



September 14, 2010

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: MM Docket No. 99-25; MB Docket No. 07-172

Dear Ms. Dortch:

On September 13, 2010, Jane Mago and the undersigned of the National Association of Broadcasters ("NAB") met with Joshua Cinelli, Media Advisor to Commissioner Michael J. Copps, and separately with Brad Gillen, Legal Advisor for Media Issues to Commissioner Meredith Attwell Baker, to discuss issues related to FM translators. On September 14, 2010, Ms. Mago and the undersigned met with William T. Lake, Kris Monteith, Peter Doyle, James Bradshaw, Robert Gates, Kelly Donohue, and Tom Hutton of the Media Bureau, also to discuss issues related to FM translators.

In all three meetings, NAB first discussed the *ex parte* filing submitted in this proceeding by the Educational Media Foundation and Prometheus Radio Project (the "Parties") on July 8, 2010. Under the Parties' proposed Memorandum of Agreement ("MOA"), all of the pending FM translator applications filed during the 2003 FM translator window would remain on file, but not processed while the Commission opens an application window for low power FM ("LPFM") stations. LPFM applications filed in such a window would receive a preference over the pending FM translator applications, thereby allowing such LPFM applicants to effectively trump applicants for pending translators. Processing of the pending FM translator applications would resume only after the Commission identifies the remaining applications that are not superseded by LPFM applications filed during the intervening window.

NAB expressed concerns that should the Commission implement the proposal as currently drafted, it could be harmful to full-power FM and AM radio stations seeking to use FM translators to better serve their communities. NAB believes that both services

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are valuable and the agreement's preference for LPFM over translators for full-service FM and AM radio service is neither warranted as a matter of policy nor consistent with FCC practice and precedent.

As the Commission has recognized, full-power radio services have a long history as an integral "component of the mass media landscape and a vital provider of broadcast service to local communities across the nation."¹ AM stations, for example, often provide the only audio service to listeners in rural areas, and most often are the home for unique news and talk formats found on radio.² No other audio service can match the comprehensive, community-responsive programming provided by full-power FM and AM radio stations.

NAB also expressed concern that the proposed MOA would disadvantage organizations with pending applications for only a few FM translators filed during the 2003 window. For example, entities holding ten or fewer pending FM translator applications would be placed at significant risk of forfeiting all or a substantial percentage of their potential translator licenses to LPFM stations. Such an outcome could harm the public interest by undermining the ability of full-power FM and AM stations to utilize FM translators as a means of enhancing service to their communities. In this vein, we noted that millions of listeners have already benefited from the improved service and additional local programming that AM radio stations have been able to deliver as a result of the Commission's 2009 decision to permit AM stations to use FM translators as a fill-in service. *See supra* note 1.

We also pointed out that the MOA would significantly delay the processing of pending FM translator applications. Given the resources needed to open and process an LPFM window, identify which pending FM translator applications to bump in favor of LPFM services, and complete a settlement process for the remaining FM translator applications, it is likely that some may have to wait up to six more years before their FM translator applications are finally resolved. NAB submits that such a time frame is unacceptable, especially given that many applications have already been pending for seven years to date.

Second, NAB described the recent challenges faced by some broadcasters with pending applications for minor modifications to FM translators, or who plan to file such applications in the near future. Broadcasters are grateful for the tremendous effort of Commission staff to process thousands of FM translator applications filed during the 2003 window, and appreciate the significant demands that compete for staff's

¹ Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, Report and Order, MB Docket No. 07-172, 24 FCC Rcd 9642, 9643 (2009) (AM on FM Translator Order).

² *Id.*

attention. Nevertheless, we remain interested in working with the Commission to find expeditious ways to address situations where translators may need to be moved to be most useful for full power stations and most beneficial for listeners.

NAB has received anecdotal information that demonstrates the need to confront this matter. For example, a Midwest AM radio station that operates at 250 watts during daytime hours must reduce power to only 3 watts during nighttime hours, in accordance with Commission's rules. This station is seeking a FM translator to provide its audience with a clearer, more reliable signal, especially during nighttime hours. An FM translator would enable the station to provide its audience with timely coverage of morning school announcements, morning and evening rush hour traffic information, nighttime weather conditions, and other events that typically occur at night, such as local political debates and high school sports.

However, consistent with the Commission's rules, the closest available FM translator for this station is located 55 miles away.

NAB submits that it would serve the public interest to identify a way for the Commission to facilitate movement of this translator to the new community. Recognizing that such movement could be accomplished through a series of minor modification applications – in this case three separate applications that would be slow and costly for the station as well as an unnecessary burden on the FCC processing staff – the Commission could entertain a waiver to treat this type of situation as one request. Not only would this conserve the Commission's resources, but it would introduce better radio service to listeners much more quickly. Such a program could be limited to circumstances where a licensee would show, for example, that it intends to use the translator to improve local service, that no interference would result, that other audio services in the community of license would have notice and other FM frequencies are available in the community. A waiver of the Commission's processing practices for minor modification applications in these circumstances would advance the public interest in high quality, local radio service.

This predicament is particularly acute for AM broadcasters because under the Commission's revised rules allowing AM stations to use FM translators, AM stations are restricted to translators that were authorized with licenses or construction permits as of May 1, 2009.³ Many AM broadcasters are thus forced to search far beyond the boundaries of their community of license for available, eligible FM translators.

One efficient way to alleviate this problem, at least for AM radio stations, would be to delete the Commission's rule restricting the pool of FM translators eligible for use by AM stations to translators authorized or permitted as of May 1, 2009. This could mean enhanced local radio service for millions of Americans. NAB respectfully submits that

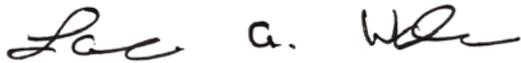
³ 47 C.F.R. § 74.1232.

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the Commission could consider this proposal in the context of the pending rulemaking in MM Docket No. 99-25 regarding the disposition of pending applications from the 2003 translator filing window and the pending petitions for reconsideration in MB Docket No. 07-172 regarding AM stations' use of FM translators.

Please direct any questions concerning this matter to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Larry A. Walke". The signature is fluid and cursive, with the first name "Larry" being the most prominent.

Larry Walke

cc: Joshua Cinelli
Brad Gillen
William Lake
Kris Monteith
Peter Doyle
James Bradshaw
Robert Gates
Kelly Donohue
Tom Hutton