



September 7, 2011

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

**Re: 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**

Dear Ms. Dortch:

The National Association of Broadcasters (NAB) filed comments yesterday in the above-captioned Third Further Notice of Proposed Rulemaking (Notice). We have now realized that the Summary of those comments contains a typographical error that could cause confusion regarding NAB's position.

Specifically, we left the word "not" out of the final sentence of the first full paragraph on Page ii of the Summary:

"We emphasize, however, that the proposed approach could be a reasonable first step, if it is improved to more precisely limit the adverse effects on broadcasters with long-pending FM translator applications to situations where grant of those applications would not preclude LPFM applications."

Please include the attached corrected copy of our Summary in the Commission's record for this proceeding. Please accept our apologies for any inconvenience.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Law A. Walke".

Lawrence A. Walke

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

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Summary

The National Association of Broadcasters (NAB) submits comments on the Third Further Notice of Proposed Rulemaking (Notice), which proposes an approach for implementing provisions of the Local Community Radio Act of 2010 (LCRA) governing the processing of FM translator and low power FM (LPFM) applications.

NAB first commends and supports the Commission's proposal to eliminate the restriction on the use of FM translators by AM stations to translators that were authorized as of May 1, 2009. FM translators enable AM stations to overcome inherent technical disadvantages that limit audio quality compared to other services, thus limiting their service to the public and even threatening their economic viability. Under the current rule, approximately 500 AM stations have used translators to better serve their listeners by initiating or expanding live coverage of local news, rush hour traffic, local election returns, high school sports, and other events that take place during nighttime and early morning hours.

The existing date restriction has prevented a substantial number of AM stations and their listeners from benefiting from improved services because pre-2009 translators are unavailable in their markets. We agree with the Commission that, with the passage of the LCRA, the time is right to amend this policy. We note in particular that eliminating the date restriction will not reduce potential opportunities for future LPFM stations.

NAB also recognizes the challenges the Commission faces in implementing the LCRA, and commends the Commission's effort to ensure the availability of licenses for LPFM stations as well as FM translators. We respectfully submit, however, that to give effect to all the provisions of the LCRA, the approach proposed in the Notice should be

revised to fully reflect actual market-level opportunities for LPFM and FM translator stations, and to process long-pending FM translator applications to the maximum extent possible.

The proposed approach apparently rests on a premise that the LCRA requires that a particular level of availability be preserved for new LPFM stations in every market. We appreciate that the proposal seeks to fulfill this goal while also facilitating the processing of some pending FM translator applications. Nevertheless, NAB believes the proposal jumps too quickly to dismiss pending applications for FM translators, which are often integral to the ability of many FM licensees (and AM as well) to serve their local audiences and fulfill their public interest commitments. We emphasize, however, that the proposed approach could be a reasonable first step, if it is improved to more precisely limit the adverse effects on broadcasters with long-pending FM translator applications to situations where grant of those applications would not preclude LPFM applications.

First, the proposal should rely on Arbitron Metro Markets to assess the market-based availability of LPFM opportunities, instead of the center-city grids set forth in the Notice. Use of the grid is needlessly preclusive in many markets as it ignores both currently licensed LPFM stations located within a radio market but outside the grid, and future LPFM opportunities outside the grid. As a result, the mechanism increases the number of markets where all pending translator applications will be dismissed. The Arbitron Metro more accurately reflects the actual radio marketplace than does the newly-created “grid,” and is the long-standing, Commission-endorsed regulatory benchmark for radio market definition. Use of Arbitron Metros, rather than the grid,

would improve the precision of any determination about the balance between LPFM and FM translator opportunities in a market, consistent with the LCRA.

Second, pending translator applications should not be dismissed in markets where, following dismissal, there would not be any opportunities for future LPFM stations. NAB used the Commission's LPFM software and database to determine that, even without protecting pending translator applications, there would be no channels or locations available for LPFM stations in a significant number of markets. In keeping with Section 5 of the LCRA, which requires the Commission to ensure that licenses are available for both LPFM stations as well as FM translators, FM translators should not be dismissed unnecessarily.

Third, in many markets, the proposal would dismiss pending translator applications if the number of available LPFM channels is less than the proposed LPFM channel floor, even if the number of available LPFM locations exceeds the proposed LPFM channel floors. This approach ignores the fact that channels within a market can often be reused for multiple LPFM stations. The proposal should be amended to allow LPFM applicants to coordinate maximum LPFM licensing opportunities in a market, which in turn would result in more appropriate determinations as to whether pending translator applications should be dismissed. This modification is consistent with LCRA's obligation to ensure that licenses are available to both translator and LPFM stations, as well as LCRA's prohibition against giving LPFM service a higher priority than translator service.

Fourth, the Notice proposes to needlessly forbid settlements among mutually exclusive translator applicants even in the numerous markets where a settlement

process would not reduce opportunities for future LPFM stations below the LPFM channel floor. Indeed, in many of these markets, the number of available LPFM channels is so large that half of all pending translator applicants could choose another channel as part of a process to settle all mutually exclusive applications, and still leave sufficient available channels for LPFM stations. The proposal should be amended to allow translator applicants to specify different channels as part of settlement agreements so long as the availability of LPFM opportunities is not reduced below the LPFM channel floor for that market.

Fifth, the proposal presumes that all of the parties with pending translator applications remain interested in constructing a new translator. During the eight years since Auction 83, some of the applicants may have gone out of business or otherwise lost interest in pursuing their applications. If some of the applications could be dismissed, that could enable the processing of the remaining applications in some markets, without reducing LPFM opportunities. It could also speed up the licensing of new LPFM stations and the processing of the remaining translator applications. NAB thus suggests a simple requirement that pending translator applicants certify that they continue to seek authority to construct their proposed translator station(s). Refreshing the record will clean up the database of pending applications, facilitate settlements, and prevent resources from being wasted on defunct applications.

Full-power broadcasters use FM translators to enhance service to their local communities, and in many cases, translators are the only vehicle for listeners to receive FM service. NAB believes that the proposal for implementing the LCRA set forth in the Notice could be a reasonable step forward if it is modified as suggested above to more

precisely reflect the terms of the LCRA, and actual market-level opportunities for LPFM and FM translator stations.