the problem of loss areas created by geographic obstructions to the signal.[14] For these reasons, stations should not have to maximize as a prerequisite to obtain replacement translators.

Finally, KMCE proposes that the Commission should sunset the replacement translator filing window on January 5, 2011. APTS is not opposed to the idea of a sunset date *per se*. However, many stations' digital facilities are not yet finalized, and until the full-power transition is wholly completed, these stations will be unable to assess fully their need for replacement translators. Thus, if the Commission decides it is necessary to institute a sunset date, APTS suggests a date of not sooner than June 12, 2011.

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[11] *In re Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations*, Report and Order, FCC No. 09-36, MB Docket No. 08-253 (Rel. May 8, 2009).

[12] Petition at 7.

[13] BDRTEDT-20090811ACE.

[14] *See, e.g.*, BDRTEDT-20090824AIL, Exhibit E at 1.

Conclusion

The replacement translator service has been a useful option for many noncommercial television educational television stations to restore service to viewers who lost it as a result of the digital transition. The applications on file show that noncommercial educational stations are using this filing opportunity judiciously and without abuse. We urge the Commission not to hamper the effectiveness of this program by staying pending authorizations and applications or instituting unnecessary rule changes.

Respectfully submitted,

/s/

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