

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

In the Matter of)	
)	
Creation of A Low Power Radio Service)	MM Docket No. 99-25
)	
Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations)	MB Docket No. 07-172 RM-11338

FORMAL COMMENT

To: The Commission;

1. Robert A. Lynch, Individual, of 175 Gray Road, Ithaca, NY 14850 ("Lynch") hereby submits his FORMAL COMMENT in response to the "Third Further Notice of Proposed Rule Making" ("NPRM") in the above-referenced proceedings. By this comment, Lynch restates his request that the Commission revisit and remove existing limitations which restrict recently-authorized FM broadcast translators from rebroadcasting the signals of AM stations. Lynch also suggests the Commission adopt a more modest, selective approach to the proposed "Market-Specific Translator Application Dismissal Processing Policy" the NPRM proposes.

COMMENTER'S STANDING:

2. Robert A. Lynch has, since 1987, served as a broadcast engineering consultant with the firm Independent Broadcast Consultants, Inc., Trumansburg, NY. In that professional role, he has submitted and participated in the submission of numerous AM, FM, and FM Translator broadcast applications. As such, he is familiar with the technical and regulatory standards governing the submission of broadcast applications and has interacted with broadcast owners and managers to gain a full understanding of the challenges they face in the modern competitive environment.

3. In addition, Mr. Lynch has tendered, under his own name, two (2) separate FM Broadcast Translator applications. One of these

translator applications, W283BQ, Ithaca, NY, has been granted a construction permit.^{1/} The second of these two applications, tendered during the Auction No. 83 filing window of 2003, remains pending.^{2/} Both proposals could be impacted by Commission action on this NPRM. The record should also state that Mr. Lynch is president, director and majority owner of Romar Communications Inc. ("Romar"), current applicant for a New AM Broadcast Station to serve Lansing, NY.^{3/} Lynch's company's role as a potential AM broadcaster in the Lansing/Ithaca radio market accords him additional interest in the outcome of this proceeding.

4. As the text of the NPRM acknowledges, Lynch has already addressed the issue of FM translator eligibility for AM rebroadcasting in a PETITION FOR (PARTIAL) RECONSIDERATION of MB Docket No. 07-172, submitted July 28, 2009.^{4/} As stated in the NPRM, this and a similar, companion Petition by Edward A. Schober, remain pending.^{5/} Therefore, as one whose initiatives may have prompted the Commission to revisit the AM-rebroadcast eligibility issue, Lynch senses an obligation to restate his position of support.

CROSS-SERVICE TRANSLATOR LIMITATIONS SHOULD BE RELAXED:

5. In his "Petition for (Partial) Reconsideration" of MB Docket No. 07-172, referenced above, the commenter believes he advanced convincing arguments to support his position that the existing limitation of cross-service broadcasting by recently-authorized FM translators is, in the Petitioner's words, "unduly arbitrary and stands contrary to the public interest." For the sake of brevity, since this Petitioner's arguments are already part of the Public Record, the entire 10-page narrative plus supporting exhibits will not be repeated here. Other commenters are encouraged to research the Petitioner's complete text. But in summary, the

^{1/} See BNPFT-20080620ADO (Fac. ID # 157181) as modified by BMPFT-20100920ADN.

^{2/} See BNPFT-20030317AFE, New FM Translator, Lansing, NY.

^{3/} See BNP-20020522AAM, as Amended (Fac. ID #136961).

^{4/} See Footnote 53 of the NPRM

^{5/} See Paragraph 35 of the NPRM

Petition maintains the current eligibility limitation, which restricts AM rebroadcasting on only those FM translators authorized by construction permits or licenses granted before May 1, 2009, would provide no tangible, identifiable benefit for Low Power FM ("LPFM") broadcasting, while tying the hands of AM broadcasters and prospective FM translator licensees. As stated:

"The limitation constrains the ability of AM licensees to secure available translator outlets...(And) the Commission has declined to demonstrate how the eligibility limitation would provide any concomitant benefit, either quantitatively or qualitatively, to any other full-facility FM or (LPFM) broadcaster. As such, the eligibility limitation appears to serve as an impediment to fulfilling the 'bedrock goals', as stated in (the Report & Order in MM Docket No. 07-172)'s opening paragraph of 'localism, competition and diversity in the broadcast media.'" 6/

6. No evidence has been placed on the record that establishment of the arbitrary May 2009 cross-service eligibility restriction will prompt recently-granted FM translator authorizations to simply vanish. Indeed, as originally proposed (most in the 2003 Auction No. 83 filing window) they will rebroadcast an FM station instead. True, the translator owner's options become more limited. And AM operators will find windows of opportunity closed they wished were open. But it's doubtful the eligibility rule would reopen those same windows for the prospective LPFM broadcaster.

7. Elsewhere in this NPRM, the Commission has advanced ideas for opening new spectrum for the LPFM broadcaster. But the cross-service eligibility restriction, embodied in Section 74.1232, Paragraph (d) of the Rules, serves no identifiable purpose toward achieving this goal. Newly authorized FM translators and those proposed in Auction No. 83 and awaiting grant, should be freed from the rule's arbitrary impediment. Lynch welcomes the Commission's concurrence.

DEVELOPMENT OF MORE MODEST, SELECTIVE APPLICATION DISMISSAL POLICIES:

8. Lynch is aware of the Commission's sincere desire to

6/ See Paragraph 2, page 1 of the "Petition for (Partial) Reconsideration" by Robert A. Lynch in the Report & Order in MM Docket No. 07-172.

enhance licensing opportunities for LPFM broadcasters, especially in larger, congested markets. As such, the Commission proposes a "market-specific spectrum availability-based translator application dismissal policy".^{7/} Under this standard, the Commission would dismiss all pending FM translator applications in markets, depending on size, where the grant of those applications would preclude the establishment of future LPFM stations at or above a certain floor. This dismissal policy would even extend to smaller markets (below #150 in Arbitron ranking) where four (4) or more FM translator applications are currently pending.^{8/} The dismissal policy appears sweeping and arbitrary. It would fail to take into account the translator applicant's status, his or her local residency, the number of translator applications he or she may have proposed nationally, or the intended purpose of the translator in terms of rebroadcasting local stations. Sincere applicants, some of them single-translator filers, who've waited since 2003 for a Commission decision, would simply be swept away. While well-intentioned, the proposal smacks of an arbitrary unfairness.

9. For the record, Lynch supports reinstatement of the so-called "ten station application cap", which would significantly reduce the number of short-form Auction No. 83 FM translator filings. While this cap may not completely eliminate the spectrum availability shortage for LPFM applicants, it would surely help. And it would ensure that FM translator applicants pursue sincere proposals, rather than just traffic in spectrum.

10. The NPRM acknowledges that the "ten station application cap" has limitations and may not "be a certain and effective processing policy for preserving LPFM licensing opportunities in many larger markets."^{9/} That stated, the question remains how best

^{7/} See Paragraphs 25-27 of the NPRM.

^{8/} For the record, Lynch's own broadcast market, Ithaca, NY, where one of his two Auction No. 83 FM translator proposals remains pending, could be impacted by this standard, since to this commenter's knowledge, more than four (4) Auction No. 83 FM translator applications remain pending. Ithaca, NY is smaller than Arbitron Market 150.

^{9/} See Paragraph 7 of the NPRM.

to "narrow the field" of translator applications in congested markets, while still preserving what may stand as the "most worthy" of the Auction No. 83 filers. Rather than a blanket dismissal of all pending FM translator applications in markets where the proposed LPFM "channel floors" are not met, Lynch suggests a selective standard based on overall national application totals, local residency and local broadcast ownership, as follows:

11. First: When reducing the number of pending FM translator applications in congested markets, the Commission should mandate dismissal of those applications whose applicants have proposed more than ten (10) FM translators in Auction No. 83 nationally;
12. Second: If additional reductions are necessary, the Commission should dismiss translator applications by parties proposing more than three (3) FM translators nationally;
13. Third: If still additional reductions are necessary, the Commission should dismiss those FM translator applications whose principal owner is not a local resident. Local residency could be based on whether the principal party's personal home or business office would exist within the translator's service contour or broadcast market as defined by Arbitron;
14. Finally: Preference should be accorded applicants who are current licensees/permittees of AM or FM stations in the market proposed to be served by the FM translator. Since such applicants would stand the most to benefit from the fill-in service the proposed translator would provide, their proposals should be the last to face dismissal.
15. As an alternative, after dismissing applicants with more than three (3) FM translator proposals nationally, the Commission could hold applicants in the final two categories (local residency

and/or local broadcast ownership) in pending status to await the outcome of the forthcoming (2012) LPFM filing window. Should no LPFM application fall into conflict with the translator proposal, translator processing could resume. Should mutual exclusivity arise, some equitable resolution of the conflict (such as facility modification) could be pursued. Should no resolution be possible, the translator application could potentially face dismissal.

16. Lynch notes that the NPRM proposes additional restrictions on the customary application settlement process so as to limit technical solutions to application conflict. It states:

"To ensure our ability to carry out the statutory mandate through the LPFM channel floor proposal or whatever approach we ultimately adopt, we propose to restrict applicants from amending applications to specify adjacent channels and/or different transmitter locations."10/

17. Good in theory; tough in practice. While prohibition of adjacent channel modifications may hold merit, rigid adherence to 2003 Auction No. 83 short-form application antenna sites would prove far more difficult. As both a broadcast engineer and an applicant, Lynch stands fully aware that even validly-engineered antenna sites chosen in 2003 may not now prove available. Some short-form applications used only reference coordinates (such as the local post office), sites where no antenna would be allowed. Perhaps, as an alternative to a blanket site-change prohibition, the Commission could establish a geographical limitation (such as 5 or 10 kilometers) for site relocation. And "singletons", those applicants with no identifiable competing applicant, could be given greater flexibility in site selection than those using relocation as only an alternative to avoid auction.

THE AUCTION ISSUE:

18. As the Commission is surely aware, its present initiatives to encourage LPFM broadcasting, including the proposed dismissal of numerous FM translator applications, have a financial downside.

10/ See Paragraph 28 of the NPRM.

Under current regulation, LPFM stations may only be non-commercial.^{11/} FM broadcast translators in the non-restricted band may be either commercial or non-commercial. As such, mutually exclusive commercial FM translator applications may be resolved through competitive bidding. LPFM applications, even those in conflict with commercial FM translators, may not. By its own definition, Auction No. 83 envisioned its numerous mutually exclusive filings going to auction, thereby bringing the government compensation for spectrum. By proposing to sweep away potentially hundreds of commercial FM translator applications, many in major markets, in favor of non-commercial LPFM availabilities, the Commission is choosing to forego otherwise-available revenue. The choice is the Commission's. This commenter's only suggestion is that the choice be made with caution.

CONCLUSION:

19. As stated in the closing sentences of his Petition for Reconsideration in July 2009, this commenter, Robert A. Lynch, maintains:

"By adopting (current) rule changes embodied in MM Docket No. 07-172, the Commission took a major step in assuring the continued viability of AM Broadcasting. As such, it enhanced the Commission's ongoing objective of a radio spectrum that's local, competitive and diverse. The modifications advanced in (Lynch's Petition for Reconsideration) would only serve to place a new valuable resource, the FM translator, into the hands of more AM operators who deserve it. As such, grant of (Lynch's Petition) would serve the Public Interest"

Now, two years later, this commenter is pleased to see the Commission, in this "Third Notice of Proposed Rule Making", acting positively on his initiative.

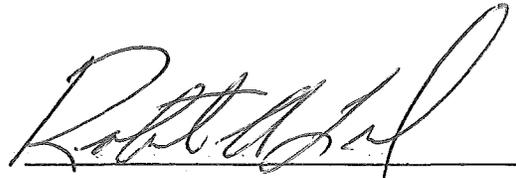
20. This commenter, Robert A. Lynch, understands and appreciates the Commission's desire to seek an appropriate balance between the interests of FM translator and Low Power FM broadcast applicants. But as he sees it, the proposed "Market-Specific Translator Application Dismissal Policy" advanced in this NPRM would tip the balance too far in LPFM's favor. Should future LPFM interest in congested

^{11/} See Section 73.853 of the Rules.

markets be high — and it likely will be —, the proposed wholesale dismissal of pending FM translator applications in those same markets now would likely preclude any future translator activity once the LPFM filing window is closed. Local FM translator filers, many of whom (like this commenter) have waited eight long years for a Commission answer to their proposals, would be denied any opportunity to advance those proposals in the foreseeable future, if ever. And struggling AM licensees who might otherwise benefit from one of those still-unbuilt FM translators, would be denied the additional tool they need to help them survive. A more modest, selective approach to application dismissal, such as that advanced in this Comment, would appear more appropriate to clear available spectrum so that Low Power FM broadcasters and FM translator licensees might coexist.

Respectfully submitted,

August 29, 2011

A handwritten signature in black ink, appearing to read "Robert A. Lynch", written over a horizontal line.

Robert A. Lynch
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