

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Petition of)
)
NATIONAL TRANSLATOR)
ASSOCIATION)
Westminster, Colorado)
) RM-10666
For Amendment of Part 74 of the)
Commission’s Rules to Add a Rural)
Translator Service)

To: The Commission

Via the ECFS

OPPOSITION TO PETITION FOR RULEMAKING

IEEE 802¹ hereby respectfully offers its Opposition to the Petition for Rulemaking (the “Petition”) in the above-captioned Proceeding.²

The members of the IEEE 802 that participate in the IEEE 802 standards process are interested parties in this proceeding. IEEE 802, as a leading consensus-based industry standards body, produces standards for wireless networking devices, including wireless local area networks (“WLANs”), wireless personal area networks (“WPANs”), and wireless metropolitan area networks (“Wireless MANs”).

IEEE 802 is an interested party in this Proceeding and we appreciate the opportunity to provide these comments to the Commission.

¹ The IEEE Local and Metropolitan Area Networks Standards Committee (“IEEE 802” or the “LMSC”)

² This document represents the views of the IEEE 802. It does not necessarily represent the views of the IEEE as a whole or the IEEE Standards Association as a whole.

INTRODUCTION

1. In its Petition in the instant Proceeding, the National Translator Association (“Petitioner”) makes a number of allegations/representations with which we respectfully disagree:

- That “... rural America has been shortchanged for more than twenty years by a Commission policy of not promoting the delivery of broadcast services to those rural areas.”
- That the Commission’s Rules are, by implication, flawed in that they “... fail to differentiate among categories of auxiliary stations based on the nature of the service proposed.”
- That “The Commission’s policies do not allow for the grant, construction, and operation of sufficient translator stations to serve the needs of rural areas.”
- That “Cable cannot provide service due the prohibitive cost of wiring sparsely populated areas, and DBS services cannot provide either high definition television or full ‘local into local’ service due to spectrum limitations.”
- That “Rural areas are *entitled* (emphasis added) to the same level of service as urban areas.”
- (Further) that (by implication) the universal provision of “... free over-the-air broadcast television” is in some sense an “inalienable right.”

(and)

- That “The only way for that service to be provided is by integrating the use of translators directly into the Commission’s policy process.”

2. We will, as the first basis for our Opposition to the Petition, address each of these allegations in the following sections of this document.

3. Additionally, we will, as the second basis of our Opposition to the Petition, raise the issue of whether a dramatic proliferation of translator stations, as Petitioner seems to desire, is, in fact, the best and highest use of spectrum in light of the confluence of the facts that a) other viable options for program delivery exist and b) there are other potential uses of the spectrum in question that might more broadly serve the public interest.

**RURAL AMERICA HAS NOT BEEN “SHORTCHANGED” ... “BY A COMMISSION
POLICY OF NOT PROMOTING THE DELIVERY OF BROADCAST SERVICES ...”
(TO RURAL AREAS)**

4. Petitioner states that the Commission’s policies “shortchange rural America” in that they have not in some way favored rural areas, and proposes that a new “Rural Translator Service” be created through an amendment of Part 74 of the Commission’s Rules.
5. Further, Petitioner suggests that “rural America” should receive preferential treatment in the processing of applications for translator stations under the proposed new service and complains (in the section of the Petition entitled “Background”) about delays in the processing and grant of translator stations, due to the Commission’s practice of using “filing windows.”
6. We do not find Petitioner’s arguments to be at all convincing. Filing windows, or scheduled auctions, have been applied by the Commission to many services that the Commission regulates, and provide a fair and uniform way of providing notice to all potential licensees, enabling all interested parties to apply for licenses on equal terms.
7. In fact, to single out rural translators for expedited processing, as Petitioner requests, would amount to unequal treatment, relative to other classes of prospective licensees, and, thus would appear to violate the principle of “equal protection under the law,” setting an unfair and dangerous precedent.
8. For these, and other reasons elaborated below, we believe the Commission should reject Petitioner’s requests for the establishment of a special “Rural Translator Service” and to provide preferential treatment thereto.

THE PETITIONER HAS NOT SUBSTANTIATED THE PETITION'S CLAIMS THAT THE COMMISSION'S POLICIES PREVENT "SUFFICIENT TRANSLATORS TO SERVE THE NEEDS OF RURAL AREAS" OR THAT TRANSLATORS ARE, IN FACT, THE ONLY PRACTICAL, OR EVEN THE BEST, WAY TO SERVE RURAL AREAS

9. Petitioner argues for a scenario where, for the purposes of the "Rural Translator Service," a "rural area" would be defined as an area in which residents are unable to receive at least a grade B signal from four television stations (over-the-air reception is presumed to be the intent, though Petitioner does not explicitly state that in this section of the Petition).

10. Petitioner suggests that, for those areas outside the predicted grade B contours of four television stations, that no service be presumed, and that for areas within the predicted grade B contours, applicants demonstrate through the "Longley Rice Terrain Dependant Population Count" described in OET 69 that actual service is not available.

11. Petitioner argues that "the FCC's concern should be people, not area," and we agree with that basic premise, but find Petitioner's methodology for "justifying" the need for the "relief" requested in the Petition to be fundamentally flawed, for reasons that we will elaborate in the following sections.

12. The Petitioner's claims that neither cable nor DBS can provide adequate service to rural areas fly in the face of the facts and petitioner's "analysis" of the number of households "served" by translators significantly exaggerates the importance of translators

13. Petitioner asserts that "Cable and Satellite services are not effective substitutes for over-the-air service," and that translator stations are the only viable (or at least the best, in Petitioner's view) means of serving rural areas - assertions that Petitioner then attempts to "prove" through some rather "creative" arguments and juggling of numbers.

14. Petitioner appears to seek to, effectively, have the Commission render a determination that the threshold for “acceptable service” in rural areas would be defined as “able to receive over-the-air signals from [at least] all six [major broadcast] networks.”³

15. We would point out that readily available, alternate means of delivering programming content are capable of providing, and routinely do provide, a much larger variety of programming content than any reasonable deployment of translators could possibly provide, even if such a deployment were justifiable and represented the “best and highest use” of spectrum, which we dispute.

16. Additionally, alternate, readily available, means of delivering programming content are also capable of providing a variety of other services that translator stations are not capable of providing.

17. Thus, if the Commission were to accept Petitioner’s definition of “adequate service,” and Petitioner’s incorrect assertion that translator stations are the best, or only practical, means of delivering that service, the Commission would *then*, arguably, be shortchanging the vast majority of rural America (as well as adopting a policy that would result in inefficient use of the spectrum in question).

18. In “Appendix A” of the Petition, Petitioner presents a rather superficially impressive study⁴ (“the Study”) that purports to demonstrate the number of households “served” and “unserved” by both primary TV broadcast stations and translator stations for each of the major networks.

³ *Paraphrased from* the Petition, at the top of page 11.

⁴ *See* the Petition, Appendix A, “*Decisionmark Study of Households Served/Unserved*”, January 2002

19. We believe that the Study’s methodology, and the conclusions that it purports to support, are fundamentally flawed for the following reasons:

- First, the Study starts with a Longley Rice prediction of the grade B signal coverage area of both primary stations and translator stations.⁵
- Next, the Study correlates the coverage area obtained above with demographic data in an attempt to determine the number of “served” and “unserved” households based on the predicted coverage areas.
- One flaw in this methodology is that it automatically assumes that all households within the predicted grade B coverage area of either a single primary station or a single translator station are “served” by that station and, conversely, that households that fall outside of predicted the grade B coverage area of either are “unserved” by that station. While the “unserved” assumption is arguably correct to a first approximation, the “served” assumption is flawed, as elaborated below.
- Given that recent data indicates that only approximately 12% of Americans actually receive their television programming from over-the-air broadcasts, simply correlating coverage areas to the number of households that physically exist within those coverage areas, and then declaring that those households are “served” by the respective station, be it a primary station or a translator, exaggerates the number of households that are, in any reasonable and meaningful way, “served.” (Being irradiated by the signal of a station, while, in fact, receiving the corresponding content by other means, is fundamentally different than being “served” by that station.)
- If one examines the numbers presented by the Petitioner,⁶ it rapidly becomes abundantly clear that, to the Petitioner, only over-the-air reception “counts” as “service,” despite the fact that the overwhelming majority of Americans do not, in fact, receive their television programming in that manner. This distortion grossly misrepresents the importance of translator stations (and, in fact, primary television broadcast stations, as well) to the American public.

⁵ While this method of coverage prediction is generally accepted as producing reasonably accurate results, the way it is combined with other assumptions in the Study results in misleading conclusions.

⁶ Both in the “Rural Dependence on Translators” section of the Petition and in the Study.

20. Petitioner implies, if not asserts, that cable service is unlikely to provide service to a large proportion of rural Americans, due to the cost of “passing” households with cable infrastructure.

This would appear to be far from the truth, since available data shows that, as of 2002, cable systems “pass” approximately 97% of all American television households.⁷

21. Additionally, industry data from the same report indicates that cable providers are making substantial investments to expand and improve their facilities to provide even larger coverage areas and higher levels of service.

22. Since cable systems provide a far wider range of programming content than simply the six major over-the-air networks (including locally generated programming – many cable operators have their own production studios), can additionally provide high speed internet access and telephone service, and do all of this without consuming prime spectrum (by constraining their signals to fiber optic or coaxial cables, rather than indiscriminately radiating them over large geographical areas to the exclusion of other potential uses of the spectrum), it is abundantly obvious that cable systems can provide a much higher level and variety of service to the overwhelming majority of rural Americans, and can do so with almost absolute spectrum efficiency, because their non-radiating nature does not preclude reuse of the same spectrum in the same areas by other services.

23. Petitioner also asserts that DBS is not a viable solution to the television programming needs of rural America, because “[DBS systems] do not and cannot provide more than a few high-definition television signals, because the necessary spectrum is simply not available to them.”

24. Suffice it to say that we find this assertion difficult to accept, and we strongly suspect that the DBS operators would have a similar reaction to the Petitioner’s assertions.

⁷ See “Cable and Telecommunications Industry Overview 2002 Year-end,” page 26, table entitled “CABLE INDUSTRY FACTS-AT-A-GLANCE,” available in .pdf format from: http://www.ncta.com/industry_overview/aboutIND.cfm?indOverviewID=1

25. Like cable systems, DBS operators provide a much richer palette of programming options (including multiple HDTV channel offerings) than the “six major networks” that the Petitioners seem to consider as [at least minimally] “adequate service,” as well as other services, such as internet access, and these services are ubiquitously available throughout the United States, including even the most sparsely populated rural portions thereof.

26. In short, we are of the opinion that Petitioner’s derogations of competing methods of television program delivery to rural America (and America in general), such as cable and DBS, are inaccurate and self-serving to the point of misrepresenting of the facts, whether intentionally or not.⁸

**THE IMPLIED CONCEPTS OF “ENTITLEMENT” TO EQUAL SERVICE AND
“FREE” OVER-THE-AIR RECEPTION OF [AT LEAST] ALL SIX MAJOR
NETWORKS IN ALL AREAS OF THE COUNTRY DEFIES ECONOMIC REALITIES**

27. While we would not question the idea that it is desirable for rural America to have access to a broad, rich palette of television programming options, we believe that means other than translator stations make that programming, as well as other services, available to virtually all of the television households of rural America now, and that they do so in a more spectrally efficient and perhaps more economical way than would the much more widespread proliferation of translator stations that Petitioner advocates.

28. As far as “free” television is concerned, we would assert that, just as “There is no such thing as a free lunch,” in reality, there is no such thing as “free” television.

29. Virtually all U.S. television (even the “PBS” variety) costs money – money that is either derived from advertising revenues that support commercial stations (and contribute to the cost of products and services), or donations by interested viewers to public broadcast stations.

⁸ See Report and Order, GC Docket No. 02-37, adopted March 4, 2003, Concerning Truthful Statements to the Commission

30. In the case of translator stations, someone must pay for the construction, maintenance, and operation of these stations (no “free lunch”), and it would appear from the example, given in the Study, that existing networks of translator stations are in some way subsidized, either by local, state, or federal funding, or some combination thereof.

31. Thus, viewers pay for all forms of programming, in some cases in an indirect, hidden way. This inescapable fact renders the idea of “free” television invalid and the concept of an “entitlement” to “free” over-the-air reception of television broadcast programming is flawed in terms economic reality.

“INTEGRATING THE USE OF TRANSLATORS DIRECTLY INTO THE COMMISSION’S POLICY PROCESS” AND, IN FACT, THE USE OF TRANSLATORS, ARE NOT THE ONLY, OR EVEN THE BEST WAY OF PROVIDING SERVICE TO RURAL AREAS, NOR DO THEY REPRESENT THE BEST AND HIGHEST USE OF PUBLIC SPECTRUM ASSETS

32. The virtually ubiquitous availability of at least two alternates to translator stations for the delivery of television programming to virtually all Americans, both rural and urban, the ability of those alternates to offer a much richer palette of programming choices in an economical fashion, and the fact that “free” television programming is a fallacy, forces us to question the wisdom of allowing the continued proliferation of translator stations which consume valuable spectral resources that could be used to provide services that might provide greater benefit to a much broader segment of the public.

33. We also note that the Commission currently has open a Notice of Inquiry in ET Docket No. 02-380 (“the NOI”), which contemplates making geographically unused TV channels available for use by license-exempt devices on a non-interference basis to existing broadcast television stations. To allow continued proliferation of translator stations would result in a significant reduction in number of unoccupied channels over a larger area, limiting the ability to implement this proposal.

34. Compared to the limited benefits translator stations provide to a very minor percentage of the population and the alternatives that are available, we believe that the proposal contemplated in the NOI would likely result in a much higher public interest benefit than the proposals outlined in the Petition.

SUMMARY AND CONCLUSION

35. IEEE 802 again reiterates its Opposition to the Petition for all of the reasons elaborated above, and we respectfully recommend and request that the Commission expeditiously DENY and DISMISS the Petition and TERMINATE this Proceeding without further consideration or action.

Respectfully submitted,

/s/

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