

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

In the Matter of:)
)
Creation of a Low)
Power Radio Service) MM Docket No. 99-25
)

COMMENTS OF JOHN NATHAN ANDERSON

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I. INTRODUCTION

I would like to commend the FCC for considering improvements to the LPFM service. There is disappointment in that the modifications being discussed fall far short of expanding the service out to its original parameters as defined by the FCC in its 2000 Report and Order, and that Congress refuses to amend the demonstrably absurd statutory limitations that forbid this, but in these times any forward progress is well-received. I would also like to take this opportunity to express support for the July 8, 2005 comments filed by REC Networks, which seek to expand the LPFM service within the confines of the Radio Broadcasting Preservation Act, and for the most recent comments filed by the Amherst Alliance, to which I am a signatory.

I am filing these comments to address a single issue cited within the expanded NPRM, that being the proliferation of FM translator stations. In March, the Commission received an emergency petition to freeze the processing of FM translator applications from the 2003 filing

window from Prometheus Radio Project et al.¹ Although the Commission adopted a six-month freeze as a part of this NPRM, it has demonstrated no initiative to follow up on any of the serious allegations made in the Prometheus petition, nor has it articulated any notion of examining the regulatory conditions which allowed the 2003 translator application flood to occur.

As a doctoral candidate in the Institute of Communications Research at the University of Illinois, I have had the opportunity to make the wave of FM translator construction permits applied for in 2003 a part of my recent studies. My conclusions both confirm and expand upon the concerns identified in the Prometheus petition, in that they more deeply illustrate the intricate and lucrative nature of the speculation and trafficking in FM translator construction permits that has already taken place. Given the egregiousness of the practice identified by Prometheus et al. alone, it is highly likely that other parties are engaged in similar behavior. It is my hope that the FCC will seriously consider the profiteering that has occurred involving scarce FM channel-space, ostensibly reserved for noncommercial purposes, and take appropriate measures to rectify the situation.

While the Commission rightfully admits that the use of translator stations as low-cost network affiliates “is not a recent development in the FM translator service,”² it denies the history of the changes to the regulations which made the 2003 application flood – and more importantly, the creation of a market for speculation and trafficking in translators – possible. The concerns which arose through the petition of Prometheus et al. are but manifestations of concerns the Commission itself expressed in rulemaking proceedings more than 20 years ago. This is why it behooves the Commission to treat the translator issue with the due diligence it deserves: first with a separate investigation into the fallout from the 2003 filing window, and then with a more fundamental review of the FM translator service and its expressed versus realized goals. For the LPFM and translator issues are inextricably linked, and a failure to adequately address them both

1. Prometheus Radio Project, REC Networks, Office of Communication of the United Church of Christ, Inc., National Federation of Community Broadcasters, Future of Music Coalition, Free Press, Center on Democratic Communications of the National Lawyers Guild, and New America Foundation, *Emergency Petition for Freeze on Pending FM Translator Applications*, March 9, 2005, available online at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517490412 (July 31, 2005).

2. See *In the Matter of MM Docket No. 99-25, Second Order on Reconsideration and Further Notice of Proposed Rulemaking*, March 17, 2005, p. 16, available online at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-75A1.pdf (July 31, 2005).

will seriously impair otherwise significant opportunities for the expansion of public access to the airwaves.

It is true that those most central to the current translator speculation and trafficking controversy happen to be religious entities, but their behavior should not be misconstrued as indicative of the behavior of religious broadcasters generally. I sincerely believe that most religious broadcasters, were they aware of what is happening, would repudiate such behavior. Nor should any of this be read as an attack on religion's right of access to the airwaves. The primary concern here is content-neutral - whether or not the public interest is adequately served by entities that *trade* in public spectrum at the expense of other, no-less-qualified potential users.

II. TRANSLATOR PROLIFERATION DUE TO INCREMENTAL RULE CHANGES

The FCC created the FM translator service in 1970. Its primary service goal was defined as wholly supplementary: assisting terrain-challenged full-power FM stations adequately cover their service areas with simulcasts on a second FM channel.³ Initially all translators had to be fed directly by the signal from a full-power "parent" or "primary" station. In order to further emphasize their secondary status, FM translators were saddled with a bevy of operating restrictions, including a cap on maximum operating power at 250 watts and a blanket prohibition on the origination of local programming.⁴ Translators were also first limited to operation on just 40 of the 100 existing FM channels.

In 1981 the Moody Bible Institute, a Chicago-based seminary with a long history of evangelistic outreach via broadcasting,⁵ petitioned the FCC for a rule change allowing noncommercial users to feed translator stations with a program source other than another FM signal. Moody argued for the changes, in part, because they would result in "less expense for the licensee and better service to the public."⁶ The petition was denied in 1984: one of the first

3. See *Report and Order*, 20 RR 2d 1538 (1970).

4. See 47 CFR § 74.1235 and 47 CFR § 74.1231(g) (2004).

5. See Moody Broadcasting Network (MBN), *Moody Broadcasting Owned & Operated & Affiliate Stations*, May 24, 2005, http://www.mbn.org/GenMoody/Media/MediaLibrary/moody_across_nation.pdf (July 31, 2005). MBN has hundreds of affiliates and owns more than 100 radio stations outright, including the parent station WMBI-FM (Chicago). Of the stations Moody owns and operates, approximately two-thirds are FM translator stations.

6. See *In the Matter of Docket 19918*, 98 FCC 2d 35 (May 18, 1984) at 36.

reasons the Commission gave for doing so was the behavior of “some parties” who “have filed a large number of [translator] applications for many locations in population centers that, if granted, would virtually preclude other applicants.”⁷ The Commission also noted that it had been watching with concern since 1974 “an emerging pattern or use of FM translators to extend the service areas of existing FM stations rather than to fill in areas of inadequate direct reception.”⁸ Moody’s request, however, did stimulate discussion within the broadcast community about the role of FM translators in radio. Four years later, in 1988, the FCC approved a rule change which allowed noncommercial translators to be fed via microwave or satellite under certain limited conditions.⁹ Later that year it released a Notice of Inquiry asking for formal comments from interested parties on further changes to FM translator service rules.¹⁰ One of them, a “Faith Communications Center,” argued that the Commission should keep or expand the ability of noncommercial broadcasters to feed translator stations remotely so as to “provide many communities with specialized program formats.”¹¹ Deliberations lasted two years, until the release of another Report and Order in December of 1990.¹²

The 1990 Report and Order constituted a significant overhaul of the FM translator rules. It introduced a new concept for allowing FM translators to operate outside the bounds of a primary station’s service area. This concept, called the “white area,” defined areas of the country un- or underserved by “full-time aural service,” which for noncommercial translator placement purposes was critically defined as “any area that is not served by a full-service public radio

8. Id. at 40-41.

8. Id. at 44.

9. See *Report and Order*, 3 FCC Rcd 2196 (1988); recon. granted in part, denied in part, 4 FCC Rcd 6459 (1989), which permitted translators operating in the educational segment of the FM band (88-92 Mhz) to be fed by alternate means.

10. See *Notice of Inquiry*, 3 FCC Rcd 3664 (1988).

11. Id. at 3666.

12. See *In the Matter of MM Docket No. 88-140*, 5 FCC Rcd 7212 (1990); modified, 6 FCC Rcd 2334 (1991); recon. denied, 8 FCC Rcd 5093 (1993).

station.”¹³ Noncommercial translators were further authorized to operate on any channel in the FM band.¹⁴ At the time of the R&O’s adoption, 1,849 FM translators were on the air and another 290 were under construction, which represented approximately 16% of the total licensed radio stations on the air nationwide.¹⁵

It is interesting to note that the period between 1984 and 1990 is when many religious broadcasters which today rely most heavily on networks of FM translators were founded or undertook major evangelical outreach projects. Don Wildmon, founder of the American Family Association, received a “vision” to evangelize using a network of FM translator stations in 1987.¹⁶ Wildmon received FCC permission to construct a full-power FM station, WAFR, in Tupelo, Mississippi in 1991 and put American Family Radio’s first FM translator on the air in 1993. The American Family Association now holds the licenses to more than 250 radio stations, the majority of which are FM translators.¹⁷ Similarly, the Educational Media Foundation - parent organization of the K-LOVE and AIR-1 Christian music networks - was not founded until 1986, utilizing KCLB-FM in Santa Rosa, California as its flagship station. Today it can be heard on hundreds of FM signals nationwide, including more than 350 translator stations.¹⁸

In 1997, while the FCC digested and implemented policy changes related to the overhaul of the Telecommunications Act, it froze the filing of new applications for FM translators in the

13. *Id.* at 7213. This is doubly critical: although prior to this policy change noncommercial broadcasters were heavy users of translators, there is nothing in the record to suggest they constituted a “full-service public radio station” in and of themselves.

14. However, remotely-fed translators were still restricted to the reserved (educational) segment of the FM band.

15. *Supra* n. 12 at 7243, note 1, and “Broadcast Station Totals as of December 31, 1990,” *FCC.gov*, <http://www.fcc.gov/mb/audio/totals/bt901231.html> (July 31, 2005).

16. See n.a., “American Family Radio - about us,” *American Family Radio*, n.d., <http://www.afr.net/newafr/about.asp> (July 31, 2005).

17. Via REC Networks, *REC Broadcast Query*, http://www.recnet.com/cdbs/fmq.php?facid=&call=&latd=&lond=&city=&state=&party=american+family+association&party_type=LICEN (July 31, 2005).

18. Via REC Networks, *REC Broadcast Query*, http://www.recnet.com/cdbs/fmq.php?facid=&call=&latd=&lond=&city=&state=&party=educational+media+foundation&party_type=LICEN (July 31, 2005).

non-reserved segment of the FM band.¹⁹ This effectively placed any FM channel above 92 MHz off-limits to new translator stations. That application freeze was still in place in 2000 when the FCC created a new low-power FM community radio service.²⁰ Whereas translators broadcast with up to 250 watts, LPFM stations are limited to 100; while translators are forbidden from creating their own programming, LPFM stations are encouraged to be “live and local.”²¹ As another form of FM radio service, LPFM stations compete with translator stations for open channels.²² Of more than 3,000 LPFM station license applications filed in the FCC’s inaugural licensing round, 485 fully licensed LPFM stations are on the air and another 513 are under construction.²³

III. TRANSLATOR SPECULATION AND TRAFFICKING

Following the codification of rule changes mandated by the 1996 Telecom Act and the receipt of a single nationwide round of applications for new LPFM stations, the FCC opened a window for the filing of new FM translator station construction permit applications in 2003.²⁴ A large pent-up demand awaited this window: not only had the FCC frozen the proliferation of translator stations on a majority of the FM dial for nearly six years running, but it had awarded

19. See *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Fixed Service Licenses*, 12 FCC Rcd 22363 (1997).

20. See *Report and Order*, MM Docket. No. 99-25, 15 FCC Rcd. 2205; *Memorandum Opinion and Order*, 15 FCC Rcd 19208 (2000); *Second Report and Order*, 16 FCC Rcd 8029 (2001). When the FCC began deliberations on its major modifications to the translator rules in 1988 it briefly considered the idea of allowing local origination on translators, which would have effectively ushered in LPFM 10 years before it actually happened; *supra* n. 10 at 3667-3668, 3671.

21. See 47 CFR § 73.872(b)(3), where preference is given to LPFM station applicants who pledge to air at least eight hours of locally-originated programming per day.

22. The competition for open channels will be even greater should the FCC modify its rules as proposed and should statutory revisions be made. This somewhat belies the Commission’s assertion that “fundamentally different technical rules” make comparisons of spectrum occupied by LPFM and translator stations impossible, especially given the release, acceptance, and recommendations of the MITRE study; see *supra* n. 2 at p. 15. This is irrespective of the fact that they are fundamentally identical modes of broadcasting.

23. According to the National Federation of Community Broadcasters, “The NFCB Low Power FM Initiative – Statistics,” July 1, 2005, *NFCB.org*, <http://www.nfcb.org/projects/lpfm/statistics.html> (July 31, 2005). This represents less than 6% of all licensed radio stations in the United States today.

24. See Federal Communications Commission, *Report No. AUC-03-93-A (Auction No. 83)*, February 26, 2003, online at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-03-359A1.pdf (July 31, 2005).

valuable spectrum that might otherwise have been used for translators to LPFM stations in the interim.²⁵ A precursor of this demand is found in a petition for rulemaking filed with the FCC in 2002 asking it to further relax the rules governing the use of remotely-fed translator stations. The primary petitioner was Calvary Chapel of Twin Falls, Idaho, co-founder of the Calvary Satellite Network (along with Calvary Chapel of Costa Mesa, California). At the time it tendered its petition the Calvary Satellite Network had 334 FM translator licenses to its name.²⁶

During the five-day (electronic) application filing window for new FM translator stations, the FCC received more than 13,000 submissions. Had they all been approved it would have effectively doubled the number of licensed radio stations in the United States overnight. Of all the applications filed, 15 groups accounted for more than half of them. This included the Educational Media Foundation, which tendered nearly 900, and Calvary Chapel of Twin Falls, which filed more than 400 under a variety of names.²⁷ However, the biggest proportion of FM translator applications (nearly one-third of the total) came from two heretofore unknown groups: Radio Assist Ministry (2,454) and Edgewater Broadcasting (1,766).

It appears that the latter two groups were created for the specific purpose of taking advantage of the FM translator application window. According to the Idaho Secretary of State, Radio Assist Ministry (RAM) was incorporated in late 2002;²⁸ as of the end of last year the

25. Some religious broadcasters have actively reached out to add LPFM stations to their networks; see *In re: Applications for New LPFM Stations*, DA 05-2026, July 20, 2005, online at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-05-2026A1.pdf (July 31, 2005), the Prometheus Radio Project, "Prometheus Commends FCC on Calvary Chapel Dismissals," *Prometheusradio.org*, March 29, 2004, http://www.prometheusradio.org/statement_calvary.shtml (July 31, 2005), and Joe Garofoli, "Airwaves: The Race for Low-Wattage Stations," *San Francisco Chronicle*, February 28, 2005, p. A1.

26. See Calvary Chapel of Twin Falls, Inc., Creative Educational Media Corporation, Inc., Positive Alternative Radio, Inc., and Priority Radio, Inc., *Petition for Rulemaking*, RM-10609, June 17, 2002, available online at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513198474 (July 31, 2005).

27. From Federal Communications Commission, "Attachment A: Non-Mutually Exclusive FM Translator Applications Not Subject to Auction," DA 03-2095, June 30, 2003, available online at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-03-2095A2.pdf (July 31, 2005).

28. See the Idaho Secretary of State's online information for Radio Assist Ministry at <http://www.accessidaho.org/public/sos/corp/search.html?ScriptForm.startstep=viewentity&ScriptForm.startScriptForm.start.ScriptStepView.viewentityFILEvalue=C146223> (July 31, 2005).

company's address was a P.O. Box in Twin Falls, Idaho,²⁹ the same city from where the Calvary Satellite Network originates. Radio Assist Ministry's officers are, according to state documents, Clark Parrish (president), Donna Atkin (vice-president), and Earl Williamson (secretary/treasurer). Edgewater Broadcasting (EB), in comparison, was incorporated in early 2003, during the actual FCC filing window for FM translator applications.³⁰ Edgewater Broadcasting is also based in Twin Falls, Idaho and shares the same corporate officers as Radio Assist Ministry.³¹ A third corporation - World Radio Link (WRL) - has an identical address and executive board. Although it did not apply for any FM translator licenses in 2003, WRL does hold 28 full-power AM and FM radio station construction permits in various locales around the country.³² World Radio Link was incorporated simultaneously with Radio Assist Ministry.³³

Clark Parrish, president of the RAM/EB/WRL triad, has intimate knowledge of building broadcast networks via the use of translator stations. In just four years - between 1993 and 1997, until the FCC froze new translator station applications - the Calvary Satellite Network went from one FM station in Twin Falls, Idaho to a broadcast chain of more than 300 stations nationwide,

29. See Radio Assist Ministry's 2004 annual report at <http://www.accessidaho.org/public/sos/corp/search.html?ScriptForm.startstep=docview&ScriptForm.startScriptForm.start.ScriptStepView.docviewDOCIDvalue=AREPORTS%23%23%23%2304301175&ScriptForm.startScriptForm.start.ScriptStepView.docviewDOCTITLEvalue=ANNUAL+REPORT&ScriptForm.startScriptForm.start.ScriptStepView.docviewPAGENUMvalue=1> (July 31, 2005).

30. See the Idaho Secretary of State's online information for Edgewater Broadcasting at <http://www.accessidaho.org/public/sos/corp/search.html?ScriptForm.startstep=viewentity&ScriptForm.startScriptForm.start.ScriptStepView.viewentityFILEvalue=C148110> (July 31, 2005).

31. See Edgewater's latest annual report online at <http://www.accessidaho.org/public/sos/corp/search.html?ScriptForm.startstep=docview&ScriptForm.startScriptForm.start.ScriptStepView.docviewDOCIDvalue=AREPORTS%23%23%23%2305046709&ScriptForm.startScriptForm.start.ScriptStepView.docviewDOCTITLEvalue=ANNUAL+REPORT&ScriptForm.startScriptForm.start.ScriptStepView.docviewPAGENUMvalue=1> (July 31, 2005). Up until very recently both corporations shared the same P.O. Box as their mailing address, but this has since changed.

32. See REC Networks' *Broadcast Query*, http://recnet.com/cdbs/fmq.php?facid=&call=&latd=&lond=&city=&state=&party=world+radio+link&party_type=LICEN (July 31, 2005). World Radio Link bid for and won 16 full-power FM station construction permits in a 2004 auction for channels in the non-reserved FM band; see http://www.dataworld.com/auc37_allotments_final.asp?f=World%20Radio%20Link,%20Incorporated (July 31, 2005).

33. See the Idaho Secretary of State's online information for World Radio Link at <http://www.accessidaho.org/public/sos/corp/search.html?ScriptForm.startstep=viewentity&ScriptForm.startScriptForm.start.ScriptStepView.viewentityFILEvalue=C146222> (July 31, 2005).

the majority of which are translators.³⁴ At that time Clark Parrish was an engineer for CSN and actively designed and oversaw the technical growth of its network.³⁵ According to CSN's Program Director, Don Mills, Parrish left the operation to found the RAM/EB/WRL triad.³⁶

Evidence also exists that Radio Assist Ministry, Edgewater Broadcasting, and World Radio Link were set up specifically to traffick in permits to build radio stations. In February, 2004, as the FCC worked its way through the flood of translator applications filed in the previous year and started to issue construction permits to qualified applicants, Donna Atkin's husband, Steve, attended the National Religious Broadcasters annual convention in Charlotte, North Carolina as a representative of Radio Assist Ministry. He was actively soliciting customers for FM translator construction permits that had not yet been issued, but for which RAM had applied. Radio Assist Ministry was an exhibitor listed in the NRB 2004 convention's official brochure.³⁷ At the NRB 2005 annual convention in Anaheim, California, World Radio Link was one of the exhibitors. A convention newsletter for registrants claimed World Radio Link represented "the two largest filers of FM translator applications in the FCC's most recent FM filing window. These two applicants, Radio Assist Ministry and Edgewater Broadcasting, are making available for acquisition hundreds of these FM translator station construction permits to existing or new entrant Christian broadcasters throughout the country."³⁸ According to information on the Radio Assist Ministry web site, which was devoid of content until just this February, "The Lord has commissioned us with the responsibility and stewardship of numerous translator broadcast facilities throughout the US. We are assisting other like-minded ministries in the development of

34. In the translator application filing window of 2003, CSN effectively doubled the number of translators in its network; see REC Networks, *REC Broadcast Query*, http://recnet.com/cdbs/fmq.php?facid=&call=&latd=&lond=&city=&state=&party=calvary+chapel+of+twin+falls&party_type=LICEN (July 31, 2005).

35. Paul Davidson, "Christian radio plan doubted after permits sold for over \$800,000," *USA Today*, April 26, 2005, online at <http://www.freepress.net/news/print.php?id=7915> (July 31, 2005).

36. See Paul Riisman, "Calvary Chapel Responds," *Mediageek*, May 4, 2004, <http://www.mediageek.org/archives/002267.html> (July 31, 2005).

37. National Religious Broadcasters, *61st Annual Convention and Exposition*, n.d., p. 26, online at <http://diymedia.net/stuff/NRB2004Brochure.pdf> (July 31, 2005).

38. National Religious Broadcasters, *NRB 2005 NL 2*, p. 2, online at <http://diymedia.net/stuff/nrb2005nl2.pdf> (July 31, 2005).

various teaching networks....”³⁹ The RAM site also contains an impressive national map listing its “translator applications that have been granted or we expect to be granted soon.”⁴⁰ As of late February, of the 4,221 FM translator applications filed by the RAM/EB corporate duo, 1,046 have been granted, 971 dismissed, and 2,204 remain pending.⁴¹

IV. RAM/EB/WRL TRANSACTION ANALYSIS

The business plan seems to be a lucrative one, given the record of transactions involving just a fraction of the translator construction permits received to date. A REC Networks overview of transactions involving just 83 construction permits revealed the companies have already booked \$803,500 in sales, of which \$270,000 has been collected.⁴² Of these transactions, the majority of revenue derived from just five specific deals. Three of the five involve Calvary Chapel of Fort Lauderdale, Florida, which applied for and received permission to construct a 100,000-watt FM station in 2003. WREH-FM (otherwise known as “Reach FM”) signed on the air in late 2004 and serves a large segment of central Florida. In April, WREH’s license was transferred from Calvary Chapel of Fort Lauderdale to Reach Communications, Inc. Information from the Florida Secretary of State’s Division of Corporations reveals that Reach Communications is a church-controlled entity.⁴³ The president of Reach is Robert Coy, Senior Pastor at Calvary Chapel of Fort Lauderdale.⁴⁴

39. See Radio Assist Ministry, “Radio Broadcast,” <http://www.radioassistministry.com/radio/> (July 31, 2005). It should be noted that the Calvary Satellite Network carries a nearly-identical format. WHOIS search information on radioassistministry.com and worldradiolink.com lists Steven Atkin as the registrant and Clark Parrish as the administrative contact: see <http://www.whois.sc/radioassistministry.com> (July 31, 2005) and <http://www.whois.sc/worldradiolink.com> (July 31, 2005).

40. See n.a., “Translator Update,” *Radio Assist Ministry*, <http://radioassistministry.com/radio/project-updates.php> (July 31, 2005); .gif archived at http://diymedia.net/graphics/translator_map_ewb-ram_sing.gif (July 31, 2005).

41. Via REC Networks, personal communication, July 28, 2005; totals were calculated using FCC information current as of July 23, 2005.

42. REC Networks, “Facts about Edgewater & Radio Assist that will make your STOMACH TURN....,” February 23, 2005, available online at <http://www.diymedia.net/feature/recmail022305.htm> (July 31, 2005).

43. From Florida Secretary of State, Division of Corporations, *Corporations Online*, <http://www.sunbiz.org/scripts/cordet.exe?a1=DETFIL&n1=N04000000705&n2=NAFWFD&n3=0000&n4=N&r1=&r2=&r3=&r4=REACHCOMMUNICATIONS&r5=> (July 31, 2005).

44. See Calvary Chapel Fort Lauderdale, “Pastoral Staff,” <http://www.calvaryftl.org/church/staff/> (July 31, 2005).

In February, Reach Communications, Inc. agreed to buy 27 FM translator station construction permits in various Florida locales from RAM/EB for \$326,500. According to documents filed with the FCC, the Reach Communications transaction was structured in three parts: the first involved the purchase of five permits from Edgewater Broadcasting for a total of \$80,000;⁴⁵ the second was for 17 permits from Radio Assist Ministry for \$234,000,⁴⁶ and the third was for five more from RAM for \$12,500.⁴⁷ In general terms, Reach Communications paid RAM/EB a fraction of the final purchase price up-front as an “option payment” for the right to the construction permits, paid another installment when the FCC officially awarded the permits, and agreed to pay the balance owed when ownership of the permits was transferred from RAM/EB to Reach. Thus money was exchanged before usage rights to the spectrum being sold were even in hand. The supporting documentation for these transactions also shows that they have been repeatedly amended since 2003. They were originally much larger in scope, initially outlining more than \$2 million worth of spectrum to be sold in multiple states. Even scaled down, Calvary Chapel of Fort Lauderdale now controls a 100,000-watt FM station and the right to build some four dozen repeaters for its signal throughout the state of Florida.⁴⁸ That is a formidable media presence assembled in a matter of months, an accomplishment the million-dollar Calvary Chapel of Fort Lauderdale ministry is not bashful of boasting about.⁴⁹

45. See *Application For Transfer Of Control Of A Corporate Licensee Or Permittee*, File No. BAPFT - 20050216AAK, February 17, 2005, via CDBS (July 31, 2005), and *Option Agreement*, August 18, 2003 (amended 8/17/04 and 10/14/04), http://svartifoss2.fcc.gov/prod/cdbs/forms/prod/getattachment_exh.cgi?exhibit_id=300391 (July 31, 2005).

46. See *Application For Transfer Of Control*, File No. BAPFT-20050216AAW, February 17, 2005, via CDBS (July 31, 2005), and *Option Agreement*, August 18, 2003, (amended 4/20/04, 8/17/04, and 10/14/04), http://svartifoss2.fcc.gov/prod/cdbs/forms/prod/getattachment_exh.cgi?exhibit_id=287844 (July 31, 2005).

47. See *Application For Transfer Of Control*, File. No. BAPFT-20041229AAG, March 9, 2005, via CDBS (July 31, 2005), *Option Agreement*, July 10, 2003, http://svartifoss2.fcc.gov/prod/cdbs/forms/prod/getattachment_exh.cgi?exhibit_id=273093 (July 31, 2005), and *Assignment*, December 1, 2004, http://svartifoss2.fcc.gov/prod/cdbs/forms/prod/getattachment_exh.cgi?exhibit_id=273094 (July 31, 2005).

48. See REC Networks' file for WREH-FM, http://recnet.com/cdbs/fmq.php?facid=&call=wreh&latd=&lond=&city=&state=&party=&party_type=LICEN (July 31, 2005) which lists 50 current and projected translator stations for the station.

49. See Reach-FM's web site, and compare the maps of the station's "current coverage" area, <http://www.reachfm.org/coverage-map/current-coverage.cfm> (July 31, 2005) with the "2005-2006 EXPANSION" map, <http://www.reachfm.org/coverage-map/> (July 31, 2005).

The second-largest batch transaction RAM/EB has accomplished to date involves another Calvary Chapel-affiliated church: Horizon Christian Fellowship in San Diego, California. Horizon Christian Fellowship holds a construction permit to build a 50-kilowatt FM station in Kettleman City, ostensibly the primary station that will feed the translator-network the church appears to be building.⁵⁰ In September, 2004 the FCC approved Horizon's purchase of nine FM translator station construction permits in California and Washington from Edgewater Broadcasting for \$147,000.⁵¹ The same day the FCC approved Horizon's purchase of 10 translator construction permits from Radio Assist Ministry for \$72,000,⁵² resulting in combined revenue of \$219,000 for RAM/EB. Other smaller-time speculators also made money selling FM translator construction permits to Horizon Christian Fellowship of San Diego: Living Proof, Inc., sold a single FM translator construction permit to Horizon for \$150,000,⁵³ while Powell Meredith Communications Company sold a permit in Modesto to Horizon for \$8,000.⁵⁴

These are just a few of the highlights to the apparent speculation taking place in translator station construction permits. Other interesting deals exist, like a series of transactions involving

50. See FCC CDBS information for Facility ID# 94214, http://svartifoss2.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/sta_det.pl?Facility_id=94214 (July 31, 2005).

51. See *Application For Transfer Of Control*, File No. BAPFT-20040708AAW. September 23, 2004, via CDBS (July 31, 2005), *Original Option Agreement*, March 22, 2004, http://svartifoss2.fcc.gov/prod/cdbs/forms/prod/getattachment_exh.cgi?exhibit_id=232599 (July 31, 2005), and *Amendment*, July 21, 2004, http://svartifoss2.fcc.gov/prod/cdbs/forms/prod/getattachment_exh.cgi?exhibit_id=232600 (July 31, 2005).

52. See *Application For Transfer Of Control*, File No. BAPFT-20040708AAJ, September 23, 2004, via CDBS (July 31, 2005), *Option Agreement*, March 22, 2004, http://svartifoss2.fcc.gov/prod/cdbs/forms/prod/getattachment_exh.cgi?exhibit_id=232595 (July 31, 2005), and *Amendment*, July 21, 2004, http://svartifoss2.fcc.gov/prod/cdbs/forms/prod/getattachment_exh.cgi?exhibit_id=232596 (July 31, 2005).

53. See *Application For Transfer Of Control*, File No. BAPFT-20040915AAP, November 5, 2004, via CDBS (July 31, 2005), and *Asset Purchase Agreement*, February 27, 2004, http://svartifoss2.fcc.gov/prod/cdbs/forms/prod/getattachment_exh.cgi?exhibit_id=243100 (July 31, 2005). This is apparently an extension of previous business between Horizon Christian Fellowship and Living Proof, *supra* n. 50.

54. See *Application For Transfer Of Control*, File No. BAPFT-20050303ADK, March 14, 2005, via CDBS (July 31, 2005), and *Assignment Agreement*, February 2, 2005, http://svartifoss2.fcc.gov/prod/cdbs/forms/prod/getattachment_exh.cgi?exhibit_id=293443 (July 31, 2005). Horizon's signatory on the *Application* is Mike MacIntosh, the church's founder.

RAM/EB and the mysterious Airport Investors, L.P. of Maryland.⁵⁵ Airport Investors bought eight translator construction permits in Delaware, Maryland, and Massachusetts from RAM/EB for at least \$63,000 and traded a construction permit it acquired in Florida for one Edgewater had in Delaware for \$1.⁵⁶ Additionally, RAM/EB also seems to have engaged in (free) trade of translator construction permits with other established religious broadcasters, like American Family Radio.⁵⁷ Clark Parrish previously noted that RAM/EB would “use many of the multiple ‘singletons’ that are granted to resolve the mutually exclusive filings which will benefit other organizations.”⁵⁸ Neighborly, but speculatively so, inasmuch as it curries favor with the aforementioned other organizations for future business.

55. Not much information is available online from the Maryland Department of Assessments and Taxation; see http://sdatcert3.resiusa.org/ucc-charter/DisplayEntity_b.asp?EntityID=M04659215&EntityName=AIRPORT+INVESTORS+LIMITED+PARTNERSHIP&TabNum=1 (July 31, 2005).

56. See the following:

Edgewater to Airport Investors (1): BAPFT-20040927AAO, November 8, 2004, via CDDBS (July 31, 2005), *Option Agreement*, June 25, 2004, http://svartifoss2.fcc.gov/prod/cdbs/forms/prod/getattachment_exh.cgi?exhibit_id=244386 (July 31, 2005), and *Assignment Agreement, Security Agreement, and Promissory Note*, August 30, 2004, http://svartifoss2.fcc.gov/prod/cdbs/forms/prod/getattachment_exh.cgi?exhibit_id=244385 (July 31, 2005); Edgewater to Airport Investors (2): BAPFT-20040927AAQ, November 8, 2004, via CDDBS (July 31, 2005); Edgewater to Airport Investors (3): BAPFT-20050126ABN, January 27, 2005, via CDDBS (July 31, 2005), *Original Assignment Agreement, Security Agreement, and Promissory Note*, August 30, 2004, http://svartifoss2.fcc.gov/prod/cdbs/forms/prod/getattachment_exh.cgi?exhibit_id=281493 (July 31, 2005), and *Amendment to Assignment Agreement, Security Agreement, and Promissory Note*, January 19, 2005, http://svartifoss2.fcc.gov/prod/cdbs/forms/prod/getattachment_exh.cgi?exhibit_id=281494 (July 31, 2005);

Airport Investors to Edgewater: BAPFT-20040928ALB, November 8, 2004, via CDDBS (July 31, 2005), and *Option Agreement*, June 25, 2004, http://svartifoss2.fcc.gov/prod/cdbs/forms/prod/getattachment_exh.cgi?exhibit_id=245545 (July 31, 2005);

Radio Assist Ministry to Airport Investors (1): BAPFT-20040927AAL, November 8, 2004, via CDDBS (July 31, 2005), and *Assignment Agreement, Security Agreement, and Promissory Note*, July 31, 2004, http://svartifoss2.fcc.gov/prod/cdbs/forms/prod/getattachment_exh.cgi?exhibit_id=244382 (July 31, 2005); Radio Assist Ministry to Airport Investors (2): BAPFT-20050128ABA, January 31, 2005, via CDDBS (July 31, 2005), and *Assignment Agreement*, December 31, 2004, http://svartifoss2.fcc.gov/prod/cdbs/forms/prod/getattachment_exh.cgi?exhibit_id=282423 (July 31, 2005).

57. See the following: Edgewater to AFA: BAPFT-20050202AAJ, February 3, 2005, via CDDBS (July 31, 2005); Radio Assist to AFA: BAPFT-20050202AAO, February 3, 2005, via CDDBS (July 31, 2005); and AFA to Edgewater: BAPED-20040730AAT, November 15, 2004, via CDDBS (July 31, 2005).

58. Naina Narayana Chernoff, “Translator ‘Flood’ Causes Concern,” *Radio World*, September 10, 2003, available online at http://www.rwonline.com/reference-room/special-report/02_rw_fm_trans_8-09.10.03.shtml (July 31, 2005).

Although RAM/EB/WRL and others paid nothing to apply for these construction permits they are making money off of them. And while the construction permits awarded in 2003 reside outside the educational portion of the FM band, which precludes their stand-alone operation as satellite-fed broadcast repeaters, the pending petition by Calvary Chapel of Twin Falls et al. could change that, which consequently would drive up the value of any spectrum it and others hold rights to develop.⁵⁹ Given that the transfer of 83 translator construction permits generated \$803,000 for RAM/EB/WRL, a conservative valuation of the remaining permits held by the triad is \$5.8 million.⁶⁰ There have even been allegations of a circulating price list for translator station construction permits, which sets their value in a range from \$6,000 to \$14,000, depending on the size of the potential audience that could be reached by their projected coverage areas.⁶¹

The fact that RAM/EB filed more than 4,000 applications for translator construction permits and both marketed and were paid for some of them before they were even in hand suggest a speculation and trafficking scheme at work. The pattern of some of the companies' largest transactions, especially those that split the business between RAM and EB, supports Prometheus' allegations that violations of agency prohibitions against unjust enrichment have occurred.⁶² The scale of this behavior speaks to a "general failure of the Commission's safeguards to prevent...trafficking" and makes one wonder whether there was not "wholesale

59. This might explain why World Radio Link also bid on full-power FM construction permits: as "seed stations" for sale to buyers interested in setting up regional translator networks, in a manner similar to the model being employed by Calvary Chapel of Fort Lauderdale and Horizon Christian Fellowship.

60. Figured by multiplying 963 by \$6,000; the "average" price of a translator in the sample of transactions highlighted by REC Networks is closer to \$9,600, but I am working from the notion that not all construction permits will be sold (just as a land speculator doesn't often clear their entire inventory). If just half of RAM/EB's outstanding translator applications were to be approved, the average value of its holdings would effectively double. Note this does not include the value of the full-power FM construction permits held by World Radio Link.

61. Pete triDish in John Anderson, *Media Minutes*, February 25, 2005, <http://www.freepress.net/mediaminutes/archive/mm022505.mp3> (April 21, 2005) at 1:40.

62. Prometheus et al. cite 47 USC 309(j)(4)(E) (2004), which require the FCC to implement "transfer disclosures and anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment," but also reference several prior proceedings in which the agency expressed an intolerance for schemes demonstrating the sophistication and scale of greed seen here; see *Elimination of Three Year Rule and Underlying Trafficking Policy*, 52 RR 2d 1081 (1982) and *Applications for Voluntary Assignments or Transfers of Control*, 47 FR 985 (1982). The latter, notes Prometheus, suggests the FCC generally frowns on any sale of a broadcast radio station before it actually goes on the air; see Prometheus et al., p. 3, 8.

abuse by other applicants as well.”⁶³ As a remedy Prometheus suggests the FCC inspect each translator construction permit issued in 2003 for any evidence that it was obtained by fraudulent purposes, and if so, to revoke it and/or seek other compensation from the offending applicants.⁶⁴ Although the record is replete with feisty banter (and more) from all parties involved,⁶⁵ only Prometheus et al. have presented a request for administrative review, articulating a concern whose validity is beyond question. Action should be definitive and well-considered, as “[t]he Media Bureau’s Audio Division already has granted approximately 3,300 new [translator] station construction permit[s]...a number nearly equal to the total number of FM translator stations licensed and operating prior to the filing window.”⁶⁶ Inexplicably, however, transactions related to the 2003 translator application window have been processed at least through July 19;⁶⁷ this included the sale of another translator permit in Florida from Edgewater Broadcasting to Reach Communications for \$6,000.⁶⁸

V. CONCLUSIONS/RECOMMENDATIONS

1. Incremental changes to the FCC’s FM translator rules over time generated the conditions by which a viable marketplace for translator construction permits could occur.

63. Id., p. 7.

64. Pursuant to 47 USC § 303(m)(1)(F) (2004).

65. See Dawn M. Sciarrino, *Emergency Motion to Dismiss*, March 14, 2005, http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517495719 (July 31, 2005); Prometheus Radio Project et al., *Opposition to Motion to Dismiss*, March 15, 2005, http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517495927 (July 31, 2005); Dawn M. Sciarrino, *Reply to Opposition to Emergency Motion to Dismiss*, March 18, 2005, http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517496684 (July 31, 2005); RAM/EB/WRL *Ex Parte* presentation, April 13-14, 2005, http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517518977 (July 31, 2005); RAM/EB/WRL *Ex Parte* presentation, May 5, 2005, http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517597714 (July 31, 2005); Media Access Project et al., *Ex Parte* presentation, June 6, 2005, http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517627389 (July 31, 2005).

66. *Supra* n. 2 at p. 15. Provided most of the construction permits are actually built, one out of every three licensed radio stations in the United States will be an FM translator.

67. Per REC Networks’ “‘Traffick’ Report – Great Translator Invasion,” *RECnet.com*, <http://recnet.com/traffic/> (July 31, 2005).

That the Commission itself worried about this very problem more than 20 years ago is poignant enough to spur an inquiry into the practice of translator speculation and trafficking and the now all-too common practice of using translators as network-surrogates for full-power FM stations.

2. The concerns identified with the behavior of Radio Assist Ministry, Edgewater Broadcasting, World Radio Link, and its principals, both legal and technical, are valid and deserve close Commission scrutiny. The evidence suggests that all three corporate entities were established primarily to collect and then market and sell FM station construction permits; there is very little to suggest that any of the three actually plan to build and/or operate any FM stations of their own. Part of the evidence leading to this conclusion is the fact that the “Ministries” attended two consecutive national conventions of religious broadcasters, under two different guises, peddling the exact same thing: access to the airwaves via FM translator construction permits. This occurred well before they knew they actually had any merchandise to peddle. Clients split their business between companies ostensibly to dilute and/or otherwise obscure the nature of the transactions. It is incomprehensible that the level of evidence thus collected could not trigger the FCC’s historically-consistent operational disposition against broadcast spectrum speculation and trafficking.⁶⁹

3. An independent review of transactions stemming from the March 2003 translator station filing window should be undertaken. Given the size and scope of the transactions analyzed thus far, as well as the preponderance of evidence suggesting the operation of a marketplace where noncommercial FM translator spectrum is being bought and sold, the Commission should continue indefinitely its freeze on the processing of all applications for translator construction permits from the 2003 window. Permits, and their transfers, that have

68. See *Application for Transfer of Control*, File No. BAPFT-20050330ABR, March 31, 2005, via CDBS (July 31, 2005).

69. As summarized *supra* n. 1 at 7-8. The FCC has several options available if punitive measures are called for, including monetary forfeitures, forfeiture of the right to be a Commission licensee, and other disciplinary measures as outlined in 47 CFR § 1.24 (2004).

already been approved should be immediately reviewed and rescinded in cases where evidence of speculation and trafficking are found.⁷⁰

4. The Commission should further review its rules governing the use of FM translator stations and, where necessary, better define the service's status as secondary.

Having seen the success of others who built networks out of FM translators, it would appear that new religious broadcasters are being attracted to the airwaves by specific weaknesses in the FM translator rules. That the largest of these new entrants happen to be entities with specific denominational ties modeling themselves after established network models is worthy of closer scrutiny.⁷¹ An important line is crossed when the sale/purchase of translators in bulk takes place: translators become a broadcast commodity viewed in the aggregate, not on individual merit. The commodity becomes coverage area; the number of translators necessary to fit the bill is variable. Arguably the Commission has an institutional disposition away from the use of translators to build networks; perhaps now it is time to formally codify it. Administrative interpretation which more properly emphasizes the secondary nature of translator service going forward should also be considered.

Respectfully Submitted,

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70. Media Access Project et. al, *supra* n. 65 (June 7 *Ex Parte* presentation) have suggested mechanisms by which “innocent applicants” not engaged in translator speculation and trafficking could be spared hardship from any investigation.

71. For example, Reach’s latest acquisition, *supra* n. 68, will rebroadcast a primary station in Georgia owned by WAY-FM. WAY-FM is a curious creation, as it is essentially a Christian music format fed via satellite to ten primary FM stations around the country, which in turn feed their own fleets of translators. Not only does WAY demonstrate a business model that the Calvary Chapels and Horizon Christian Fellowships might aspire to, but it also utilized the 2003 filing window to expand its own reach. See n.a., “WAY-FM – Station List,” *kxwa.wayfm.com*, n.d., <http://kxwa.wayfm.com/stationlist.html> (July 24, 2005).