

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)	MB Docket No. 07-172
FM Broadcast Translator Stations)	RM 11338
)	

To: The Commission

REPLY COMMENTS

Northeast Broadcasting Company, Inc. ("NEBCO"), by its attorneys, hereby submits these Reply Comments in response to the Third Further Notice of Proposed Rulemaking issued by the Commission in the above-referenced proceeding on July 12, 2011 (the "NPRM").¹ In the NPRM, the Commission proposes to dismiss all FM translator ("FX") applications in spectrum-limited radio markets where the total number of available channels is less than the per-market channel floors proposed by the Commission for low power FM services ("LPFM"). NEBCO, which has applied for new FM translator stations in the Boston, Massachusetts ADI, a spectrum-limited market according to the Commission, has, in its Comments, urged the Commission to replace its current proposal with a spectrum allocation policy that divides available channels in spectrum-limited markets equally between FX and LPFM services. This balanced approach more faithfully adheres to the language of Section 5 of the Local Community Radio Act of 2010

¹ *Creation of a Low Power Radio Service et al.*, Third Further Notice of Proposed Rulemaking, FCC 11-105 (rel. July 12, 2011). The date for filing Reply Comments has been extended to this day. *Public Notice*, DA 11-1571, released September 16, 2011.

("LCRA"),² better serves the interests of fairness and procedural integrity, and offers opportunities both to new FM translators and LPFM stations.

NEBCO's review of the Comments submitted by those parties that operate commercial radio stations, including FM translator stations, and the National Association of Broadcasters ("NAB"), evidences similar concerns as to whether the Commission has established a basis for taking the extraordinary act of dismissing applications that have been pending for lengthy periods of time. While most of these Comments are grounded in legal or equitable arguments, NEBCO has made note that certain of the Comments also present engineering evidence that questions whether the Commission has established the necessary predicate upon which to undertake the application dismissals.³

The Comments submitted by Sacred Heart University, Inc. ("SHU") present a particularly compelling case for the Commission to rethink its rush to judgment in this instance. SHU takes the spectrum-limited market it has proposed for new FM translators and, by applying the processing standards, applicable to the two broadcast services, evidences that certain channels,

² Pub. L. No. 111-371, 124 Stat. 4072 (2011). Section 5 states as follows:
The Federal Communications Commission, when licensing new FM translator stations, FM booster stations, and low-power FM stations, shall ensure that –
(1) licenses are available to FM translator stations, FM booster stations, and low-power FM stations;
(2) such decisions are made based on the needs of the local community;
and
(3) FM translator stations, FM booster stations, and low-power FM stations remain equal in status and secondary to existing and modified FM stations.

³ NEBCO has also made note of the proposal of the Broadcast Maximization Committee, in its Comments, that the Commission use vacant space currently allotted to VHF Channels 5 and 6 for LPFM use. If LPFM stations were placed in this spectrum, the Commission would not have to engage in wholesale application dismissals of FM translator applications in spectrum-limited markets.

where FM translator applications are pending, cannot be used for LPFM stations because of minimum spacing requirements but, by waiving second adjacent spacing requirements, which the Commission has proposed,⁴ finds that five channels are available for new LPFM stations at specified transmitter sites.

The NAB's Comments contain engineering evidence that NEBCO finds particularly instructive for the Commission, as it deals with spectrum availability in Boston market where NEBCO's FM translator applications lie. According to the NAB's research, the Boston and other specified markets can accommodate the pending FM translator applications, including NEBCO's, but cannot accommodate any new LPFM stations. The NAB concludes (Comments at p. 15-16)⁵:

Using the Commission's LPFM6 software and database, NAB examined whether, even without protecting the pending translator applications, there would be channels or locations available for LPFM stations. NAB has established that, in all but five of these markets, there would be no available channels for LPFM stations. Since dismissing the pending translator applications would not result in the licensing of any LPFM stations in those markets, translator applications in those markets should continue to be processed (footnotes omitted).

NEBCO submits that if the NAB is correct, the Commission would be acting arbitrarily and capriciously were it to dismiss applications such as NEBCO's on the basis that new LPFM stations need to be accommodated, where it is not technically possible to do so.

What this tells NEBCO is that the proposal for the wholesale dismissal of pending FM translator applications may be an easy and simple one, but is not supported by a solid engineering foundation. The SHU and NAB Comments evidence that instead of a wholesale dismissal process, the consideration of each market should be on a case-by-case basis. If the

4 See Note 23 to the NPRM.

5 See also Appendix A to NAB's Comments.

market that SHU examined can accommodate both FM translators and LPFM stations, then so should other markets. If there are markets such as those examined by the NAB, where FM translators but not LPFM stations can be granted, such a result needs to be considered. What must be done is that the Commission undertake a complete examination of the channel availability and application of LPFM and FM translator allotment and spacing rules and then reach new determinations as to spectrum availability. Alternatively, the Commission can present what it believes the available spectrum is in each market and permit existing FM translator applicants to show that they can be accommodated along with adequate spectrum availability, within the standards of the LCRA, for new LPFM stations. Until such evidence is presented and parties have the ability to comment on it, and establish how LPFM and/or FM translators can be accommodated by application of the existing rules, no FM translator application, including NEBCO's, should be dismissed.

WHEREFORE, Northeast Broadcasting Company, Inc. respectfully requests that the Commission abandon its current proposal to allocate all available spectrum in affected spectrum-limited markets to LPFM services and instead, either equitably divide available spectrum between FM translator and LPFM services in such markets in accordance with the procedures identified above, or undertake a further and more complete analysis of spectrum availability and spacing/separations to determine what channel availability there is in an effort to ensure that neither pending FM translator applicants nor future LPFM applicants are entirely excluded from

seeking and obtaining broadcast spectrum they can use to serve the public interest.

Respectfully submitted,

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