

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

MM Docket No. 86-112

In the Matter of

Amendment of Part 74 of the  
Commission's Rules to Provide  
for Satellite and Terrestrial  
Microwave Feeds to Noncommercial  
Educational FM Translators

**SECOND REPORT AND ORDER**  
(Proceeding Terminated)

Adopted: August 19, 1992;

Released: August 28, 1992

By the Commission:

**INTRODUCTION**

1. By this *Second Report and Order (Second Report)*, the Commission is modifying its rules to allow independently owned and operated noncommercial educational FM (NCE-FM) translators assigned to reserved frequencies (channels 200-220) and providing service in the fill-in areas of their primary stations to receive signals by terrestrial microwave or other terrestrial means.<sup>1</sup> Currently, the Commission allows only NCE-FM translator stations assigned to reserved channels, and owned and operated by their primary stations, to rebroadcast signals that are relayed by any technical means.<sup>2</sup> The Commission is also adopting rules to allow broadcast intercity relay microwave facilities to be used to deliver signals to NCE-FM translators owned by their primary stations, on a secondary basis; and, to independently owned and operated NCE-FM translators operating in the fill-in areas of their primary stations, also on a secondary basis.<sup>3</sup>

**BACKGROUND**

2. In the *Report and Order* in this proceeding, the Commission amended its rules so that NCE-FM translator stations assigned to reserved channels and owned and operated by their primary stations could receive signals for rebroadcast via any technical means the licensee deems suitable. Concurrently, the Commission adopted a *Further Notice of Proposed Rule Making (Further Notice)* that pro-

posed to extend this rule change to *all* NCE-FM translators assigned to reserved channels.<sup>4</sup> The Commission also proposed to allow broadcast intercity relay microwave facilities to be used to deliver signals to NCE-FM translators, on a secondary basis. Finally, the Commission solicited comment on whether to adopt procedures that would give local noncommercial broadcasters priority in acquiring NCE-FM translators located within their 1 mV/m contour, or extending their service to adjacent areas.

3. Comments were filed in response to the *Further Notice* by the Association For Broadcast Engineering Standards, Inc. (ABES); the Association of Maximum Service Telecasters, Inc. (MST); the Intercollegiate Broadcasting System (IBS); the National Association of Broadcasters (NAB); National Public Radio (NPR) (initial and reply); and Salem Broadcasting Services (SBS). The three proposals will be discussed in order.

**Proposal I** -- Permit the use of any alternative technical means to deliver signals to independently owned NCE-FM translators.

4. *Comments.* The commenters are uniformly opposed to the unconditional extension of alternative signal delivery authority to independently owned NCE-FM translators. IBS, NAB, NPR and SBS oppose the proposed modifications on the grounds that "localism" will be adversely affected. NAB opines that NCE-FM translators using alternative signal delivery are a threat to localism, spectrum, integrity and efficiency. NAB claims that the argument that these translators are needed to provide service to unserved and underserved areas does not withstand close scrutiny. NAB contends that there are fewer and fewer unserved and underserved radio markets each day. NAB observes that many communities without radio stations are still served by nearby radio stations. It also argues that if the Commission wants to provide service to these communities, such service should be provided by local full service stations with the responsibility to provide issue responsive programming, and not by the importation of distant FM stations via NCE-FM translators that have no responsibility to meet this obligation.

5. NPR states that the extension of alternative signal delivery authority to all NCE-FM translators is contrary to "localism" and that localism is the core of broadcast regulation and the prior translator rules. NPR, therefore, suggests that the Commission modify the underlying alternative signal delivery NCE-FM translator rule and impose limitations to be consistent with localism. Specifically, NPR proposes that NCE-FM translators be licensed to receive alternate signal delivery only if they meet any one of the following conditions: 1) the translator is located within the 1 mV/m contour of the primary station; 2) the translator is located within a specified distance of the primary station and the primary station meets all regula-

<sup>1</sup> An FM translator is providing "fill-in" service if the FM translator's coverage contour is within the coverage contour of its primary station. See Section 74.1201(h) of the rules. 47 CFR §74.1201(h).

<sup>2</sup> NCE-FM translator stations assigned to reserved channels, and owned and operated by their primary stations, are authorized to receive signals for rebroadcast via any technical means the licensee deems suitable. See *Report and Order*, MM Docket No. 86-112, 3 FCC Rcd 2196 (1988).

<sup>3</sup> The revised rules are contained in the Appendix. These rules were also modified so as to conform with the rules adopted in *Report and Order*, MM Docket No. 88-140, 5 FCC Rcd 7228 (1990).

<sup>4</sup> *Further Notice of Proposed Rule Making*, MM Docket No. 86-112, 3 FCC Rcd 2202 (1988).

tions for assuring local access and control; or 3) the translator applicant makes a showing that the area served by the translator is not now served by a full service noncommercial educational radio station and is not likely to be so served within the next five years. NPR claims that each of these conditions permit NCE-FM translators to use an alternative signal delivery technology while at the same time maintaining the traditional functions of NCE-FM translators and fundamental communication policies. SBS proposes to authorize alternative delivery for NCE-FM translators if the translator was authorized prior to May 31, 1988, or would provide the first or second NCE-FM service to the area.

6. ABES and NAB state that the proposed modification of the NCE-FM translator rules will generate a massive number of applications for satellite-fed translators. They argue that the increase in the number of applications will overburden limited Commission resources. ABES and NAB maintain that the resultant delays in processing will force local FM translator applicants to look toward commercial channels to remedy the shortage of available noncommercial channels.

7. NAB, IBS and MST contend that interference problems might increase if the NCE-FM translator rules are relaxed. NAB states that such a relaxation will increase the interference levels to all broadcast stations. MST is especially concerned with potential interference to TV Channel 6 and suggests that the Commission adopt a processing standard that will protect all broadcast stations.<sup>5</sup>

8. *Discussion.* In the *Report and Order* in this proceeding, the Commission authorized NCE-FM translators in the reserved band that are owned and operated by their primary stations to receive signals from their primary stations via any technical means the licensees deem suitable. The Commission stated that this action would expand "opportunities for providing quality FM service to unserved and underserved areas."<sup>6</sup> In response to several petitions for reconsideration, the Commission modified its initial action by requiring, in some cases, that applicants for alternative signal delivery authority for a NCE-FM translator make a special showing.<sup>7</sup> This showing contains a series of conditions designed to assure continued local radio service in the NCE-FM band and to allow expansion of service through the use of NCE-FM translators. The Commission took this action in order to strike a balance between the public interest embodied in ensuring the development and expansion of local public radio service and increasing NCE-FM service by the use of translators.

9. Although the record lends no support for eliminating all alternative signal delivery restrictions to independently owned NCE-FM translators, we continue to believe that service to the public will be enhanced by permitting independently owned NCE-FM translators to receive signals

by other means in addition to off-the air. However, our concern for maintaining a balance between the public interest embodied in ensuring the development and expansion of local public radio service and increasing NCE-FM service by the use of translators persuades us to retreat from our original proposal to allow all independently owned NCE-FM translators to use all forms of alternative signal delivery and to adopt, instead, a more limited relaxation of the signal delivery rule. We have concluded that independently owned NCE-FM translators assigned to reserved frequencies and serving fill-in areas should be afforded the same alternative signal delivery authority as the Commission allows for commercial FM translators providing fill-in service.<sup>8</sup> Thus, independently owned NCE-FM translators assigned to reserved frequencies and serving fill-in areas will be permitted to receive signals by any terrestrial transmission facilities including, but not limited to, microwave, phone company circuits, and dedicated cable. We will also be favorably disposed toward requests for waivers of the prohibitions contained in this rule for "white areas" -- those areas beyond the coverage contour of all full-time noncommercial aural services. This modest relaxation of the signal delivery rule for independently owned NCE-FM fill-in translators will afford licensees added flexibility while not posing any appreciable risk to eventual development of full-service educational stations or their continued support.

**Proposal II -- Allow broadcast auxiliary intercity relay microwave facilities to be used to deliver signals to certain NCE-FM translators on a secondary basis.**

10. *Background.* In allowing terrestrial signal delivery we note that private and common carrier microwave facilities are already permitted to provide this type of service and, therefore rule changes are not necessary to allow NCE-FM translators to use those facilities to receive program signals. The broadcast auxiliary service, however, is not currently authorized to provide such a service. In this regard, the *Notice of Proposed Rule Making (Notice)*, had proposed to allow broadcast auxiliary intercity relay microwave stations to be used to deliver signals to NCE-FM translators in the reserved band which were owned by their primary station.<sup>9</sup> The proposal was intended to facilitate the use of alternate signal delivery technology to NCE-FM translators. In the *Report and Order*, the Commission acknowledged the potential congestion in the intercity microwave band and stated that it believed the most desirable way to maximize the availability of broadcast channel space and still provide for use of these frequencies by NCE-FM translators would be to authorize such use on a secondary basis only. The Commission, therefore, sought additional comment on this issue in the *Further Notice*.

<sup>5</sup> As we stated in the *Report and Order*, interference issues are beyond the scope of this proceeding and we will not, therefore, address these concerns here. Interference issues were considered in MM Docket No. 88-140 regarding FM translator issues. See *Report and Order*, MM Docket No. 88-140, 5 FCC Rcd 7228 (1990).

<sup>6</sup> See *Report and Order*, MM Docket No. 86-112, 3 FCC Rcd 2198 (1988).

<sup>7</sup> See *Memorandum Opinion and Order (MO&O)* in MM Docket No. 86-112, 4 FCC Rcd 6459 (1989). This special showing requires that an applicant demonstrate that an alternative NCE-FM frequency remains available.

<sup>8</sup> In the *Report and Order* in MM Docket No. 88-140, the Commission authorized commercial translators providing fill-in service to use terrestrial facilities, and adopted a "white area" waiver policy. See *Report and Order*, MM Docket 88-140, 5 FCC Rcd 7221 (1990). We note that there has been no increase in the incidents of interference complaints from full-service stations as a result of this change.

<sup>9</sup> *Notice of Proposed Rule Making*, MM Docket No. 86-112, 104 FCC 2nd 318 (1986).

The *Further Notice* also sought comment on whether independently owned NCE-FM translators using alternative signal delivery should be permitted to use the intercity microwave band on a secondary basis. The Commission stated, in the *Report and Order*, that in the interim it would accept applications for intercity relay stations on broadcast auxiliary channels to deliver primary station signals to NCE-FM translators owned by their primary stations consistent with a secondary authorization. Such authorizations, however, would be subject to the provisions of our final decision on this matter.

11. *Comments.* NAB opposes relaxing this prohibition against use of broadcast auxiliary frequencies and states that, due to congestion in this band, even a secondary authorization of microwave delivery of signals to NCE-FM translators could have a detrimental effect on the ability of full service FM stations to use effectively the intercity relay band. NAB adds that use of these channels by NCE-FM translators could preclude full service stations from serving the public with locally-oriented programming. NPR also concedes that there is congestion in this band and claims that broadcast auxiliary channels are needed for the primary use of studio to transmitter links and intercity relays. Nevertheless, NPR proposes to allow some use of auxiliary channels with certain restrictions it claims would assure that the primary functions of the translator service are preserved and that local broadcasters' uses of broadcast auxiliary channels are protected. Finally, SBS suggests that the Commission authorize such use only on a secondary basis and only where it would not interfere with full service FM stations.

12. *Discussion.* While we recognize that continued congestion exists in the broadcast auxiliary frequencies in larger markets, it is likely that broadcast channel space is available in more remote areas. We believe it is in the public interest to maximize the potential for service to such areas. We are also mindful of the need to maintain the balance between the public interest embodied in ensuring the development and expansion of local public radio service and in increasing NCE-FM service to areas unable to receive service due to distance or intervening terrain obstructions. We are, therefore, authorizing the use of broadcast auxiliary channels to feed NCE-FM translators on channels 200-220 for translators that are co-owned and operated by their primary stations, and for those independently owned NCE-FM translators operating in the fill-in areas of their primary stations. We will also be favorably disposed toward requests for waivers of the prohibitions contained in this rule for translator operation in "white areas." This approach is consistent with our purpose of maximizing the flexibility of NCE-FM translators in providing service to areas in which direct reception of radio broadcast stations is unsatisfactory due to distance or intervening terrain barriers.

13. In order to minimize the impact on the availability of aural intercity relay frequencies to deliver signals to full service stations, these authorizations will be granted on a secondary basis only. This means that aural intercity relay stations could be used to deliver signals to NCE-FM translators only if such use would not interfere with use of

those channels to serve full service stations. This secondary authorization will preserve broadcast auxiliary intercity relay spectrum for use by full service stations in those markets in which this band is congested. Furthermore, a secondary authorization will protect the service to be provided by future FM radio broadcast stations because the FM translator is required to relinquish its use of the spectrum if an increase in demand by radio stations cannot otherwise be accommodated. Applicants seeking to use the intercity relay stations are advised to file such requests on FCC Form 313 and to indicate in Section 5(d) the intended purpose of the facility, *i.e.*, for NCE-FM translators.

**Proposal III** -- Adopt procedures granting NCE-FM broadcasters priority in acquiring NCE-FM translators within their service area or extending their service into adjacent areas.

14. *Comments.* In responding to this issue, SBS strongly supports policies which are designed to give local community organizations a preference in receiving NCE-FM translator authorizations in their own communities. SBS states that only through adopting such preferences can the Commission achieve its goal of assuring responsiveness to local community needs. NPR concurs and adds that local broadcaster priority should be assured through: (1) distance limitations between the primary station and the NCE-FM translator; (2) absolute priority for a local broadcaster where a translator is located within the 1 mV/m contour of the station; (3) use of a filing window of 90 days to accommodate public funding and planning needs. NPR states that only through imposition of such conditions can the Commission adhere to its established regulatory framework and preserve the important principles of localism.

15. *Discussion.* The Commission already has safeguards in place that protect the demand by local public broadcasters for translators to fill in their service areas. First, for mutually exclusive applications, the Commission gives highest priority to translator applicants proposing fill-in service of the commonly owned primary station.<sup>10</sup> Second, the Commission has established a transition period in the *MO&O* that affords local public broadcasters time to acquire a NCE-FM translator. During this transition period, which expires on October 2, 1992,<sup>11</sup> an applicant for a NCE-FM translator seeking authorization to use alternative signal delivery has to make a showing that an alternative NCE-FM frequency is available that would potentially serve the same area as the applicant's proposed contour. We believe that these two measures adequately resolve our concerns in this area.

#### PROCEDURAL MATTERS

16. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. *Need for and purpose of the rules.* The Commission concludes that these rule changes will permit the expansion of noncommercial FM translator service to areas in

<sup>10</sup> *Report and Order* in MM Docket No. 88-140, 5 FCC Rcd 7223 (1990).

<sup>11</sup> The Commission has received informal comments indicating that the transition period may be too short. While changing the

length of the transition period is beyond the scope of this proceeding, the Commission will, of course, entertain formal requests to extend the transition period, based upon specific factual showings demonstrating that relief is appropriate.

which direct reception of radio broadcast stations is unsatisfactory due to distance or intervening terrain barriers, while striking a balance between the public interest embodied in ensuring the development and expansion of local public radio service.

II. *Summary of issues raised by public comment in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result.*

A. *Issues Raised.* No issues were raised specifically in response to the initial regulatory flexibility analysis. All of the comments were directed to proposed extension of the alternative signal delivery rule to independently owned translators.

B. *Assessment.* We believe our initial assessment with regard to the use of broadcast auxiliary frequencies to be correct and that such usage will increase the potential for additional NCE-FM service to areas with reception problems. However, we have modified our original proposal to extend, to independently owned NCE-FM translators operating within the coverage area of their primary stations, the permissible alternative signal delivery already afforded NCE-FM translators owned and operated by their primary stations.

C. *Changes made as a result of comments.* We are authorizing independently owned and operated NCE-FM translators operating in fill-in areas of their primary stations to use terrestrial signal feed.

III. *Significant alternatives considered and rejected.* We have considered and rejected alternatives and have concluded that the action taken herein balances the benefits of expanded NCE-FM service with the enhancement of local public radio service.

17. Accordingly, IT IS ORDERED That under the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, Part 74 of the Commission's rules and regulations IS AMENDED as set forth in the Appendix below, effective **October 16, 1992**.

18. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

19. For further information, contact Scott Roberts at (202) 632-6302.

#### FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy  
Secretary

#### APPENDIX

Part 74 of Title 47 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for Part 74 continues to read as follows:

**Authority: 47 U.S.C. 154 and 303.**

2.47 CFR 74.501 is amended by revising paragraph (b) to read as follows:

**§ 74.501 Classes of aural broadcast auxiliary stations.**

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(b) Aural broadcast intercity relay (ICR) station. A fixed station for the transmission of aural program material between radio broadcast stations, other than international broadcast stations, between FM radio broadcast stations and their co-owned FM booster stations, between noncommercial educational FM radio stations and their co-owned noncommercial educational FM translator stations assigned to reserved channels (Channels 201 to 220), between FM radio stations and FM translator stations operating within the coverage contour of their primary stations, or for such other purposes as authorized in §74.531.

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3. 47 CFR 74.531 is amended by revising paragraph (c) to read as follows:

**§ 74.531 Permissible service.**

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(c) An aural broadcast intercity relay station is authorized to transmit aural program material between noncommercial educational FM radio stations and their co-owned noncommercial educational FM translator stations assigned to reserved channels (Channels 201 to 220) and between FM radio stations and FM translator stations operating within the coverage contour of their primary stations. This use shall not interfere with or otherwise preclude use of these broadcast auxiliary facilities by broadcast auxiliary stations transmitting aural programming between broadcast stations as provided in paragraph (b) of this section.

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4. 47 CFR 74.532 is amended by revising paragraph (a) to read as follows:

**§ 74.532 Licensing requirements.**

(a) An aural broadcast STL or an aural broadcast intercity relay station will be licensed only to the licensee or licensees of broadcast stations, other than international broadcast stations, and for use with broadcast stations owned entirely by or under common control of the licensee or licensees. An aural broadcast intercity relay station also will be licensed for use by noncommercial educational FM translator stations assigned to reserved channels (channels 201-220) and owned and operated by their primary station, by FM translator stations operating within the coverage contour of their primary stations, and by FM booster stations.

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5. 47 CFR 74.1231 is amended by revising the introductory portion of paragraph (b) to read as follows:

**§ 74.1231 Purpose and permissible service.**

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(b) An FM translator may be used for the purpose of retransmitting the signals of a primary FM radio broadcast station or another translator station which have been received directly through space, converted, and suitably amplified. However, a FM translator providing fill-in service may use any terrestrial facilities to receive the signal that is being rebroadcast. An FM booster station or a noncommercial educational FM translator station operating on a reserved channel (Channel 201-220) and owned and operated by the licensee of the primary noncommercial educational FM station it rebroadcasts may use alternative signal delivery means, including, but not limited to, satellite and terrestrial microwave facilities. *Provided*, however, that an applicant for a noncommercial educational FM translator station operating on a reserved channel (Channel 201-220) and owned and operated by the licensee of the primary noncommercial educational FM station it rebroadcasts complies with either paragraph (b)(1) or (b)(2) of this section:

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