

Emergency Operations  
Emergency Service  
Translator FM  
Translator Operation  
Translator UHF  
Translator VHF

Report and Order adopted amending Secs. 74.731(f) and 74.1231(f) of Rules permitting TV and FM translators to originate emergency warnings of imminent danger and to employ fund raising solicitations to defray their costs. BC 78-252

FCC 80-166

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of

Origination of Solicitations for Contributions by VHF Translators and of Emergency Messages by TV and FM Translators.

BC Docket No.  
78-252  
RM-2739  
RM-2740

Report and Order

(Proceeding Terminated)

(Adopted: March 27, 1980; Released: May 28, 1980)

BY THE COMMISSION: CHAIRMAN FERRIS ISSUING A SEPARATE STATEMENT; COMMISSIONER LEE ABSENT.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, adopted August 8, 1978, inviting comments on two petitions for rule making filed by the National Translator Association ("NTA").<sup>1</sup> These petitions requested the Commission to amend its rules to permit VHF translator stations to originate transmissions soliciting and acknowledging contributions to defray their costs (RM-2739) and to permit both TV and FM translators to originate emergency warnings of imminent danger. In the *Notice of Proposed Rule Making*, the Commission proposed the amendment of Sections 74.731(f) and 74.1231(f) to permit such operation and,

<sup>1</sup> Those petitions were accepted for filing and given the rule making numbers RM-2739 and RM-2740. Public Notice of the two petitions was given on August 17, 1976, Report No. 997.

additionally, to permit the origination of other visual, as well as aural, materials by television translators.<sup>2</sup> Both supporting and opposing comments and reply comments were filed during the public comment period which followed adoption of the *Notice of Proposed Rule Making*.<sup>3</sup>

2. Because the comments supporting the proposed rules primarily follow the reasoning which the Commission set forth in its *Notice*, they will not be discussed in detail herein except where indicated. The opponents, however, raise several points that warrant discussion. Perhaps the most important point raised in opposition concerns the proposal to permit the origination of solicitations of contributions and the acknowledgment of such contributions. It is argued that Congress, in amending Section 318 of the Communications Act (47 U.S.C. §318) did not intend to permit such use of translators. Section 318 requires a licensed operator for broadcast stations, but it excludes from this translators which are operated on an unattended basis. Prior to 1976, the translator exception in Section 318 of the Act was phrased in terms of stations engaged "solely" in the function of rebroadcasting the signal of other broadcast television stations. In 1976, the Section was changed to refer to stations engaged "primarily" in the rebroadcast of the signals of other TV stations, and to permit unattended operation of FM, as well as TV translators. (P.L. 94-335, approved July 1, 1976, 90 Stat. 794.) As we observed in the *Notice*, the change was made to permit the Commission to explore the possibility of authorizing translators to originate limited amounts of local program and commercial material. In objecting to the proposed rules, those parties pointed out that the House Report issued in connection with the amendment of Section 318 stated that, "[t]he Committee is relying upon statements of the Commission that it will not allow the substitution of commercial advertising." H. Rep. No. 94-1261, 94th Cong., 2nd Sess., 3 (1976). Accordingly, it is argued, Congress did not intend to provide the Commission with permission to enact the subject rule because this would enable translators to acknowledge contributions, by, in effect, broadcasting the advertising messages of contributors.

3. Several commentators urge the Commission either to delete

<sup>2</sup> Under current Commission rules, both FM and UHF translators may originate transmissions soliciting and acknowledging contributions. Additionally, UHF translators have been permitted to originate emergency warnings. See, footnote 7, *infra*.

<sup>3</sup> Those filings comments were: the National Telecommunications and Information Administration ("NTIA"); the National Translator Association ("NTA"); a group of television licensees ("TV licensees"); the Association of Maximum Service Telecasters, Inc. ("MST"); the National Association of Broadcasters ("NAB"); American Broadcasting Companies, Inc. ("ABC"); the Teleprompter Corporation ("Teleprompter"); and the Washington State Association of Broadcasters ("WSAB"). Reply comments were filed by KHQ, Inc. ("KHQ"), WSAB, and NTA. The proposed rules were supported by NTIA, NTA, the TV licensees, MST, ABC, and to a more limited extent by WSAB, NAB and KHQ. They were opposed by Teleprompter and, to a limited extent, WSAB.

such permission or to state clearly that such messages may not be for profit. In support of its comments in this regard, WSAB chronicles what is alleged to be an abuse of the permission for solicitation and acknowledgment of contributions currently extended to UHF television translators. WSAB contends that commercial time is being sold on translators in Wenatchee, Washington, and elsewhere and that translator originated commercials are being substituted for those on the originating station. This, it argues, has an adverse effect upon broadcast radio services which cannot compete with the advertising rates offered by translator operators who do not have the program production and origination costs of other broadcasters. Television service also is said to suffer because the originating station has no control over the commercial substitutions by translators and as a result may be placed in an awkward situation with viewers attributing commercials aired by the translator to the originator even though they may be contrary to the advertising practices and voluntary restraints of the originating television station.

4. Further, the opponents assert that the proposed rules would encourage VHF translator development at the expense of UHF translators and also would accord preferential treatment to translators as a whole as compared with cable operators.<sup>4</sup> The proposal to permit emergency broadcast originations is objected to on the ground that there is no clear standard as to what would constitute an emergency, leaving the way open for abuse by the transmission of a significant number of non-emergency broadcasts. Emergency originations also are said to be likely to cause interference. Teleprompter requests that this Docket be incorporated into the Low-Power Television Inquiry, BC Docket 78-253,<sup>5</sup> so that the translator industry can be studied with respect to its financial condition, the technical problems that allegedly would attend the "widespread" origination of programming by translators, and the appropriate role of translators.

5. *Solicitations and Acknowledgments of Contributions.* Many of the arguments raised by commentators opposing all or part of the proposal to permit limited VHF translator originations for the purpose of soliciting and acknowledging financial contributions are similar to those made earlier by the National Cable Television Association, Inc. ("NCTA"), and rejected by the Commission, when we adopted the *Notice of Proposed Rule Making* in this matter. These objections, when

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<sup>4</sup> In this regard, Teleprompter argues that translators do not have the responsibilities of regular broadcast or cable operators, especially with respect to technical standards governing originations, and are relieved from various filing requirements applicable to broadcast and CATV operators. Moreover, the proposed rules are said to fail to protect cable subscribers from interference from translators and also are asserted to treat cable operators unfairly because they have been denied permission to carry certain emergency broadcasts, citing *CATV Carriage of Television Signals*, 62 F.C.C.2d 190 (1976).

<sup>5</sup> *Notice of Inquiry*, 68 F.C.C.2d 1525 (1978).

raised by other parties in the context of opposing that *Notice*, are no more persuasive at this time than they were when we proposed the subject rule amendments.

6. The limited authority to solicit and acknowledge contributions was designed to help defray the costs of translator operation. Financial problems, for example, do not appear to be limited to translators in the UHF band, even though they may vary in degree. It also is true, however, that financial viability may differ in degree as between various UHF translators or within the VHF translator "community." The Commission must be able to enact rules of general applicability if the administrative processes are to avoid grinding to a halt. Thus, granting VHF translators the ability to solicit contributions toward the defrayal of the costs of installing, operating and maintaining the translator, and to acknowledge such contributions, to the extent permitted, is warranted. Whether some, none, or all VHF translators avail themselves of this privilege remains to be seen. Our experience has been that most translators are "shoe string" operations that deserve to have this avenue open to them.

7. With respect to the argument that the Commission lacks financial reports on the economic health of translators and that we have not assessed the possibility of translator interference to, and competition with, other media, it should be noted that these matters are under consideration in the *Low Power Television Inquiry, supra*. The rule that we are adopting today is neither such a major rule revision nor does it rest upon such infirm support that it is necessary to await the outcome of the *Low Power Television Inquiry* before moving ahead in this proceeding. Furthermore, the fact that some translator operators currently may be operating in violation of our rules by using prohibited commercial substitution does not constitute a ground for our holding this proceeding in abeyance or for declining to adopt the subject rule. The substitution problem also is currently under examination in the *Low Power Television Inquiry*. Our rules concerning both interference and, inferentially, substitutions, are not changed by the rule that we are adopting hereby. That rule merely permits the origination of material soliciting or acknowledging financial contributions to defray the costs associated with the operation of a VHF translator. It does not permit harmful interference or the substitution of commercial material and it does not permit the sale of commercial time "for profit." Any current or potential violations of our rules regarding these practices can be addressed through specific complaints. While we do not condone these abuses, we do not see their relevancy to permitting the law-abiding VHF operator a reasonable opportunity to defray expenses, in the same manner as the UHF and FM operators have been permitted to do.<sup>6</sup>

8. The portion of the proposed rules that perhaps has caused the

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<sup>6</sup> Translator licensees are reminded that Section 317 of the Communications Act

most controversy is the sentence which states that, "Such acknowledgments may include identification of the contributors, the size or nature of the contributions and *advertising messages of contributors.*" (Emphasis supplied.) This language is consistent with the rule currently applicable to UHF and FM translators. Such acknowledgments, even where they consist of a contributor's advertisement, are of limited duration, and are permitted only in connection with contributions defraying operational costs (and hence may not be "for profit"). Such advertisements may be used solely as a method of acknowledging contributions made "toward the *defrayal of the costs* of installing, operating and maintaining the translator . . ." (Emphasis supplied.) It is clear from a reading of the legislative history of the amended Section 318 that Congress was concerned about commercial substitutions. On this point, the House Report accompanying the 1976 amendment is quite explicit:

The Committee is relying upon statements of the Commission that it will not allow the substitution of commercial advertising. H.R. Rept. No. 94-1261, 94th Cong., 2d Sess. 3 (1976).

In this context, "substitution of commercial advertising" refers to the insertion of the translator's messages at the same time that the originating station's commercial advertising is being carried. This Commission understands that, as a general principle, commercial substitution is a practice that Congress intended to strongly discourage, if not outright proscribe. We are therefore putting translator operators on notice that commercial substitution, as a practice, will not be allowed. As with all of our rules and policies, we expect reasonable, good faith efforts, to comply with this stricture. We also recognize that, because of the technical, operational, and economic characteristics of translator service, ensuring perfect compliance with this requirement could undercut the primary purpose of the legislative amendment: to permit limited origination so that translators may "give their audiences access to local news and information of vital community interest . . . [and] meet the difficult problems of financial support for their operation and service." S. Rept. No. 94-919, 94th Cong., 2d Sess. 4 (1976); H. Rept. No. 94-1261, 94th Cong., 2d Sess. 3 (1976). Should issues as to translator compliance arise, the Commission will consider the particular facts and circumstances presented to determine whether reasonable measures have been taken to avoid the occurrence of commercial substitution. In particular, efforts by the translator to coordinate its insertions with the originating station's commercial schedule will be relevant to any question of reasonable, good faith compliance.

9. *Emergency Broadcasts.* Permitting TV and FM translator

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requires the announcement of commercial sponsorship, and that Section 315 of the Act applies in full to political advertising, see "Public Notice," FCC 76-986, October 8, 1976, 62 F.C.C.2d 896.

stations to originate broadcasts relating to emergency warnings of imminent danger is manifestly in the public interest.<sup>7</sup> No convincing argument to the contrary has been made. The phrase, "emergency warnings of imminent danger," is a standard sufficiently precise to adopt without further definition or embellishment. The adoption of a more precise standard would leave open the distinct possibility that some event, which legitimately could be classed as an emergency creating an imminent danger, inadvertently would be left out. Rather than run this risk, the Commission considers it preferable to authorize translator operators to have the flexibility to respond to such emergencies as they occur. We place our reliance upon the good faith discretion of our licensees guided by the clear language of the rule we are adopting today. Should abuses arise, we will not hesitate to deal with them. But when weighed in the balance, the mere possibility of such an abuse does not outweigh the obvious benefits to the public to be derived from permitting all television and FM translators to originate emergency messages.

10. Teleprompter's reliance upon *CATV Carriage of Television Signals, supra*, to support its position that the Commission is preferring translator operators over CATV operators by permitting the former to do what was prohibited in that case to the latter, is entirely misplaced. In *CATV Carriage of Television Signals, supra*, the Commission was faced with a petition for rule making which, if the proposed rule was adopted, would permit the cable carriage of any television or radio broadcast station on any or all of the channels of the cable system during periods of emergency. Such a rule would not involve the CATV system's origination of emergency warnings of an imminent danger. Rather it would permit the wholesale importation of the signals of stations which could be far removed from the CATV system's subscribers. Moreover, this importation would not even be limited to the emergency warning. Instead it would have had the effect of suspending the Commission's rules on the importation of distant signals, including emergency warnings, entertainment and non-entertainment programming, for the entire period of the emergency. Such a rule easily could have led to a situation in which a cable system, for instance, in Wyoming, could import all of the programming of any or all radio and television stations, for instance, in Atlanta, Georgia, day after day during a period of emergency created by a tornado, a hurricane, an air pollution alert or a civil disturbance of any sort. In short, the rejection of a proposed open-ended waiver of the signal carriage rules for cable has no applicability as precedent to the instant proposal to permit emergency warning originations by all TV and FM translators. The public interest demands that we adopt the

<sup>7</sup> UHF translators have been permitted to originate emergency warnings although such authority is not conferred by the present terms of Section 74.731(f) of the Commission's Rules. See, *Medallion Broadcasters, Inc.*, Public Notice 35783, July 1, 1975.

proposed rules to enable all such translators to carry emergency warnings of imminent danger.

11. Finally, we have decided to make two minor modifications to the text of the rules that we had proposed in the initial *Notice of Proposed Rule Making*. First, we are here conforming the FM translator rules to the TV translator rules by deleting from the definition of an FM translator (Sec. 74.1201):

“. . . by means of direct frequency conversion and amplification of the incoming signals . . . .”

This phrase would have precluded FM translator originations of any sort. Secondly we are deleting the requirement, for both FM and TV translators, that the type of originating equipment be reported in writing, in advance, to the Commission. The rules we adopt here are plain as to the types of equipment authorized to be used, and we can expect our licensees to comply with these limitations without any need to multiply reporting burdens upon them or processing demands upon the Commission's staff. This situation is to be contrasted with the policy regarding terrestrial relays for translators. In the latter case, we require both reporting of equipment and equipment type-acceptance. However, the assurance of quality relays relates to all or nearly all of the translator's output, because all of its rebroadcast material would be obtained by that relay. The need for oversight of equipment there has no applicability to the originations authorized today, which by rule can comprise only a *de minimis* part of the translator's broadcast service.

12. Authority for the adoption of the rules herein is contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, and Section 1.425 of the Commission's Rules.

13. Accordingly, IT IS ORDERED, That Part 74 of the Commission's Rules IS AMENDED as set forth in the attached Appendix, effective July 7, 1980.

14. IT IS FURTHER ORDERED, That the proceeding in BC Docket No. 78-252 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,  
WILLIAM J. TRICARICO, *Secretary*.

#### APPENDIX

Part 74 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 74.731(f) is amended to read as follows:

§74.731 Purpose and permissible service.

\* \* \* \* \*

(f) A locally generated radio frequency signal similar to that of a TV broadcast station and modulated with visual and aural information may be connected to the input terminals of a television broadcast translator for the purpose of transmitting still photographs, slides and voice announcements. The radio frequency signals shall be on the

same channel as the normally used off-the-air signal being rebroadcast. When transmitting originations concerning financial support, connection of the locally generated signals shall be made automatically either by means of a time-switch or upon receipt of a control signal from the TV station being rebroadcast designed to actuate the switching circuit. The switching device shall be so designed that the translator input circuit will be returned to the off-the-air signal within 30 seconds. The connection for emergency transmissions may be made manually. The apparatus used to generate the local signal which is used to modulate the translator must be capable of producing a visual or aural signal or both which will provide acceptable reception on television receivers designed for the transmission standards employed by TV broadcast stations. The visual and aural materials so transmitted shall be limited to emergency warnings of imminent danger and to seeking or acknowledging financial support deemed necessary to the continued operation of the translator. Accordingly, the originations concerning financial support are limited to 30 seconds no more than once an hour and to the solicitation of contributions toward defrayal of the costs of installing, operating and maintaining the translator or acknowledgments of financial support for those purposes. Such acknowledgments may include identification of the contributors, the size or nature of the contributions and advertising messages of contributors. Emergency transmissions shall be no longer or more frequent than necessary to protect life and property.

2. Section 74.1201(a) is amended to read as follows:

§74.1201 Definitions.

(a) *FM translator.* A station in the broadcasting service operated for the purpose of retransmitting the signals of an FM radio broadcast station or another FM broadcast translator station without significantly altering any characteristics of the incoming signal other than its frequency and amplitude, in order to provide FM broadcast service to the general public.

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3. Section 74.1231(f) and (g) are amended to read as follows:

§74.1231 Purpose and permissible service.

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(f) A locally generated radio frequency signal similar to that of an FM broadcast station and modulated with aural information may be connected to the input terminals of an FM translator for the purpose of transmitting voice announcements. The radio frequency signals shall be on the same channel as the normally used off-the-air signal being rebroadcast. Connection of the locally generated signals shall be made automatically by means of a time-switch when transmitting originations concerning financial support. The connection for emergency transmissions may be made manually. The apparatus used to generate the local signal that is used to modulate the FM translator must be capable of producing an aural signal which will provide acceptable reception on FM receivers designed for the transmission standards employed by FM broadcast stations.

(g) The aural material transmitted as permitted in paragraph (f) of this Section shall be limited to emergency warnings of imminent danger and to seeking or acknowledging financial support deemed necessary to the continued operation of the translator. Accordingly, the originations concerning financial support are limited to 30 seconds no more than once an hour and to the solicitation of contributions toward defrayal of the costs of installation, operation, and maintenance of the translator or acknowledgments of financial support for those purposes. Such acknowledgments may include identification of the contributors, the size or nature of the contributions and advertising messages of contributors. Emergency transmissions shall be no longer or more frequent than necessary to protect life and property.

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SEPARATE STATEMENT OF CHARLES D. FERRIS, CHAIRMAN

RE: TELEVISION AND FM TRANSLATORS FUND RAISING SOLICITATIONS  
AND EMERGENCY WARNINGS

Today's rule modifications eliminate unnecessary differences among FM, VHF and UHF translator services. In doing so, the Commission takes another positive step to overcome the problems of isolation of rural Americans identified in the President's February, 1979 rural telecommunications proposals.

In order to promote continued viability of rural translators, we must assure operators reasonable means of attracting financial support. As a result of today's order, all classes of broadcast translator stations will be allowed to offer limited advertising time to contributors to their operation. Their rural viewers and listeners will also be able to receive emergency warnings of tornados, hurricanes and other natural disasters.

In the coming months we will consider further steps to lift restrictions on these stations so that they may more fully serve rural consumers, who often depend on translator broadcasts as their link with the rest of society.