

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

In the Matter of)
)
Revitalization of the AM Radio Service) MB Docket No. 13-249
)

**OPPOSITION OF THE NATIONAL ASSOCIATION OF BROADCASTERS
TO THE PETITION OF PROMETHEUS RADIO PROJECT FOR IMMEDIATE PARTIAL STAY AND
PROCESSING FREEZE PENDING REVIEW OF PETITION FOR RECONSIDERATION**

I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)¹ hereby responds to Prometheus Radio Project's Petition for Emergency Partial Stay and Processing Freeze Pending Review of Petition for Reconsideration in the above-captioned proceeding, and respectfully requests that the Commission promptly dismiss Prometheus' request as premature.² NAB opposes Prometheus's petition on substantive grounds but files this opposition to address a glaring procedural defect of the petition: Prometheus has not even filed a petition for reconsideration of the rules it seeks to stay, adopted in the Commission's recent Order.³ Under the Commission rule cited by Prometheus in its petition, there must be a pending petition for reconsideration before good cause can be shown to stay the rule. The Commission should therefore reject Prometheus's petition for stay.

¹ NAB is a nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² Petition of Prometheus Radio Project for Emergency Partial Stay and Processing Freeze Pending Review of Petition for Reconsideration, MB Docket No. 13, 249 (Apr. 3, 2017) (Prometheus Petition).

³ *Revitalization of the AM Radio Service*, Second Report and Order, 32 FCC Rcd 1724 (2017) (Order).

II. THERE CAN BE NO GOOD CAUSE TO STAY THE EFFECTIVE DATE OF A RULE WHEN THERE IS NO PENDING PETITION FOR RECONSIDERATION

Prometheus bases its request for an emergency stay on Section 1.429(k) of the Commission's rules regarding petitions for reconsideration.⁴ As the rule clearly states, "upon good cause shown, the Commission will stay the effective date of a rule *pending a decision on a petition for reconsideration.*"⁵ Although Prometheus lays out the four-factor test for determining whether a stay should be granted, it is wholly premature and inappropriate to debate the merits of whether those factors are present in this case. There is no pending petition for reconsideration. Thus, no grounds exist for the Commission to find good cause and grant the requested stay.

Rejecting Prometheus' petition is consistent with Commission precedent. The Commission has previously held that the purpose of Section 1.429(k) "is to avoid irreparable harm while the Commission considers petitions for reconsiderations challenging newly adopted rules," and that "procedural posture" requires a pending petition for reconsideration in order for the Media Bureau to have the authority to stay a Commission Order.⁶ To grant Prometheus's request for stay would be to condone a procedural defect that violates the clear letter of the rule upon which Prometheus seeks a stay.⁷

⁴ Prometheus Petition at 1.

⁵ 47 C.F.R. § 1.429(k) (emphasis added).

⁶ See Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, *In re: WWHK(FM) (Formerly WOTX-FM), Concord, New Hampshire, Facility ID No. 8683, Capitol Broadcasting Corp., File No. BTCH-20050105ACS, Request for Temporary Waiver And/Or Stay*, 23 FCC Rcd 12060 (Aug. 12, 2008).

⁷ Should Prometheus file a petition for reconsideration, NAB looks forward to refuting any arguments Prometheus may raise. In particular, NAB will demonstrate that the Commission's action is a logical outgrowth of the rulemaking proceeding. From the beginning of this proceeding, the Commission put would-be commenters on notice that it proposed to relax its rules to revitalize AM radio service. Further, numerous commenters weighed in on both sides of the exact rule Prometheus now seeks to stay. The Commission provided proper notice,

III. CONCLUSION

Unless Prometheus files a petition for reconsideration, there can be no grounds to find good cause to delay the effective date of this rule and to delay the revitalization of AM radio any further. Accordingly, NAB respectfully requests that the Commission promptly reject Prometheus's petition for stay.

Respectfully submitted,

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appropriately considered the comments in the record and determined that its proposed rule needed to be modified. Such a determination was a logical outgrowth of the proceeding.

We also note that the entire premise of Prometheus's petition is too speculative to justify a stay. Notwithstanding their vigorous claims of "immediate and irreparable harm," the fact remains that the Commission's action may have zero impact on LPFM stations. The rule change pertains only to existing cross-service translators; it does not allow translators to increase power or authorize any new translators. Applications to relocate a translator pursuant to the amended rule will be required to comply with all of the Commission's normal channel allocation procedures and to "protect any LPFM stations under the contour protections set forth in 47 CFR § 74.1204(a)." Order at ¶ 4 n.21. There is no evidence that translator relocations will hinder LPFM stations' service, nor can Prometheus predict that relocated translators will be any more preclusive than their current locations. Indeed, it is just as likely that a translator relocation may enhance an LPFM station's ability to accommodate a new or modified primary FM station. Prometheus also incorrectly claims that the Order removes "any distance limitation for newly-filed FM translator applications." Petition at 2. Translators that rebroadcast AM stations will remain subject to the current limit of the greater of the station's 2 mV/m contour or 25 miles from its transmission site.

CERTIFICATE OF SERVICE

I, Larry Walke, do hereby certify that a copy of the foregoing Opposition to Petition for Emergency Partial Stay and Processing Freeze Pending Review of Petition for Reconsideration was served, this 6th day of April, 2017, to the following:

VIA ELECTRONIC MAIL

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