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

MM Docket No. 88-140

In the Matter of

Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations	RM-5416 RM-5472

MEMORANDUM OPINION AND ORDER

Adopted: June 28, 1993; Released: July 28, 1993

By the Commission:

INTRODUCTION

1. On November 8, 1990, the Commission adopted a *Report and Order (Report)*, 5 FCC Rcd 7212 (1990), amending the rules governing the FM translator service. The Commission's action restructured the FM translator rules consistent with the intended purpose of providing supplementary service to areas in which direct reception of FM radio broadcast stations is unsatisfactory due to distance or intervening terrain barriers. Before the Commission are separate petitions for reconsideration filed by the National Association of Broadcasters (NAB), John S. La Tour (La Tour), the National Translator Association (NTA), Klimek Communications Corp. (Klimek), Ed Crook (Crook), and Doyle Brewer (Brewer).[1] By this *Memorandum Opinion and Order*, we affirm and further clarify the FM translator rules, including the revised standards for: ownership and financial support of translators; the definition of "major change" in translator coverage areas; maximum power output; and interference criteria for translators. We also adopt minor amendments in the grandfathering criteria and the technical aspects of local program origination.

BACKGROUND

2. FM translators are stations that receive the signals of FM radio broadcast stations and simultaneously retransmit those signals on another frequency.[2] In general, the signal of the FM radio broadcast station being rebroadcast[3] must be received directly over-the-air at the translator site.[4] FM translators were authorized in 1970 as a means of providing FM service to areas and populations that were unable to receive satisfactory FM signals due to distance and intervening terrain obstructions.[5] The Commission restricted FM translators to operating strictly on a secondary basis and limited their service, ownership, financial support, and program origination authority.[6]

3. In the *Report*, we tightened or clarified several rules after concluding that the proper role for FM translators remains as a secondary service supplementing the service of FM radio broadcast stations. We also modified several rules so that translators could better serve the public. The rule changes sought to ensure that the translator service does not adversely affect the operation of FM radio broadcast stations. First, the coverage contour of a translator providing fill-in service was defined to coincide with the coverage contour of the primary station for the respective station classes. With respect to service issues, we determined that an FM translator may not be licensed to a commercial FM broadcast station if the translator's coverage contour goes beyond the primary station's coverage contour. In "white area" situations, beyond the protected contour of any full-time aural service, we indicated that we would be favorably disposed toward requests for waivers of our rules to permit commercial primary station ownership. Similarly, we determined that commercial primary stations could financially support fill-in translators[7] both before and after the translator commences operation. We also concluded that commercial FM broadcast stations may not provide financial support beyond technical assistance to

[1] Dan Hendrix and FM Technology Associates, Inc. filed petitions for reconsideration after the 30-day statutory deadline. *See* 47 U.S.C. § 405, 47 CFR § 1.106(f). Therefore, the issues raised by these parties are not considered in this proceeding.

[2] Currently, there are approximately 1,901 FM translators on-the-air. Construction permits have been granted for another 390 translators.

The current rules also recognize FM booster stations that receive, amplify and retransmit signals on the same frequencies as the FM radio broadcast station. Booster stations are authorized only to the licensee of the primary station they rebroadcast and afford a means whereby the licensee of a primary station may provide service to areas at low signal strength within its primary service contour. *See* 47 CFR § 74.1231(h). We have revised the FM booster rules to authorize higher power FM boosters and to permit them to rebroadcast signals received by any distribution technology the licensee deems suitable. *See Report and Order* in MM Docket No. 87-13, 2 FCC Rcd 4625 (1987).

[3] An FM radio broadcast station whose signal is rebroadcast by an FM translator is referred to as the "primary station." *See* 47 CFR § 74.1201(d).

[4] The rules have been modified to permit licensees of noncommercial educational FM stations to use any distribution technology they deem suitable, subject to certain conditions, to transmit programming to their own translators operating on reserved channels. *See Report and Order* in MM Docket No. 86-112, 3 FCC Rcd 2196 (1988), *recon. denied in relevant part, Memorandum Opinion and Order* in MM Docket No. 86-112, FCC 89-216, 4 FCC Rcd 6459 (1989). Further, independently-owned FM translator stations that operate in the "fill-in" area of their NCE-FM primary stations may receive signals by using any terrestrial means. *See Second Report and Order* in MM Docket No. 86-112, 7 FCC Rcd 5546 (1992).

[5] *See Notice of Proposed Rule Making* in Docket No. 17159, 34 FR 761 (1969), *Report and Order* in Docket No. 17159, 20 Rad. Reg. 2d (P&F) 1538 (1970). *See also* 47 CFR § 74.1231(a).

[6] The FM translator rules are set forth at 47 CFR §§ 74.1201-74.1284.

[7] The *Report* distinguishes between a "fill-in" translator, whose predicted coverage contour is entirely contained within the primary station's coverage contour, and an "other area" translator, whose predicted coverage contour extends beyond the primary station's coverage contour.

"other area" FM translators; however, we indicated that we will favorably view waiver requests to allow financial support for translators in "white areas." Noncommercial educational FM (NCE-FM) translators are exempt from these ownership and financial support restrictions.

4. With respect to other service issues, we permitted all translators to use one or more announcements not to exceed a total of 30 seconds per hour in order to acknowledge and solicit funds for operating expenses. We allowed commercial fill-in translators to use any terrestrial means to obtain the primary station signals, with a favorable disposition toward waiver requests for similar permission entertained for "white area" translators. We clarified that licensees may operate multiple FM translators upon showing "need" as determined on technical grounds by the quality of signal received from the intended primary station or any operating translator. We also adopted procedures to resolve mutually exclusive applications. We defined a "major change" for FM translators as any change in output frequency (output channel), or any change or increase (but not decrease) in geographic area that increases the 1 mV/m coverage area by more than 10 percent of the previously authorized 1 mV/m coverage contour. We continued to exempt FM translators from our multiple ownership rules, and also to prohibit AM-FM cross-service translating.

5. Regarding technical issues, we decided to allow all FM translators to operate on any of the 80 commercial channels with the 20 reserved noncommercial educational channels remaining available for NCE-FM translator use. We adopted a maximum ERP standard of 250 watts at low antenna heights (HAAT), and stated that additional antenna height must be traded for reduced power, implemented by new criteria that limit permissible coverage distance. We indicated that we would be favorably disposed toward waiving this rule to permit higher power (up to 250 watts ERP at any HAAT) if applicants demonstrate that the service to a greater distance reaches only a "white area." In order to apply the waiver standard to NCE-FM translators, we decided to construe any area that is not served by a full-service noncommercial educational radio station as a "white area." We clarified the standards for antennas and adopted our proposed prohibited overlap criteria for predicted interference to FM and TV Channel 6 stations. We concluded that existing stations must comply with the new service rules within three years of the effective date of these new rules, and stated that we would entertain waiver requests where service to the public would be unduly lost as a result of compliance. We also "grandfathered" existing translators that do not comply with the new technical rules unless interference problems occur or the licensee of a grandfathered translator seeks to modify its facilities.

DISCUSSION

General Comments

6. *Petitions.* The petitioners discuss several general issues in connection with the new FM translator rules. In particular, NTA and Klimek believe that submissions to the record regarding the abuses of the ownership and fundraising limitations by FM translators are unsupported allegations for which the Commission has not made any findings of actual violations.[8] NTA also claims that the new rules concerning translator use in "white areas" are contrary to the Commission's pro-competitive policies and other precedents, observing that the Commission has concluded elsewhere that a rural area is "underserved" if it receives interference-free service from less than five full-time stations.[9]

7. Conversely, NAB argues that the Commission should promote FM radio service through "full-service," regularly authorized FM broadcast stations, and that the purpose of FM translators should be to provide radio service to unserved areas or areas where there is a gap in authorized service. It suggests further reforms in translator ownership requirements in order to ensure that FM radio stations are not subjected to unwarranted technical interference or to "unfair competition" by FM translator stations. NAB also contends that the rules should allow additional provision of radio service where genuinely desired by the public rather than by entrepreneurs alone. NTA asserts that NAB has not demonstrated that their members have been subject to "unwarranted technical interference" or "unfair competition," and that the Commission *Report* protects full-service rural stations from competition.

8. *Discussion.* As stated in the *Report*, we find that any enhancements to FM service are most efficiently provided by full-service broadcast stations. The prior rules allowed certain uses by FM translators that contributed to the potential for abuse and to the possible detriment of the FM radio broadcast service. We conclude that the new ownership and financial support limitations adopted in the *Report* will best serve the public interest by promoting incentives for primary station development.

9. NTA asserts that the decision contradicts other Commission precedents regarding the definition of "adequately served" and "underserved" areas. However, the FM translator service is designed to function on a secondary basis in order to supplement the service provided by FM radio broadcast stations. While we have defined "adequately served" and "underserved" areas differently in other Commission regulatory contexts, our definition of "white areas" for the purposes of FM translators is more relevant to the FM translator service's role of filling gaps caused by distance and terrain barriers. The full-service broadcast station concept of an "underserved" area considers a greater number of stations because such stations are our preferred means of achieving broad distribution of radio service. Furthermore, the definition of "underserved" referenced by NTA is one used to determine which of several competing proposals for stations would, on a comparative basis, better

[8] For a complete discussion of the alleged abuses by FM translators in the *Report*, *see* 5 FCC Rcd 7212, 7215, 7216 (1990).

[9] NTA generally cites "the line of cases applying Section 307(b) of the Communications Act." *See* NTA Petition for Reconsideration, January 9, 1991, at p.10, n.9. NTA also references the *Further Notice of Proposed Rule Making* in MM Docket No. 90-4, released December 31, 1990, where the Commission proposed requiring a number of local signals to constitute effective competition for local cable systems.

serve the public interest. Therefore, that definition has little direct relevance to the relationship between full-service and translator service. In addition, the number of entities necessary for establishing effective competition for cable services, as cited by NTA, is irrelevant to the standard applied in the aural medium. Therefore, we continue to believe that commercial primary stations should be able to own FM translators beyond the station's predicted 1 mV/m coverage contour only if the translator serves a "white area." Independent parties, of course, are permitted to establish FM translators to serve any area as desired.

Service Issues

Ownership restrictions

10. *Current Rules.* The new ownership rules allow commercial FM broadcast stations to own a translator only when the translator's coverage area is entirely within the primary station's coverage contour. The rules do not allow ownership of "other area" FM translators by any entity "interested in or connected with" the licensee of a primary station.[10] We stated that we would view favorably waiver requests to permit commercial primary station ownership of translators providing "other-area" coverage for "white areas."

11. *Petitions.* NAB supports our decision but requests that translator service to truly "white areas" should be allowed without requiring FM radio station licensees to seek a waiver. According to NAB's proposal, primary station ownership in "white areas" would be permitted until the area obtains service from an FM broadcast station. At that point, under NAB's proposal, a translator would be required to abide by the normal "other area" requirements. NAB claims that in "white" areas, there is no fear of unfair competition to full-service FM radio stations or any threat of abuse of the rules.

12. *Discussion.* We conclude that the record does not support NAB's contention that a "white-area" exception to our ownership rule would substantially improve public service in comparison to a waiver process. We find that the waiver process more appropriately addresses the unique needs of "white areas" by permitting the Commission to engage in thorough oversight of situations where primary stations continue to own "other area" FM translators. Therefore, where a licensee establishes that service is indeed unavailable in the absence of a translator, we will be favorably disposed toward requests for waivers of this rule to address these unique circumstances. We also wish to clarify that we will be especially reluctant to grant a request for authorization of an "other-area" translator unless the party requesting the authorization states affirmatively that the translator is not sought as part of a reciprocal arrangement with another primary station, whereby the primary stations seek translator authorizations in order to rebroadcast each other's signals. Such arrangements would present substantial potential for abuse and would undermine our new service rules.

Financial support

13. *Current Rule.* Under the new financial support rules, fill-in translators may be supported financially by the primary station before and after beginning operations. However, "other area" translators cannot receive support, either direct or indirect, from commercial primary stations or interested parties at any time except for technical assistance.[11] The Commission will favorably consider waiver requests for commercial FM primary station support of other area translators serving "white areas."

14. *Petitions.* La Tour states that the new financial support rules will eliminate many translator services by severely limiting sources of support.[12] He believes that FM translators offer many unique services to the public, including providing otherwise unavailable "narrow" formats, providing a variety of media viewpoints, helping small market radio stations, and creating efficient advertising options for smaller urban businesses. Additionally, La Tour and Klimek claim that translators do not harm other local FM services, stating that owners and management are responsible for the failure of AM and FM stations by failing to provide satisfactory formats and service to listeners.[13]

15. NTA asserts that the Commission action is tantamount to abolishing the translator service, as their members need some financial assistance from primary stations. NTA argues that it is impossible for the Commission to conclude that independent financial sources will be adequate. NTA observes that solicitations from area residents may cover authorization and construction costs, but ongoing translator expenses generate "free-rider" problems, and residents will become dissatisfied with having to pay for services that are free for urban neighbors.[14] NTA recommends allowing primary station funding up to a $200-per-month threshold, above which a demonstration of the underlying costs for additional operating and maintenance expenses would be required.

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[10] Interested and connected parties extend to group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members, and business associates. As stated in the *Report*, because of the potential for abuse, we intend this provision to be broader than our general attribution rules.

[11] Primary stations will be permitted to provide "technical assistance" to FM translators in other areas, to the extent of installing, repairing, or making adjustments to equipment to assure compliance with the terms of the translator station's construction permit or license. In this regard, technical assistance is excluded from the indirect support proscription in our rule.

[12] Doyle Brewer also believes that many FM translators will not survive without additional financial support.

[13] See Exhibit 2, La Tour petition, which lists 54 AM stations that have gone dark for financial reasons though no translators operate in the area. Also see Exhibit 4, La Tour petition, a statement from high power broadcasters attesting that there are no adverse affects to their stations from translators.

[14] Klimek and Crook argue that additional methods of obtaining funds for actual expenses, in addition to the current 30 seconds of solicitations and announcements, should be allowed due to the unreliable nature of independent donations. Crook also suggests that the 30-second announcements may divert funds from small high-power stations that offer advertising at greater rates.

16. NAB and London Bridge favor the new financial support restrictions, commenting that the public interest is furthered if full-service radio stations are not harmed by translators. They observe that the rules still allow technical assistance to FM translators in "other areas."[15]

17. *Discussion.* We affirm our decision to prohibit a commercial primary station from providing direct or indirect financial support to any FM translators serving "other areas," both before and after they commence operation, except for technical assistance. Also, we will maintain a favorable disposition toward requests for waivers of this rule to permit a commercial primary station to support any translator providing service to "white areas." We continue to believe that the revised financial support rule is necessary to ensure that translators owned by a commercial station seeking to increase its coverage are used only to provide FM service to areas and populations that are unable to receive satisfactory FM signals due to distance or intervening terrain barriers.

18. In the *Report,* the Commission dismissed La Tour's arguments favoring only limited constraints upon financial support for FM translators.[16] La Tour's petition for reconsideration presents no new arguments. As noted in the *Report,* we believe that an expanded translator service could provide disincentives for the establishment of broadcast stations, relative to translator facilities, since translators have no local service obligations and generally operate at significantly lower cost. While La Tour correctly notes that translators could provide small market stations with a means of distributing their signals in larger markets, and a means of distributing additional innovative programming services, we note that these goals are also attainable through acquisition of or initiation of service by full-service broadcast stations. Therefore, we affirm our prior determination that the new rules will help ensure that FM translators remain limited to a supplementary role so as not to discourage full-service radio broadcast station development of additional formats and service to the public.

19. We also reject NTA's proposal for a $200 per month limit on acceptable financial support combined with reporting requirements. NTA's proposal would create a substantial burden for both licensees and the Commission due to the additional oversight and review necessitated by such filings. In response to NTA's concern that listeners may not contribute funds despite benefiting from the translator's service, we emphasize that the new rules provide for waivers of the "grandfathering" period upon a showing by the licensee that the public would lose service as a result of compliance with the rules. NTA's alternative also overlooks the fundamental enforcement problem associated with a primary station's "indirect support" to FM translators. Given that many of the potential abuses by translators would arguably occur by primary stations providing support in the form of "indirect services", we conclude that the public is better served by the limitations established in the new rules. In addition, we reiterate that communities seeking additional service and formats will have the opportunity to fund FM translator service under the new rule through their independent charitable support.

20. We stated in the *Report* that "technical assistance" by primary stations will be excepted from the indirect financial support proscription.[17] We affirm this decision and clarify that "technical support" refers to actual services provided by the primary station's technical staff or compensation for the time and services provided by independent engineering personnel. Such support does not include the supply of equipment or direct funding for the translator's discretionary use. We also reiterate that technical assistance by the primary station should occur after the issuance of the translator's construction permit or license in order to meet expenses incurred by installing, repairing, or making adjustments to equipment.[18] We continue to believe that these maintenance expenses may become prohibitive given the limited financial resources of many FM translators, and that limited technical assistance by the primary station will enable translators to continue to provide valuable service to the public.

Fundraising by translators

21. *Current Rule.* The new fundraising rules permit FM translators to air one or more fundraising announcements or advertisements per hour totalling 30 seconds in length.

22. *Petitions.* NAB asserts that fundraising announcements should be restricted to "enhanced underwriting"-type messages on the grounds that full service stations should not be subjected to translator activities that detract from their local and public service operations.[19] NAB is further concerned that multiple announcements per hour will cause frequent interruptions in primary station programs and create unwarranted incentives for translator operators to behave as commercial broadcasters.[20] London Bridge supports NAB and objects that the new rules allow profit-making by translator licensees, particularly through incentives to advertisers provided by primary stations as "indirect support" to translators. Specifically, London Bridge suggests that the rules would allow a primary station to offer an advertiser a reduced rate for an advertisement on the primary station in return for providing financial support to the translator. In response, La Tour comments that 30-second fundraising

[15] London Bridge expresses concern that the new rules permit primary stations to provide maintenance and repair service for translators. London Bridge states that as a result, the translator "entrepreneurs" who previously received monthly fees from primary stations for maintenance and repair may simply be disguised as salaried engineers under the new rules.

[16] *See* 5 FCC Rcd 7217 (1990) at para. 31.

[17] *See* 5 FCC Rcd 7217 (1990), n.36. We note that the attribution rules for the ownership of FM translators should preclude the potential abuses of "technical assistance" raised by London Bridge. *See* 47 CFR § 74.1232 (d).

[18] The amended rules are set forth in Appendix B.

[19] NAB also requests that the Commission reconsider its decision not to include in the new rules the guideline that translators "may not make fundraising announcements for the purpose of making a profit." We note that essentially the same standard was set forth in the *Guide to FM Translator Rules and Policies,* 55 RR 2d (P&F) 1248 (1984), and that this standard is superseded by the new rules. When existing translators become subject to the new rules in three years, such a requirement will become unnecessary. However, the *Report* retained the Policy Statement's guideline that prevents fundraising announcements for profit for three years, a period coinciding with the "grandfathering" period for the service rules.

[20] Arizona Broadcasters Association filed *ex parte* comments on April 8, 1991, which also advocate stronger content restrictions on the solicitation of funds by translator operators.

announcements each hour will not damage radio services, and indeed are too limited to provide a reliable source of funding to translator operators.

23. *Discussion.* We reaffirm the rule limiting on-air fundraising activities by FM translators to 30 seconds of announcements within an hour. We continue to believe that the 30-second period is an adequate opportunity for FM translators to acknowledge contributions as well as to solicit funds from their listeners as necessary. We also affirm our decision in the *Report* that the solicitations or announcements may be split during the hour. We continue to believe that it is unnecessarily restrictive to regulate how translators should allocate their 30 seconds of announcements within an hour.

24. We deny NAB's request that announcements should be restricted in form to "enhanced underwriting" messages. In order to encourage donations from independent sources, translators must be able to provide some information about their contributors. We find it unnecessary to limit the content of these brief announcements. Also, while the new rules no longer require FM translator licensees to operate non-profit facilities, the record before us does not indicate that translators will be able to earn substantial profits. In addition, we find that the scenario raised by London Bridge -- under which a primary station's advertisers could be enticed to provide financial support to a translator in return for reduced advertising rates -- would violate the "indirect support" prohibition.

Local program origination authority

25. *Current Rule.* In the *Report*, the Commission retained its limitation on local program origination to 30 seconds per hour for fundraising and acknowledgement of contributions.[21] Emergency warnings of danger are limited in time and frequency to that necessary to protect life and property. Translators owned by parties other than the primary station must obtain written consent for the rebroadcast of the FM radio broadcast station signals.[22] We also retained the rule that prohibits the retransmission on translators of signals other than those emanating from FM full-service or translator stations.[23]

26. *Petitions.* La Tour states that translators can provide innovative programming by retransmitting the aural portions of cable services on the FM dial (*i.e.*, C-Span, ESPN, CNN, and the Weather Channel). He believes that this would improve public safety while enhancing programming options on the FM band. Also, a network of translators could be set up to rebroadcast the audio portion of the Weather Channel up and down every interstate system in the country and could relay a warning message as soon as a hazardous situation is discovered. In opposition, NAB comments that program origination by FM translators goes against the basic, secondary role of FM translators and threatens the provision of issue-responsive programming by local, full-service stations. NAB argues that La Tour essentially recommends allowing FM translators to develop into a low power radio service.

27. *Discussion.* We reaffirm the rules prohibiting program origination by all translators, commercial and NCE-FM, with the exception of acknowledgements or solicitations of financial support as well as emergency warnings of danger.[24] In the *Report*, we emphasized that the proper role of FM translators is to provide secondary service to areas where direct reception of signals from FM broadcast stations is unsatisfactory due to distance or intervening terrain obstructions. We remain committed to providing FM radio broadcast service in a manner that promotes program diversity while enhancing the incentives for efficient full-service broadcast station development. Therefore, we intend to maintain the existing programming authority distinctions between FM broadcast stations and translator services.

28. We note that the rules concerning the permissible sources of input channels for FM translators are not intended to restrict programming content. Rather, where there is sufficient community interest, the rules permit translators to rebroadcast any programming broadcast by a primary FM station, thereby affording translators an opportunity to import programming formats otherwise unavailable. Thus, rebroadcasts of the aural portion of a TV or cable signal would be permitted if such a signal were first rebroadcast by a full-service FM station, but not solely by a translator. Once again, we believe that it is necessary to distinguish between the services provided by low cost translators and FM radio broadcast stations due to our preference to provide service through more efficient radio broadcast stations.

Signal delivery

29. *Current Rule.* The *Report* provides that fill-in translators of commercial primary stations may now use any terrestrial delivery means to obtain the signal from the primary station. "Other-area" translators, however, may only use off-air delivery, although we indicated that we will favorably consider waiver requests to permit signal delivery by any terrestrial means for translators serving "white areas."

30. *Petitions.* La Tour's petition for reconsideration argues that all translators should be permitted to use a dependable method of signal delivery so as to avoid the static found in over-the-air methods. It asserts that "other-area" translators are, by definition, located many miles from the primary station, such that even high gain antennas mounted high above the average terrain cannot overcome signal fades and interference. La Tour claims that if NCE-FM translators may use all forms of alternative signal delivery technologies to provide a higher quality signal, then commercial translators (since they use the same principles of reception and transmission) should have access to the same signal delivery technologies. Also, La Tour contends that translators located 70 to 80 miles away from the primary station need alternate signal delivery methods more than "fill-in" translators since they have a more difficult time receiving the signal.

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[21] 47 CFR § 74.1231(g).

[22] 47 CFR § 74.1284(b). 47 U.S.C. § 325(a).

[23] 47 CFR §§ 74.1231(b), 74.1284(c).

[24] Section 74.1231(f) of the rules specifies that a locally-originated signal be made automatically by means of a "time switch". *See* 47 CFR § 74.1231(f). On further consideration, we conclude that allowing alternate means of control is warranted in order to alleviate the possible inconveniences created by timing errors when translators must rely solely upon the automatic switches. Therefore, the Commission will allow translators to use any otherwise permissible automatic means of production when originating local signals. We will exclude manual control of the signal in order to facilitate compliance with the 30-second time limitation for fundraising announcements.

31. *Discussion.* We believe that any further extension of signal delivery alternatives for "other area" translators would be inconsistent with the secondary role of FM translators in the commercial context. The *Report* extended permission for fill-in translators to use alternative signal delivery on the grounds that other terrestrial means would conceivably be necessary to circumvent the terrain or other barriers that prevent otherwise expected over-the-air delivery of an FM signal to the translator.[25] As for "other-area" translators, however, there is no similar expectation, especially at large distances, such as 70 to 80 miles from the station. We continue to believe that, to the extent that translator service is desirable beyond a station's predicted service contour, the over-the-air signal will generally be suitable for rebroadcast, although certain white-area situations may warrant a waiver to permit alternative signal delivery methods. Moreover, we believe that the signal delivery provisions in the *Report* will eliminate disincentives for service by full-service radio broadcast stations in instances where sufficient community interest exists for additional services, but where the existence of "other area" translators financed by primary stations would work to limit the economic viability of such stations. Furthermore, we do not believe that allowing alternative signal delivery for "other area" NCE translators owned by their primary stations requires that we do the same for commercial translators. We have long recognized that NCE-FM and commercial licensees participate in fundamentally different broadcast services. Therefore, we continue to believe that we are not required to apply the same standards for signal delivery to NCE-FM and commercial licensees.

Definition of major change

32. *Current Rule.* A "major change" is defined in the *Report* as occurring due to any change in output frequency (output channel), or any change or increase (but not decrease) in 1 mV/m coverage area of more than 10 percent of the previously authorized coverage contour.

33. *Petitions.* NAB urges that where a translator changes the primary station being rebroadcast, that change should be subject to full public scrutiny as a "major change." NAB claims that translators often significantly shift their technical facilities shortly after authorization, and also frequently change the primary station received. Furthermore, NAB believes that "other area" translators, under our new rules, will seek to substitute a primary station whose protected contour is sufficiently proximate that it would qualify as a "fill-in" translator, and that such changes should be reviewed to ensure that the change does, in fact, result in "fill-in" service. La Tour comments that if a translator wants to change primary stations so that the translator's coverage is completely within the primary coverage area of the new primary station, such changes are consistent with the new rules and should not be deemed a "major change."

34. La Tour argues that the 10-percent threshold is very low and will lead to abusive petitions. He claims that conditions prompting a tower change will trigger the major change process which could drag out for years in costly administrative proceedings or, at best, a minimum of 90 days. La Tour also argues that potential interference from changes in the coverage area greater than 10% should not be a concern, because if any change in an operating facility causes interference to a regularly used signal, the Commission can suspend the operation of the translator.

35. *Discussion.* We continue to believe that our definition for "major change" appropriately covers those changes in technical parameters and coverage areas that are significant. The standard also allows licensees sufficient flexibility to make minor technical and facility changes that cause negligible changes in signal patterns. In addition, we believe that changes in coverage areas in excess of 10% could have significant public interest implications. For example, FM translators have an obligation to protect audiences beyond the defined service areas of full service FM stations, and such information is not available in an FM translator application itself. The greater the change in the translator's coverage area, the higher the risk that the audience of a full service station will be affected. Accordingly, changes in coverage area in excess of 10% are appropriately considered "major changes."

36. We also reject NAB's request to include a change in input channel or primary station as a major change criterion. A change in the input channel does not alter a translator's technical parameters because the coverage area, output channel, and potential for creating interference remain identical. While a change in the output frequency is a significant technical change, the input channel is essentially a programming content decision that is not significant with respect to the public interest. Furthermore, to the extent that a translator changes its primary station in a manner that does not clearly comply with our rules, we note that the matter is more appropriately a question for our enforcement function rather than the application process.

Technical Issues

Maximum power output

37. *Current Rule.* As decided in the *Report*, an FM translator's maximum power output will be limited to 250 watts ERP. In addition, the coverage contour of fill-in translators may not go beyond the coverage contour of the primary station. "Other-area" translators will be restricted to power and height combinations that yield a distance to the translator's coverage contour that does not exceed 7 km in Zone I-A[26] and east of the Mississippi River, and 13 km elsewhere. The Commission will be favorably disposed toward waiving this rule to permit higher power up to 250 watts at any antenna height if the service to a greater distance reaches only a "white area."[27]

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[25] A letter from E.W. Bundy questions the signal delivery authority distinctions between NCE-FM and commercial translators as well as the three year transition as part of the decision in MM Docket No. 86-112. (*See Memorandum Opinion and Order*, in MM Docket No. 86-112, 4 FCC Rcd 6459, (1989)). Bundy claims that these decisions deny local public radio stations the protection retained for local commercial stations. However, this issue is not germane to MM Docket No. 88-140. Mr. Bundy's letter has been entered into the record of MM Docket No. 86-112.

[26] Zone I-A consists of Puerto Rico, the Virgin Islands, and the portion of California located south of the fortieth parallel. *See* 47 CFR § 73.205(b).

[27] For NCE-FM translator applications, white areas are defined

38. *Petitions.* La Tour, Brewer, and Crook state that the ERP standard will produce a weak signal for the listening public without justification by the Commission. They argue that with the newly adopted interference standards, even 1 kW power would not cause interference, and that the Commission should adopt the 1 kW ERP limit with primary coverage at 16 km as proposed in the *NPRM.* Similarly, Klimek states that under the new maximum power output rule it is impossible for translators to be effective in states with widely varying terrain. Klimek offers an example that, in western states, translators are located on mountain tops in order to avoid terrain barriers that would prevent their signal from reaching the communities they wish to serve. NTA adds that the new rules will require multiple translators to serve rural populations that do not conform to a 16 km radius.

39. NAB supports the Commission's ruling on maximum power output and comments that the requests for a higher ERP limit and less restrictive contour distances are contrary to the secondary nature of FM translators. Accordingly, NAB advocates ERP standards which are established at the minimum necessary level for signal coverage.

40. *Discussion.* As stated in the *Report,* the Commission's new maximum power limits recognized that translators must deliver broadcast signals to small and distant service areas with the minimum necessary power. However, we observed that many translators were already constructed more than 16 km from the area of service and utilized power output in excess of 250 watts. As a result, the 250 watt maximum ERP standard and the grandfathering provisions discussed below will promote the fundamental purpose of FM translators while also accommodating most existing authorized facilities. Although we originally proposed a 1 kW ERP limit with a distance to the coverage contour not to exceed 16 km, we observed that most licensees are already in compliance with the lower adopted power standard as well as the 7 km and 13 km distances to coverage contours. For these reasons, the Commission affirms its decision not to expand the maximum power limits so as not to contradict the intended purpose of the FM translator service. We continue to believe that service similar to large or high-power translator stations should be provided by full-service stations. Nonetheless, we emphasize that existing facilities that are not in compliance with the new maximum power standards are grandfathered until actual interference occurs or licensees propose to make changes in their facilities.[28]

Interference criteria

41. *Current Rule.* In the *Report,* we adopted a contour overlap method for predicting interference with translator applicants permitted to show that interference will in fact not occur. We will not grant an application if an objecting party provides convincing evidence that the proposed translator station would be likely to interfere with the reception of a regularly received off-the-air existing service, even if there is no predicted overlap. This revised method for predicting interference incorporates greater processing flexibility through population and terrain exceptions. Complaints of actual interference must be resolved by the FM translator.

42. *Petitions.* NAB states that the Commission should require FM translator applicants to include exhibits to show compliance with the interference standards because: (1) the exhibits will initiate recognition of the new rules and interference standards and thus lead to better compliance; and (2) the new rules allow applicants to determine the appropriate level of supporting analysis which shifts the burden of demonstrating compliance or non-compliance to the FCC and existing broadcasters. NAB also observes that the new availability of 80 commercial channels for translator operations, as well as a 250 watt maximum ERP, will increase the importance of predicted interference protection standards in order to prevent actual instances of interference. La Tour comments that even if a translator operator could disguise interference at the application level, the actual operations of an interfering translator would be difficult to conceal, and that the "comprehensive exhibits" advocated by NAB will greatly increase the cost of translator applications.

43. *Discussion.* We reject NAB's suggestion to require applicants to include exhibits demonstrating compliance with our interference limits because it would create an unnecessary burden on applicants. We find that NAB's proposal is unnecessary because we will continue to perform interference studies to determine whether applicants comply with the new rules. We also recognize that due to their limited financial and technical means, many FM translator licensees may require the flexibility of determining compliance with the interference rules without detailed analyses as part of their applications. Due to the secondary nature of the service, we reiterate that FM translator licensees must adjust their operations following instances of actual interference.[29]

Other Matters

Grandfathering criteria for existing translators

44. *Current Rules.* Licensees authorized prior to June 1, 1991[30] may continue to operate without conforming with the new technical rules provided that no actual interference occurs and the translator does not propose to modify its facilities.[31] If actual interference develops or the

as "any area that is not served by a full-service public radio station." *See* 5 FCC Rcd 7227 (1990). By using the term "public radio," we did not intend to exclude from the relevant stations those noncommercial stations not affiliated with the National Public Radio or American Public Radio networks.

[28] *See* para. 48, *infra.*

[29] We also note that Section 74.1237 of the rules regarding antenna location is amended to reflect that the limitation applies only to translators owned by commercial FM radio stations in order to remain consistent with the ownership and financial support restrictions. *See* 5 FCC Rcd 7215 (1990).

[30] The amended rules governing the FM translator service became effective on June 1, 1991. *See Order,* 47 FR 23024 (May 22, 1991). Applications pending as of June 1, 1991 can be granted only under the terms of the new service and technical requirements and must be amended to conform with the new rules. *See Report,* 5 FCC Rcd 7233 (1991). We allowed pending applicants 60 days to file amendments demonstrating compliance with the new rules. We now believe, however, that this 60-day period was too restrictive, and we will allow pending applicants to file conforming amendments upon notification by the processing staff. Applicants must use a revised FCC Form 349.

[31] *See* 47 CFR § 74.1203 for "actual" interference standards governing FM translators with respect to the direct reception of off-the-air signals by the public.

translator seeks to modify facilities, translators must satisfy the new technical standards concerning interference protection for FM broadcast and TV channel 6 stations, as well as the new power limitations.[32] With respect to the service rules, compliance by existing FM translators will be required in three years, and requests for waivers will be considered if licensees show that the public would unduly lose service as a result of compliance with the new rules.

45. *Petitions.* NAB, supported by ABA and London Bridge, requests a one-year grandfathering period for compliance with the new service rules, starting from the December 10, 1990 publication of the *Report* in the *Federal Register*. They contend that the three-year grandfathering provision, as well as a possible waiver, will lead to further abuses by translators which may eliminate many local radio stations. NAB also claims that translators should be able to adapt to the new rules within a few months. La Tour opposes a reduced grandfathering period since the Commission noted that rapid compliance with the new rules could cause a "withdrawal" of FM translator service from areas currently served, "a result contrary to the public interest."

46. *Discussion.* In adopting the *Report*'s three-year grandfathering provision for compliance with the service rules, we emphasized the limited resources of many FM translator licensees and the burden that could result if we were to require accelerated compliance with the new financial support standard. We therefore deny NAB's request to reduce the grandfathering period for the service rules based upon our desire to promote an orderly transition to the new rules and to avoid an unnecessary disruption of service to the public. We also conclude that an indefinite grandfathering period would undermine the effectiveness of the new rules in returning the FM translator service to its original secondary role. Instead, we continue to believe that the *Report*'s provision for extended waivers will adequately prevent the public from unduly losing service in unique circumstances.

47. We wish to clarify that "other-area" translators that are temporarily "grandfathered" with respect to the ownership and financial support provisions of the new rules will not be required to comply with the new service rules for the remainder of the three-year period if the translator changes its primary station. We believe that a change in the primary station will reflect the preferences of local audiences in the community without altering the technical aspects of a translator's operation, and should ensure that translators constructed based on expectations formed under our prior rules will have sufficient time to adjust their operations.

48. We also amend the grandfathering provision concerning the technical rules by specifying that FM translators authorized prior to the effective date of the rules must comply with the full scope of the technical requirements when they implement a "major change" modification or if they cause interference. Such FM translators seeking "minor changes" may continue to operate without complying with the technical rules provided that they satisfy the standards for actual interference.[33] We have affirmed that translators proposing modifications that would not change or increase the 1 mV/m coverage area by more than 10 percent are not subject to the "major change" review process. Similarly, we believe that it would be unduly onerous to require compliance with all the technical rules in instances where modifications do not significantly increase the translator's coverage area.[34]

IF Separation Requirements

49. We are amending Section 74.1204(g) of our rules to state standards for the treatment of FM translators based on ERP, so that they are consistent with the minimum permissible power level for Class A FM stations, and the treatment of other secondary FM services.[35] Translators operating with less than 100 watts ERP will be treated as Class D stations and will not be subject to IF separation requirements.[36] We believe that adjusting this requirement to this extent, given the totality of the safeguards adopted in this proceeding, is consistent with our fundamental concern with preventing interference, and we emphasize that the secondary nature of the FM translator service will require correction of any actual interference.

Directional Antennas

50. The *Report* adopted a contour protection method for protecting existing translator licensees against potential interference. In order to implement this approach, we are entering the technical parameters of each FM translator station into the Commission's data base. We have found that many licensees and permittees have inadequate information currently on file for our use. Accordingly, we are requesting by letter that such licensees furnish data necessary to implement the *Report*. In order to ensure that a licensee's failure to provide the requested information does not unduly hamper the functioning of our licensing process, we are, on our own motion, amending Section 74.1235 to establish specific mileage contours consistent with a translator station's power for those licensees that fail to submit the requested data. We note that this procedure is similar to that followed in updating our data bases for low-power television and TV translators,[37] and we believe that it will enable us to effectively implement changes in our rules that affect existing translator licensees. We also do not believe that public comment would serve a useful purpose because this action is a minor and non-controversial process to facilitate our efforts to gather information. However, we recognize that licensees may fail to submit the requested data and later conclude that the hypothetical values applied for their facility are unacceptable. In such instances, licensees may submit corrected figures for our use in protecting translators against potential interference.

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[32] *See* 47 CFR §§ 74.1204(j), 74.1205(d), and 74.1235(j).

[33] *See* revised Sections 74.1204 (j), 74.1205 (d), and 74.1235 (j) in Appendix B.

[34] In this regard, we also correct the text of the *Report*, which states in paragraph 142 that FM translators causing interference or proposing to modify facilities must comply with only the predicted interference standards in Section 74.1204, rather than Sections 74.1204, 74.1205, and 74.1235 of the rules.

[35] *See Order*, FCC 91-317, 6 FCC Rcd 6060 (1991), reconsideration pending.

[36] *See* 47 CFR § 74.1204 (g).

[37] *See, Memorandum Opinion and Order* in BC Docket No. 78-253, 53 RR 2d 1267, 1280 (1983).

TV Channel 6 Interference

51. In the *Report,* we adopted contour overlap standards to protect TV Channel 6 operations from FM translator operations. These standards were generally consistent with the NCE-FM broadcast station rules. However, Section 73.525(a) of the NCE-FM broadcast station rules permits NCE-FM broadcast applicants whose stations would potentially affect TV Channel 6 broadcast operations to file written agreements with each relevant TV Channel 6 broadcast station concurring with the proposed facilities. The new rule for translators lacked such a provision but we find no reason to omit a similar provision from the translator rules. On our own motion, we will add a provision to Section 74.1205 of the rules to indicate that we will accept FM translator applications that are accompanied by written agreements with all relevant TV Channel 6 broadcast station licensees or permittees.

CONCLUSION

52. By this *Memorandum Opinion and Order,* we have affirmed and further clarified the FM translator rules, including the revised standards for: ownership and financial support of translators; the definition of "major change" in translator coverage areas; and maximum power output. We have found that an expanded FM translator service could potentially redistribute revenues away from FM radio broadcast stations and limit the overall level of service to the public. We have amended aspects of the rules in order to facilitate the technical operation of FM translators. We have also denied NAB's petition for partial reconsideration seeking to tighten several rules, including a reduction of the grandfathering provision for service requirements to one year. We continue to believe that sufficient evidence for more stringent compliance standards is lacking and we desire to avoid an unnecessary loss of service to the public. Conversely, we believe that our decisions in the *Report* will allow for an orderly transition to the new rules while returning the FM translator service to its intended supplementary role.

PROCEDURAL MATTERS

53. Pursuant to the Regulatory Flexibility Act of 1980, the Commission included a final analysis in the *Report* detailing (i) the need for and purpose of the rules. (ii) the summary of issues raised by public comment in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result, and (iii) significant alternatives considered and rejected. No substantive changes have occurred pertaining to the final analysis as a result of the petitions for reconsideration.

54. Accordingly, IT IS ORDERED that the Petitions for Reconsideration filed by the National Association of Broadcasters, the National Translator Association, Ed Crook, Klimek Communications Corporation; John S. La Tour, J and J Broadcasting, and Power du Pree Broadcasting Corporation; and Doyle Brewer ARE DENIED.

55. IT IS FURTHER ORDERED THAT pursuant to 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 ARE AMENDED as set forth in Appendix B below, EFFECTIVE **30 days after publication in Federal Register.**

56. Further information on this proceeding may be obtained by contacting Alan Schneider, Mass Media Bureau, (202) 634-6307.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

List of Petitioners and Responses

Petitioners

1. National Translator Association (NTA)
2. Ed Crook
3. Klimek Communications Corporation
4. National Association of Broadcasters (NAB)
5. John S. La Tour, J & J Broadcasting, and Power du Pree Broadcasting Corp.
6. Doyle Brewer

Late-filed Petitioners

1. Dan Hendrix
2. FM technology Associates

Oppositions

1. Klimek Communications Corporation
2. John S. La Tour, J & J Broadcasting, and Power du Pree Broadcasting Corp.
3. London Bridge Broadcasting
4. NAB

Reply to Oppositions

1. NAB
2. NTA

APPENDIX B

Rule Changes

Title 47 CFR Part 74 is amended as follows:

PART 74 - Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services

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

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

2. Section 74.1204 is amended by revising paragraphs (g) and (j) to read as follows:

§ 74.1204 Protection of FM broadcast stations and FM translators.

* * * * *

(g) An application for an FM translator or an FM booster station that is 53 or 54 channels removed from an FM radio broadcast station will not be accepted for filing if it fails to meet the required separation distances set out in Section 73.207 of this chapter. For purposes of determining compliance with Section 73.207 of this chapter, translator stations will be treated as Class A stations and booster stations will be treated the same as their FM radio broadcast station equivalents. FM radio broadcast station equivalents will be determined in accordance with Sections 73.210 and 73.211 of this chapter, based on the booster station's ERP and HAAT. Provided, however, that FM translator stations and booster stations operating with less than 100 watts ERP will be treated as class D stations and will not be subject to intermediate frequency separation requirements.

* * * * *

(j) FM translator stations authorized prior to June 1, 1991 with facilities that do not comply with the predicted interference protection provisions of this section, may continue to operate, *provided* that operation is in conformance with § 74.1203 regarding actual interference. Applications for major changes in FM translator stations must specify facilities that comply with the provisions of this section.

3. Section 74.1205 is amended by adding an introductory paragraph and revising paragraph (d) to read as follows:

§ 74.1205 Protection of Channel 6 TV broadcast stations.

The provisions of this section apply to all applications for construction permits for new or modified facilities for a noncommercial educational FM translator station on Channels 201-220, unless the application is accompanied by a written agreement between the NCE-FM translator applicant and each affected TV Channel 6 broadcast station licensee or permittee concurring with the proposed NCE-FM translator facility.

* * * * *

(d) FM translator stations authorized prior to June 1, 1991 with facilities that do not comply with the predicted interference protection provisions of this section, may continue to operate, *provided* that operation is in conformance with § 74.1203 regarding actual interference. Applications for major changes in FM translator stations must specify facilities that comply with the provisions of this section.

4. Section 74.1231 is amended by revising paragraph (f) to read as follows:

§ 74.1231 Purpose and permissible service

* * * * *

(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 by any automatic means when transmitting originations concerning financial support. The connections 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.

* * * * *

5. Section 74.1232 is amended by adding two sentences to paragraph (d), three sentences to paragraph (e) and an accompanying Note to paragraph (e) to read as follows:

§ 74.1232 Eligibility and licensing requirements.

* * * * *

(d) * * * An FM translator station in operation prior to June 1, 1991, which is owned by a commercial FM radio broadcast station and whose coverage contour extends beyond the protected contour of the primary station, may continue to be owned by a commercial FM radio broadcast station until June 1, 1994. Thereafter, any such FM translator station must be owned by independent parties.

(e) * * * Such an FM translator station may, however, receive technical assistance from the primary station to the extent of installing or repairing equipment or making adjustments to equipment to assure compliance with the terms of the translator station's construction permit and license. FM translator stations in operation prior to June 1, 1991 may continue to receive contributions or support from a commercial FM radio broadcast station for the operation and maintenance of the translator station until June 1, 1994. Thereafter, any such FM translator station shall be subject to the prohibitions on support contained in this section.

Note: "Technical assistance" refers to actual services provided by the primary station's technical staff or compensation for the time and services provided by independent engineering personnel. Conversely, such support must not include the supply of equipment or direct funding for the translator's discretionary use. "Technical assistance" must occur after the issuance of the translator's construction permit or license in order to meet expenses incurred by installing, repairing, or making adjustments to equipment.

* * * * *

6. Section 74.1235 is amended by adding a note to paragraph (i) and revising paragraph (j) to read as follows:

§ 74.1235 Power limitations and antenna systems.

* * * * *

(i) * * *

Note: Existing licensees and permittees that do not furnish data sufficient to calculate the contours in conformance with § 74.1204 will be assigned protected contours having the following radii:

Up to 10 watts -- 1 mile (1.6 km) from transmitter site

Up to 100 watts -- 2 miles (3.2 km) from transmitter site

Up to 250 watts -- 4 miles (6.5 km) from transmitter site

(j) FM translator stations authorized prior to June 1, 1991, with facilities that do not comply with the ERP limitation of paragraph (a) or (b) of this section, as appropriate, may continue to operate, *provided* that operation is in conformance with § 74.1203 regarding interference. Applications for major changes in FM translator stations must specify facilities that comply with paragraph (a) or (b) of this section, as appropriate.

7. Section 74.1237 is amended by revising paragraph (d) to read as follows:

§ 74.1237 Antenna location.

* * * * *

(d) The transmitting antenna of an FM booster station shall be located within the protected contour of its primary station, subject to Note, Section 74.1231 (h). The transmitting antenna of a commonly owned commercial FM translator station shall be located within the protected contour of its commercial primary FM station.