

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
) RM-11338
Petition for Rulemaking of the National) MB Docket No. ____
Association of Broadcasters to Permit AM)
Radio Stations' Use of FM Translators)

COMMENTS IN OPPOSITION TO PETITION FOR RULEMAKING

Prometheus Radio Project¹ (“Prometheus”) respectfully submits these Comments in response to the Commission’s Public Notice seeking comment on the *Petition for Rulemaking of the National Association of Broadcasters* (“NAB Petition”). Public Notice, RM No. 11338, rel. July 25, 2006. The National Association of Broadcasters (“NAB”) seeks to initiate a rule making to allow AM broadcast stations to operate FM translator stations as a fill in service. NAB Petition at 1. Prometheus respectfully opposes a rule making to allow such a service.

The NAB’s Petition seeks to hoard the FM band for AM stations at the expense of other authorized services, namely Low Power FM (“LPFM) radio service. This request deliberately seeks changes to the FM band that would have a devastating impact on the LPFM service and the public interest. Moreover, the Commission already has before it pending proceedings that are also seeking to gain access to the FM Band. Without resolution of these pending proceedings, NAB’s requested rulemaking would be an unnecessary drain on the Commission’s resources. Thus, the Commission should dismiss the NAB Petition.

¹ Prometheus Radio Project is a non-profit organization founded in 1998 by a group of media activists to promote community radio. Prometheus’s primary focus is on creating a vibrant community of LPFM stations and listeners, which it does by assisting the building of radio stations and by sponsoring events that promote awareness and support for LPFM radio.

ARGUMENT

At the outset, the Commission should note that the NAB Petition is a blatant tactical artifice designed to divert the Commission's attention and resources from existing policy objectives. The NAB Petition undermines the Commission's and Congress's policy to foster localism and create opportunities for new entrants, such as LPFM stations. Ongoing proceedings related to the LPFM service and allocation of the FM Band continue to remain unresolved and would impact distribution of the FM Band. As a result, to take on yet another proceeding, whose only goal is to hoard the FM Band, would be a diversion of, and drain on, the Commission's valuable resources at this time. Thus, the Commission should dismiss the NAB Petition.

I. AM Stations Must Not Gain Access to the FM Band at the Expense of the Public Interest and Future LPFM Stations.

The Commission should recognize the NAB Petition for what it is - a deliberate means to deter competition and undermine both the Commission's and Congressional policies to foster localism. The Commission established the LPFM service in 2000 specifically to "create a class of radio stations designed to serve very localized communities or underrepresented groups in communities." *Report and Order, Creation of a Low Power Radio Service* ("Report and Order"), 15 FCC Rcd 2205 at ¶ 4 (2000). Congress has also addressed the need to increase citizens' access to the airwaves when it found that "it is necessary and appropriate for the Federal Government to complement, assist, and support a national policy that will most effectively make public telecommunications services available to all citizens of the United States." 47 USC §396(a)(7). Allowing existing AM broadcasters to crowd the FM Band would take away the possibilities of new entrants and local citizens to provide service to local communities.

Nonetheless, the NAB Petition claims that the use of FM translators by AM stations would result in increased localism, as well as competition and diversity. NAB Petition at 16. However, it is these very same objectives that LPFM stations are now fulfilling. In fact, the Commission noted that “[o]ne of the most important purposes of establishing [the LPFM] service [was] to ... expand diversity of ownership” and to “foster local, community based service.” Report and Order, 15 FCC Rcd at ¶¶ 24, 29. Moreover, unlike the selection of AM broadcasters, LPFM licenses are awarded based on the applicant’s “established community presence” and commitment to “local program origination.” Report and Order, 15 FCC Rcd at ¶ 136. Thus, the LPFM service should be protected from being displaced by AM Broadcasters and continue to have the opportunity to serve their communities.

Indeed, it has been well documented that LPFM stations have done a remarkable job in providing invaluable service to their local communities. *See e.g.*, Testimony of Sara Allen, Transcript of The FCC Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Mar. 6-7, 2006 at 329 (discussing the important role of LPFMs in providing emergency information during Hurricanes Katrina and Rita); Joel Brown, *Low-power radio station is making its voice heard*, The Boston Globe, Feb, 5, 2006, at <http://tinyurl.com/8qykg> (low-power station WSCA-FM has made an impact in the community by “sponsoring events, raising issues, and giving a voice to citizens who are otherwise in no danger of commandeering the airwaves”). Moreover, in many instances, LPFM stations are in a far better position than AM broadcast stations to provide service to local communities. LPFMs have strong ties to their communities and thus a vested interest in providing emergency information to friends, neighbors, and the community as a whole. Additionally, LPFMs are likely to be attuned to the specific circumstances of their area, and thus able to provide

more trustworthy and accurate information than other broadcasters.

While Prometheus acknowledges that AM stations face certain problems, these AM stations at least have the ability to broadcast. There are many groups that would like to broadcast, but are unable to do so because they cannot currently get on the FM band. In fact, Congress has required the Commission to “make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.” 47 USC §307(b). Thus, AM stations that are already broadcasting should not be allowed the opportunity to receive additional signals when there are those that are still trying to get their first channel.

II. AM Stations must Not Gain Access to the FM Band Without the Resolution of Pending Proceedings.

The NAB Petition would allocate additional licenses and FM spectrum to an existing AM service. This spectrum has proved to become a valuable source, which various parties are attempting to access, as evidenced by recent activity at the Commission. *See e.g.*, NAB Petition; Miller Communications, Inc., *et al.*, Petition to Allow FM Translator Licensees to Locally Originate Programming, RM-11331 (filed April 27, 2006); Comments of Prometheus Radio Project *et al.*, In the Matter of Creation of a Low Power Radio Service, MM 99-25 (filed Aug. 2, 2005) (seeking *inter alia* the creation of spectrum for LPFM service); Emergency Petition for Freeze on Pending FM Translator Applications, MB-99-25, AUC-03-83-B (filed March 9, 2005) (“Emergency Petition”) (notifying the Commission of the illegal speculation of translator licenses).

Because of the potential value of the spectrum to the public, the Commission should not act on the NAB Petition and allocate valuable FM spectrum without considering policy objectives and

pending interests. In fact, the Commission already has before it an unresolved LPFM Rulemaking and Emergency Petition that would allow for future LPFM stations. Thus, the Commission should not act on this single NAB Petition without considering the consequences to the public and other parties who also wish to access the FM Band.

III. Grant of the NAB Petition Would Be a Drain on the Commission's Resources.

Finally, based on the above, it is evident that a grant of the NAB Petition would be a waste of the Commission's resources. The Commission already has before it other proceedings related to accessing the FM Band that require the Commission's attention and resources to come to a resolution. Moreover, the NAB Petition asks the Commission to initiate a single proceeding which the NAB claims will foster localism, competition and diversity. However, these objectives are already being met by LPFM stations. Thus, the Commission should not exert its valuable resources on a meritless rulemaking.

Respectfully submitted,

/s/

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