

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

In re 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-11339

To: The Commission

### Petition for Reconsideration

Western North Carolina Public Radio, Inc. (“WNCPR”), through counsel, hereby respectfully petitions the Commission for reconsideration of the *Fourth Report and Order and Third Order on Reconsideration*, FCC 12-29, released March 19, 2012 (“FROTOR”), in which the Commission adopted rules for processing FM translator applications filed in the 2003 filing window.

WNCPR is the licensee of noncommercial educational FM radio stations WCQS, Asheville, North Carolina, WFSQ, Franklin, North Carolina, and WYQS, Mars Hill, North Carolina, and holds a construction permit for WMQS in Murphy, North Carolina. WNCPR filed several applications for new FM translator stations in the 2003 filing window. It operates in Arbitron Market No. 159. WNCPR requests reconsideration of the FCC’s definition of a market with respect to the Asheville, North Carolina market. Specifically, WNCPR requests that the 159<sup>th</sup> market not be included in Appendix A to the FROTOR or, alternatively, that the community of Black Mountain, North Carolina, not be considered a part of the Asheville market.

In historical FM translator processing, an applicant was allowed to show a specific need for a translator serving substantially the same area. 47. C.F.R. Sec. 1232(b). The Commission recognized that:

Our translator rules contemplate that a party may receive an authorization for a second or third FM translator serving substantially the same area as the first only after making a “showing of technical need for such additional stations. This is a spectrum efficiency rule based on our experience that parties rarely need such multiple translators.”

FROTOR, para. 59. Given the volume of applications, however, the FCC decided it was not administratively feasible to conduct a case-by-case assessment of the technical need for a translator in a specific area. Instead, it applied a one-cap application per market limit based on the markets identified in Appendix A, the geographic parameters of which are based on Arbitron determinations. The FCC went further than simply including the top 150-rated Arbitron markets. The FCC also added six other markets for which four or more FM translator applications had been filed.

WNCPR submits that the Arbitron market area is too broad an area as applied to the Asheville market. Translators in Asheville and Black Mountain would not serve substantially the same area. As set forth in the attached technical statement of Timothy L. Warner, P.E., Black Mountain, North Carolina, is geographically distinct from Asheville, even though the community of Black Mountain is included in the Asheville Arbitron market definition. The areas are not substantially the same. A mountain range separates the communities.

Appendix A of the FROTOR lists Asheville as the 159<sup>st</sup> Arbitron market. It is not a spectrum limited market. The only reason it was listed in Appendix A was that the translator applications filed in that Arbitron metro exceeded four applications. WNCPR



**Technical Statement**  
**In Support of Petition for Reconsideration**  
**by**  
**Western North Carolina Public Radio, Inc.**

**May 2012**

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Declaration

I declare, under penalty of perjury, that I am a technical consultant to broadcasting and other communications systems, that I have over twenty-five years of experience in the engineering of broadcast and other communications systems, that I am familiar with the Federal Communications Commission's Rules found in the Code of Federal Regulations Title 47, that I am a Professional Engineer registered in North Carolina, that I have prepared or supervised the preparation of the attached Technical Statement for Western North Carolina Public Radio, Inc., and that all of the facts therein, except for facts of which the Federal Communications Commission may take official notice, are true to the best of my knowledge and belief.



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8 May 2012

### Purpose

This Technical Statement supports a Petition for Reconsideration of the Fourth Report and Order and Third Order on Reconsideration In the Matter of Creation of a Low Power Radio Service, and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations (“Report”).<sup>1</sup>

### Statement

Western North Carolina Public Radio, Inc. (“WNCPRI”) filed multiple applications in the 2003 translator window. The applications were expressions of interest in service to multiple areas. In particular, applications were filed for service to Asheville, North Carolina and Black Mountain, North Carolina. Those applications are both in the Arbitron Metro area of Asheville, North Carolina. As such, the Report limits WNCPRI to one applications to be processed.

The limit of one application per market is based on the requirement that “a showing of need for such additional [same market] stations”<sup>2</sup> is normally required for same area translators. In the case of Asheville and Black Mountain, the areas are sufficiently separate and blocked by terrain that such a showing would not normally be required for the two communities. Figure 1 is a map of the Asheville Metro area with service contours for two of the applications filed by WNCPRI.

The communities are separate and distinct, are each communities of license for multiple facilities in the AM, FM, and television service, and can not be service from a common site with a single translator.

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<sup>1</sup> FCC 12-29, released March 19, 2012.

<sup>2</sup> Ibid., at ¶59, quoting 47 C.F.R. §74.1232(b).

