

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

RM-5219

REPORT AND ORDER

Adopted: March 24, 1988;

Released: April 15, 1988

By the Commission:

INTRODUCTION

1. By this action, the Commission is adopting changes to its rules to allow noncommercial educational FM translator stations assigned to reserved channels and owned and operated by their primary stations¹ to receive signals for rebroadcast via any technical means the licensee deems suitable.² The revised rules will permit use of signal delivery means that include, but are not limited to, satellite and terrestrial microwave facilities. Moody Bible Institute of Chicago (Moody) first sought authority to allow such translators to be fed by means other than direct over-the-air reception in a Petition for Rule Making filed on October 31, 1985.³ The Commission accepted their petition and commenced a Rule Making proceeding in *Notice of Proposed Rule Making* in MM Docket No. 86-112, 104 FCC 2d 318 (1986). On the basis of the record developed in response, the Commission concludes that use of alternative signal delivery methods by noncommercial educational stations as specified above would serve the public interest by facilitating improvements in the quality of signals they rebroadcast and enabling such stations to reach larger numbers of listeners who desire noncommercial educational service, including populations residing in more remote areas. We also find that this rule change is consistent with our policy authorizing translators as a secondary service for reaching areas and populations unable to receive satisfactory FM service because of distance or intervening terrain obstructions.⁴

BACKGROUND

2. The FM translator service was instituted in 1970 as a means to supplement the primary service provided by full facility FM stations.⁵ While the Commission recognized the benefits which would be derived from the translator service, it was concerned about the use of translators as a means to expand competitively the service area of a primary FM station. Consistent with these objectives and concerns, the Commission authorized FM translators for

the specific and limited purposes of providing FM radio service to underserved areas, extending additional FM service to underserved areas, and improving service to areas within the predicted 1 mV/m contours of primary FM stations. To ensure that translators are used only for these limited purposes, licensees of commercial FM stations are restricted from owning translators beyond their 1mV/m contour and within the 1mV/m contour of another commercial station assigned to a different principle community.⁶ The Commission found there to be less potential for harm to full service noncommercial stations from competition by noncommercial translators and therefore did not impose ownership restrictions on noncommercial translators. As part of these rules, the Commission restricted both commercial and noncommercial FM translators to rebroadcast of signals received directly over-the-air from their primary stations or another translator.⁷

3. In its petition, Moody proposed that the Commission permit noncommercial educational FM translators to rebroadcast signals delivered via satellite and terrestrial microwave facilities. It also proposed that the authority to use such facilities be limited to noncommercial FM translators that are assigned to reserved channels (Channels 200-220) and owned and operated by the noncommercial primary station to be rebroadcast.

4. In support of its proposal, Moody stated that use of satellite and microwave facilities would allow delivery of superior quality input signals to noncommercial translators and thereby improve the quality of the signals that are rebroadcast. In this regard, Moody stated that signals delivered by these means could be distributed to more remote locations, thus extending service to underserved areas. It also submitted that such alternative distribution systems would eliminate the need for expensive, cumbersome antenna systems, and that the savings so realized could be used to enhance programming services. It further indicated that the additional translator stations that its proposal would make possible would add to the diversity of voices available to radio listeners. Finally, Moody stated that this proposal would be consistent with the Commission's overall goals regarding service by noncommercial educational translators.

5. In response to Moody's petition, we adopted a *Notice of Proposed Rule Making (Notice)* on April 3, 1986, 51 FR 15026 (April 22, 1986), to consider the proposed changes to our FM translator rules. In the *Notice*, we stated that consideration of the proposed use of satellite and terrestrial microwave facilities as alternative input signal delivery methods for noncommercial educational FM translators was appropriate at that time because the radio proceedings in Docket Nos. 80-90, 84-231 and 20735, which had been pending in 1984 when we considered Moody's earlier petition, are now complete.⁸ We also stated that it appeared that this proposal would not impede the growth of full service radio stations since noncommercial educational translators would continue to be authorized only on a secondary, non-interference basis. In addition, we stated that we did not intend to change our policy requiring translators to rebroadcast simultaneously a specific parent station and that we would not permit the establishment of a network of only translators. In response to the *Notice*, the Commission received twenty comments, seven reply comments and approximately 1,300 informal comments.⁹

COMMENTS

6. Five commenting parties and the parties filing informal comments fully support the proposed rule changes.¹⁰ These parties generally agree with Moody's initial position that use of satellite and microwave facilities to feed non-commercial educational translators would permit translators to provide higher quality service, would increase needed translator service in unserved and underserved areas and would enhance program diversity. In this regard, the Oregon Commission on Public Broadcasting (OCPB) submits that many FM translators experience significant over-the-air reception problems which limit their ability to deliver a high quality signal to the intended audience. OCPB cites temperature inversion, multipath distortion and co-channel and adjacent channel interference among the problems often experienced. Additionally, Southwestern Adventist College believes that the cost effectiveness of a particular means of delivering an input signal depends on the geographic characteristics of the areas to be served and, thus, translator operators should have the flexibility to choose from among off-the-air, satellite and microwave systems. Columbia Union College Broadcasting, Inc. suggests classifying those translators fed via satellite or microwave as secondary to those that rebroadcast signals received directly off-the-air. Thomas W. Read believes that FM translators should be allowed to use the best technical method available to receive the signal of the primary station and should not be limited to microwave and satellite technology, as suggested in the Moody petition. Rather, Read suggests, the Commission should authorize translators to utilize alternative technologies, such as telephone lines and fiber optics, for example, so that translators can receive the best possible technical signal from the primary station.

7. In addition to adoption of the changes set forth in the *Notice*, the Association of Maximum Service Telecasters (MST) recommends the adoption of minimum Channel 6 protection standards to be used in conjunction with the general provision that translators are authorized only on a non-interference basis.¹¹ MST states that the use of such standards at the application stage would help avoid costly administrative and litigation expenses arising out of protracted interference disputes.¹²

8. Three commenters representing public radio interests support the use of microwave facilities for noncommercial translator input signal delivery, but oppose use of satellite systems.¹³ Their principal concern is that use of satellite technology to deliver signals to translators would encourage centralization in broadcasting to the detriment of localism. They argue that while microwave facilities are technically limited to relaying signals to nearby communities, satellites are unsuitable for such local or intrastate regional use. These parties also assert that satellites are far more costly than microwave facilities and, thus, cannot be used to provide economical service except over large and distant areas.

9. The majority of the thirteen opposing commenters are licensees of commercial radio stations broadcasting religious program formats.¹⁴ They generally believe that use of satellite and microwave facilities as input signal delivery systems for noncommercial FM translators would fundamentally alter and undermine the purposes of the FM translator service by permitting the establishment of *de facto* networks of FM "superstations" or "satelators". These commenters believe that the expanded input signal delivery authority proposed for noncommercial translators

would adversely affect the viability of commercial religious format stations and the principles of localism and diversity in broadcasting. They assert that this proposal would unfairly discriminate against commercial religious format stations which broadcast programming nearly identical to that of noncommercial religious format stations and the Moody Satellite Network.

10. Several opposing parties, including the National Association of Broadcasters (NAB), believe that the proposed rule change would undermine the Commission's efforts to provide service by primary FM stations and to promote the use of higher-powered noncommercial full service stations capable of serving wide geographic areas and large populations. Several of these parties also believe that to allow noncommercial translators to use alternative input signal delivery systems would substantially increase interest in the reserved channels, resulting in a flood of new applications. They state that this would severely burden the Commission's limited resources and delay the processing of "legitimate" translator, as well as full service station, applications. In this regard, these parties are particularly concerned that the initiation of new primary service pursuant to Docket Nos. 80-90 and 84-231¹⁵ would be delayed to the detriment of the public interest. In addition, with regard to the proposal to allow translators to make use of broadcast auxiliary facilities, NAB asserts that aural intercity relay channels already are congested in many parts of the country and that full service stations should not have to compete with FM translators for this spectrum.

11. In its reply comments, Moody initially asserts that the informal comments filed by more than 1,000 parties is a message to the Commission that significant portions of the country are underserved by noncommercial FM stations. It thus believes there is an immediate and existing need for the services that its proposal would permit. As to the arguments regarding competition between non-commercial educational formats and commercial religious formats, Moody asserts that an examination of program content can play no role in the Commission's evaluation of the issues raised in this proceeding. Moody further asserts that the principle of "localism" would not be adversely affected by adoption of its proposal because translators would be used primarily as a means of enhancing service to unserved and underserved areas. Moody argues that while "translator service will never supplant the need for listener support for stations providing local news and information", a signal received from a translator is preferable to no signal at all.

12. Similarly, Moody states that because translators would continue to operate on a secondary basis to full service stations, allowing them to use satellite and microwave facilities for input signal delivery would not result in their consuming the reserved spectrum or hinder the establishment of new full service noncommercial stations. Rather, Moody asserts that because there are communities which may not be capable of supporting a full service station, the existence of a translator signal, enhanced by microwave or satellite feed, will only serve to increase the diversity of voices available to those communities.

DISCUSSION

13. Upon consideration of the proposal as set forth in the *Notice* and examination of the comments submitted thereon, we conclude that it is both useful and desirable to permit noncommercial FM translators assigned to reserved channels and owned and operated by their parent stations to use means for delivery of their primary station's signal other than over-the-air reception. This rule change will permit extension of noncommercial FM radio service to unserved and underserved areas and will facilitate improvement in the service provided by many existing noncommercial FM translators. We also see no need to limit the specific technology that can be used to satellite and microwave systems. Rather, we agree with Thomas Read's comments on this issue and find it is more desirable to provide these translator licensees full discretion to choose the means of input signal delivery most suitable to their particular circumstances.

14. The existing restriction on the means of signal delivery to noncommercial FM translators limits the potential service areas that can be reached by primary noncommercial FM stations. In this respect, the range of line-of-sight reception of over-the air signals with normal equipment is limited in most cases to areas not much beyond the predicted service area of the primary station. As Moody indicates, reception at greater distances requires expensive antenna systems, and even with such systems, is often unsatisfactory due to weather conditions and interference from other signals. Translators may, of course, be used to provide service at greater distances if the primary signal is relayed through other translators. However, the areas that can be reached through this method of signal delivery are limited to places within the range of other translators¹⁶ and signals relayed through other translators generally suffer some deterioration in quality.

15. We find that elimination of the signal delivery restriction for noncommercial educational translators will benefit the public by expanding opportunities for providing quality FM service to unserved and underserved areas. In this respect, the rule change we are adopting will facilitate improvement in the quality of signals rebroadcast by many existing noncommercial FM translators and will allow noncommercial FM service to reach many remote areas for the first time.

16. We also find the limited relaxation of this restriction for noncommercial educational translators will not adversely affect the public interest objectives embodied in our current FM translator policy. Initially, we observe that the Commission has never specifically restricted the range over which a primary noncommercial station can provide service through translators. As discussed by some commenting parties, we recognize that, theoretically, new translators could pose some additional competition to full service noncommercial stations in the absence of the over-the-air signal delivery rule. However, it is not at all apparent that any resulting competition would have an adverse impact on local full service noncommercial stations or would cause a net loss of service to listeners. In this respect, commenters have not provided any evidence indicating specific harms from extensions of service contemplated under the proposed rule change and there is no indication that there has been any harm to noncommercial stations from existing translators. Moreover, the degree of competition for audiences and resources in the noncom-

mercial broadcast services traditionally has been low and we do not expect this rule change to raise the level of competition there.

17. In the *Notice* we noted that "[a]" network of only translators would not be permitted.¹⁷ We are aware of the likelihood that translator networks might be created as a result of the rule changes adopted herein. However, after careful consideration of the comments filed in this proceeding, we believe that such networks would not be inimical to the fundamental nature of the noncommercial educational FM translator service. As stressed by many commenters, the rule changes adopted in this Report and Order will facilitate the provision of noncommercial educational radio to unserved and underserved areas and improve service by existing noncommercial translators. Existing restrictions on the permissible means of signal delivery limit both the area which can be served and the quality of the signal that can be received by the public. The new rules adopted herein will allow improved service but will not change the fundamental nature of the translator service. In this respect, noncommercial educational translators are already allowed outside the 1mV/m contour of their primary station. In addition, as many commenters point out, noncommercial educational FM translators will still be secondary, restricted to the rebroadcast of a primary station. Moreover, we disagree with opposing commenters' position that the new rules will permit noncommercial FM translators to be used in a manner that would undermine our efforts to promote the operation of full service FM stations. The new rules will in no way alter the secondary status of noncommercial FM translators that would be served by alternative signal delivery means or the requirement that they "give way", *i.e.*, that the translator operator resolve the conflict or cease operation of the translator, when in conflict with a full service station.

18. As we observed in the *Notice*, the rule making and policy development tasks associated with Docket Nos. 80-90 and 84-231 that caused us to delay consideration of FM translator issues have now been completed. We note here that, in conjunction with our comprehensive review of our FM translator policy, we are imposing a general freeze on new translator applications until the issues addressed in that proceeding are resolved.¹⁸ However, we are providing an exception to the general freeze on translator applications to permit the filing of applications for new noncommercial, educational FM translators seeking assignment to the reserved frequency band (channels 200-220). This will permit the implementation of the non-commercial signal delivery technology rule change we are making today. We also will permit the filing of applications for stations that would be mutually exclusive with an application that is exempt from the freeze. In such cases, the completing application will also be exempt from the freeze.

19. In order to facilitate the implementation of this rule change, we also are amending Section 74.1250 of our rules pertaining to FM translator transmitters and associated equipment as contemplated in the *Notice*.

20. In the *Notice*, we also proposed to modify our rules to allow broadcast auxiliary intercity relay microwave stations to be used to deliver signals to noncommercial translators.¹⁹ This proposal was intended to facilitate the basic objective of this proceeding to permit such translators to be served by alternative signal delivery technologies. In considering this issue, we observe that the broadcast auxil-

ary frequencies are already congested in many areas, particularly in the larger markets. The additional demand for channel space on these frequencies that results from authorizing their use with noncommercial translators could impede the use of broadcast auxiliary facilities for their primary purpose, *i.e.*, delivery of program material for broadcast by full service broadcast stations. However, it is also likely that broadcast auxiliary channel space will be available in the remote areas that many new noncommercial translators would serve through the authority adopted herein.

21. We believe that the most desirable way to maximize the availability of broadcast channel space for full service station use and still provide for use of these frequencies with noncommercial translators may be to authorize the use of broadcast auxiliary channels for use with noncommercial FM translators on a secondary basis. A secondary authorization would provide that broadcast auxiliary channels could be used to deliver signals to noncommercial translators where such use would not interfere with use of those channels to serve full service stations. This would be similar to the secondary authority we recently provided for use of broadcast auxiliary channels in conjunction with FM booster stations in MM Docket No. 87-13.²⁰ We wish to obtain additional comment on this approach before applying it to use of broadcast auxiliary channels with noncommercial translators and therefore have raised this issue in the Further Notice in this proceeding.²¹ On this basis, we will not amend our broadcast auxiliary rules regarding this issue herein.

22. We do not wish to delay the initiation of new noncommercial translator service made possible by the rule changes adopted herein where the new translator would need to use one or more broadcast auxiliary intercity relay stations. Accordingly, we will accept applications for intercity relay stations on broadcast auxiliary channels to be used to deliver primary station signals to noncommercial stations owned and operated by their primary station licensee consistent with a secondary authorization as proposed in the Further Notice. Any such authorizations granted in the interim period would be subject to the provisions of our final decision.

PROCEDURAL MATTERS

23. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final regulatory flexibility analysis is:

I. *Reason for Action* : The Commission concludes that it is useful and desirable to adopt the proposed changes to the permissible input signal delivery authority for noncommercial translators. The Commission also finds that to allow noncommercial translators to be fed via satellite and terrestrial microwave facilities is consistent with its longstanding policy of authorizing FM translators as a means to supplement the service provided by primary FM stations.

II. *Summary of issues raised by public comments 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. However, in its comments, the Rocky Mountain Corporation for Public Broadcasting (RMCPB) opposed the proposal to allow the use of satellites to feed noncommercial translators on the grounds they are extremely expensive and, thus, can cost effectively be used only on a national "networking" scale. In this regard, RMCPB expressed concern that in the long run diversity might be harmed by the substantial increase in use of the reserved spectrum by satellite-fed translators, to the detriment of the establishment of full service and translator stations owned by local, in-state entities, particularly small entities lacking the financial resources to use satellite facilities.

B. *Assessment* : The Commission does not agree with RMCPB that the use of satellites to feed translators would create opportunities to establish networks to the detriment of localism or that additional translators will occupy reserved spectrum to the detriment of local stations. As explained above, the limited rule change we are adopting herein does not alter our longstanding policy of only allowing FM translators to rebroadcast the signals of a specific primary station. Further, the new rule will not affect the availability of spectrum space for full service stations in that it will not alter the secondary status of translators or the requirement that they "give way" when in conflict with a full service station. Finally, the limited nature of the relaxation of the signal delivery rule change is not expected to result in a significant number of new translators and therefore is not expected to significantly affect the availability of opportunities for local FM stations.

C. *Changes made as a result of such comments* : None.

III. *Significant alternatives considered and rejected* : The significant alternatives to the proposal to allow the use of satellite and microwave facilities to deliver input signals to noncommercial translators were to: 1) retain the rule in its current form; 2) modify the rule in accordance with the proposal to allow the use of either satellite or microwave facilities; or, 3) modify the rules to permit licensees of such translators full discretion in the choice of the technical means of signal delivery. The Commission concludes that the most desirable policy is to provide licensees of noncommercial translators assigned to reserved channels and owned and operated by their primary stations full discretion to choose the signal delivery technology most suitable to their particular circumstances.

24. The rule changes adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure or record retention requirements; and will not increase or decrease burden hours imposed on the public.

25. Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Part 74 of the Commission's Rules and Regulations IS AMENDED as set forth in Appendix B below, effective May 31, 1988.

26. IT IS FURTHER ORDERD that applications for use of broadcast auxiliary facilities in conjunction with delivery of signals to noncommercial FM translator stations operating on reserved channels and that are owned and operated by their licensee of their primary station WILL BE ACCEPTED consistent with the interim procedures set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

APPENDIX A

Parties filing formal comments

- Association of Maximum Service Telecasters, Inc.
- Communicom Corporation of America
- Evangel Christian School, Inc.
- Furniture City Broadcasting Corporation, et al.
- Intercollegiate Broadcasting System, Inc.
- KBLE AM, Inc.
- KRXV, Inc.
- Moody Bible Institute of Chicago
- National Association of Broadcasters
- National Public Radio
- Northern Michigan University
- Olympic Broadcasters, Inc.
- Oregon Commission on Public Broadcasting
- Rocky Mountain Corporation for Public Broadcasting
- Rocky Mountain Public Radio, Inc.
- Salem Broadcasting Services
- Satellite Radio Network
- Thomas Wilmot Read
- Universal Broadcasting Corporation
- WDAC Radio Company

Parties filing reply comments

- Association of Maximum Service Telecasters, Inc.
- Columbia Union College Broadcasting, Inc.
- Moody Bible Institute of Chicago
- Oregon Commission on Public Broadcasting
- Rocky Mountain Corporation for Public Broadcasting
- Southwest Adventist College
- Universal Broadcasting Corporation

APPENDIX B

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 74.1231 is amended by revising paragraph (b) to read as follows:

§74.1231 Purpose and permissible service.

* * * * *

(b) Except as set forth in paragraphs (f) and (g) of this section, an FM translator may be used only for the purpose of retransmitting the signals of a primary FM broadcast station or another translator station which have been received directly through space, converted, and suitably amplified. However, a noncommercial educational FM translator station operating on a reserved channel (Channel 200 to 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 micro-wave facilities.

* * * * *

3. 47 CFR 74.1250 is amended by revising paragraph (a) to read as follows:

§74.1250 Transmitters and associated equipment.

(a) FM translator and booster transmitting apparatus used by stations authorized under the provisions of this subpart may only use transmitting apparatus that has been type accepted for such use in accordance with Subpart J of Part 2. Translator stations authorized for transmitter output power of 10 watts also may use FM broadcast transmitters notified or type accepted to operate with an output power not exceeding 10 watts under the provisions of Part 73 of the Rules for broadcast stations.

* * * * *

FOOTNOTES

¹ A "primary station" is the full service FM station retransmitted by a translator.

² In a separate action today, we are adopting a Further Notice of Proposed Rule Making in this proceeding to consider allowing all noncommercial FM translators assigned to reserved channels to receive signals by the same means we are authorizing herein for licensee-owned and operated noncommercial educational facilities. See *Further Notice of Proposed Rule Making* in MM Docket No. 86-112, FCC 88-126, adopted March 24, 1988.

³ Moody had previously petitioned the Commission on May 21, 1981, to amend its rules to permit expanded service for all FM translators. That petition was denied in *Memorandum Opinion and Order* in Docket No. 19918, 98 FCC 2d 35 (1984).

⁴ In a separate action today, we are initiating a proceeding to undertake a comprehensive reexamination of our FM translator policies. This new proceeding will consider the full range of issues pertaining to service authorization and technical rules and may result in further rules changes that would affect both commercial and noncommercial FM translators. See *Notice of Inquiry* in MM Docket No. 88-140, FCC 88-120, adopted March 24, 1988.

⁵ See *Report and Order* in Docket No. 17159, 20 RR 2d 1538 (1970).

⁶ See 47 CFR §74.1232(d).

⁷ See 47 CFR §74.1231(b).

⁸ See *Report and Order* in BC Docket No. 80-90, 94 FCC 2d 152 (1983); *First Report and Order* in MM Docket No. 84-231, 100 FCC 2d 1332 (1985) and *Memorandum Opinion and Order* in Docket No. 20735, FCC 85-328, 50 FR 27954 (July 9, 1985).

⁹ A list of parties who filed formal comments and reply comments is attached as Appendix A.

¹⁰ These commenters are Evangel Christian School, Inc., Oregon Commission on Public Broadcasting, Southwestern Adventist College, Columbia Union College Broadcasting, Inc., and Moody Bible Institute of Chicago. OCPB supports the proposed rule change regarding microwave transmission but takes no position with regard to satellite delivery.

¹¹ MST suggests standards comparable to those imposed on television translator applications. See 47 CFR §74.705.

¹² We note that we explicitly did not apply the FM-TV 6 interference standards adopted in the *Memorandum Opinion and Order* in Docket No. 20735, *supra* note 8, to FM translators. MST's suggestion is beyond the scope of the issues addressed in this proceeding and thus will not be discussed further herein.

¹³ These are National Public Radio, Rocky Mountain Corporation for Public Broadcasting, and Rocky Mountain Public Radio, Inc.

¹⁴ These are Communicom-Corporation of America, Furniture City Broadcasting Corporation, et al., Olympic Broadcasters, Inc., Salem Broadcasting Services, Satellite Radio Network, Universal Broadcasting Corporation and WDAC Radio Company. The Intercollegiate Broadcasting Network, KBLE-AM and KRXU, Inc. also filed opposing comments.

¹⁵ See *supra* note 8.

¹⁶ Section 74.1231(c) of the rules currently provides that translators may not be used solely for the purpose of relaying a signal to another translator. See 47 CFR §76.1231(c).

¹⁷ See Notice, *supra* at para. 10.

¹⁸ See Notice of Inquiry in MM Docket No. 88-120, *supra* note 4.

¹⁹ Use of other private and common carrier microwave and satellite facilities is not restricted to specific types of services and therefore rule changes are not necessary to allow noncommercial translators to be fed via stations in those services.

²⁰ See *Report and Order* in MM Docket No. 87-13, 2 FCC Red 4625 (1987).

²¹ See *supra* note 2.