

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

In the Matter of )  
 )  
Amendment of Service and Eligibility Rules )  
for FM Broadcast Translator Stations )

MB Docket No. 07-172  
RM - 11338

FILED/ACCEPTED

DEC 20 2007

Federal Communications Commission  
Office of the Secretary

To: The Commission

**COMMENTS  
OF  
MORRIS BROADCASTING COMPANY OF NEW JERSEY, INC.**

**MORRIS BROADCASTING COMPANY OF NEW JERSEY, INC.** ("Morris"), by Counsel, pursuant to *Notice of Proposed Rule Making, FCC 07-144 (released August 15, 2007)*, hereby submits these Comments in the above-captioned rule making proceeding regarding a proposal submitted by the National Association of Broadcasters ("NAB") to permit AM stations to use FM translators.<sup>1</sup> In support hereof, Morris submits the following:

1. Morris is the licensee of Radio Station WIMG-AM at Ewing, New Jersey. Although Radio Station WIMG-AM is not an AM daytimer station -- having authority to operate at 3.2 kilowatts daytime and 1.3 kilowatts nighttime -- Morris believes that this proceeding should be expanded to provide special relief to broadcasters, such as Morris, that provide programming targeted to minorities. The WIMG-AM format caters to African-Americans, and nearly all of Morris'

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<sup>1</sup> On August 23, 2006, Morris filed preliminary comments in this proceeding in support of the NAB's proposal in response to *Public Notice Report No. 2782 (released July 25, 2006.)* These Comments are more extensive, and are intended to show Morris' continuing interest in the NAB's proposal.

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employees are African-American.

2. Radio Station WIMG-AM is required to power down sixty percent (60%) during nighttime hours. As a result, the station's coverage to most of Burlington County, New Jersey and portions of Mercer County, New Jersey are lost. When this occurs, WIMG-AM cannot provide service to the most heavily minority populated areas in its market. Since the Commission has recently reaffirmed its commitment to enhance minority-responsive broadcasting, Morris believes that in special unique circumstances such as WIMG-AM, the Commission should approve the use of FM translators by AM broadcasters to maintain full-time service to minority audiences.<sup>2</sup> Accordingly, hereinbelow Morris provides responsive comments to the proposal proffered by NAB.

3. Although the NAB proposal seems to place great emphasis on AM daytimer stations, Morris urges the Commission to acknowledge that AM daytimer stations are not the only AM stations that face a competitive disadvantage at night. As described hereinabove, stations such as WIMG-AM lose a significant portion of their target audience when required to power down at night. This proceeding needs to acknowledge the service issues of all AM broadcasters. While Morris agrees that any use of FM translators by AM broadcasters must be narrowly awarded to only the most deserving AM broadcasters, determinations based upon power only is most prejudicial. The Commission must look at the unique circumstances of each applicant and base its decision accordingly.

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<sup>2</sup> Morris acknowledges that a station's format is always subject to change. Therefore, in the event the FCC grants an FM translator construction permit and license to a minority-responsive AM station, there should be conditions placed on the authorizations that a change to a non-minority responsive format would result in the automatic termination of the FM translator station's permit or license.

4. Morris submits that AM translator stations operating pursuant to any new policy resulting from this proceeding be authorized on a primary-status basis such as full power FM stations and fill-in FM translators so that they do not face the risk of elimination by other FM stations that might subsequently modify their operations, or by other new FM service proposals. In order to make this new service viable and immune from application gamesmanship that could thwart the long term relationship of FM translator stations with AM stations, such primary-status licensing must be applied here.

5. Fifteen years ago, within the context of reviewing technical proposals to improve the AM broadcast service, the Commission stated the following:

Over the years ... channel congestion and interference, both radio- and environmentally-induced, have dramatically increased in the AM band. Coincident with this growth has been a decline in the fidelity of AM receivers. As a consequence, during the last twenty years there has been a well-documented shift of AM listeners to newer mass media services that offer higher technical quality and better aural fidelity. This shift in listenership has clearly dulled the competitive edge of this once vital service.

Nonetheless, we believe that AM radio continues to hold a valuable place on the communications landscape. AM service provides a significant number of outlets that contribute to the vital diversity of viewpoints and programming available to Americans. Indeed, AM often offers the only radio service to listeners in a variety of circumstances, particularly those living in and traveling through rural areas. In view of the undisputed public importance of the AM service, we believe that innovative and substantial regulatory steps must be taken to ensure its health and survival.

For the past several years, the Commission has made an intensive effort to identify the service's most pressing problems and, where relevant and feasible, to adapt the regulatory environment for AM stations that will ameliorate those problems. *Review of the Technical Assignment Criteria for the AM Broadcast Service, 6 FCC Rcd. 6273 at paras. 2-4 (1991)*

*(footnotes omitted).*

Despite the Commission's encouraging words almost half a generation ago, it is accurate to say that the more things have changed, the more they have stayed the same. Much effort has been expended to identify the problems of the AM broadcast service, but little has been done to fix those problems. In reality, the AM broadcast service has been abandoned, and now there is an opportunity to provide some reasonable relief.

6. Morris submits that any use of FM translators by AM broadcasters should be narrowly awarded to only the most deserving AM broadcasters -- looking at a combination of such factors as the amount of service loss at night, whether or not the station serves a minority audience, the size of the station's market and the amount of competition in that market, and whether or not the station is locally owned. There are several administrative reasons why this is necessary. First, as with any communications service today, there is fierce competition among competing interests for use of frequencies. In this regard, the Commission is faced with some difficult decisions in this proceeding. For example, will the applications by an AM broadcaster for an FM translator station be subject to competing applications by FM broadcasters? If so, will the AM broadcaster be provided a preference?<sup>3</sup> And, since any future proposed use of an FM translator station on a commercial frequency will be subject to an auction, will there be a need for special auction rules for these matters? However, should the FCC ultimately permit the rebroadcasting of AM stations on existing

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<sup>3</sup> Morris submits that as a result of new translator service rules originating from this proceeding, the Commission should open a series of special filing windows where only the most deserving AM stations (as defined in this proceeding) can apply for new FM translator stations to associate with eligible AM stations.

appropriately located FM translators, the commencement of this new rebroadcast service could be expedited. Morris submits that it is in the public interest to provide this much-needed relief to AM broadcasters as soon as possible, so use of existing appropriately located FM translator stations should be permissible without question.<sup>4</sup>

7. With regard to new FM translator station applications filed by AM broadcasters, Morris urges the Commission to adopt a priority scheme for FM translator stations applied for by AM broadcasters serving minority audiences *vis-a-vis* FM translator applications filed by noncommercial FM broadcasters and other commercial broadcasters proposing *other than* fill-in service. First priority should be afforded to AM broadcasters serving minority audiences to receive an absolute right to apply for any available FM translator frequency without the risk of a competing application. These applicants would expect to pay for their channels pursuant to the new FCC auction and revenue rules, but there should be no risk of mutual-exclusivity filings. Second priority should be afforded to AM daytimers, as these broadcasters also have a long history of service issues. These applicants would not necessarily be afforded a right to apply for an FM translator without the risk of competition, but they would receive priority status (i.e., in the form of a bidding credit) against a non-AM daytimer applicant for an FM translator station. Finally, Morris proposes that any AM translator application be afforded absolute priority over any FM translator application filed by an FM station proposing other than fill-in service.

8. Morris recognizes that there is fierce competition amongst competing

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<sup>4</sup> Morris has determined that approximately thirty-seven (37) operating or unbuilt FM translator stations could theoretically be associated with WIMG-AM. The use of just one or two of these stations would provide much deserved help to the nighttime coverage area of WIMG-AM.

interests for available FM frequencies. Over time, the situation will only get worse. However, the Commission will soon have at its disposal in most areas of the country additional FM spectrum as most Channel 6 TV stations complete their DTV transition.<sup>5</sup> As this occurs, the Commission should allocate all or most of this spectrum for new FM translator stations to be associated with eligible AM stations.

9. If the Commission decides to implement the NAB proposal, Morris believes that it must be as narrow and selective as possible in order to avoid applicant abuse and to maintain a level of credibility for this new service. The use of FM translators by AM broadcasters should generally be to provide nighttime service to the community of license only. Therefore, Morris believes that the usable area in which to locate these FM translator stations should be generally limited to an area within the AM station's daytime city-grade service contour at any optimum location.<sup>6</sup> However, in special circumstances, the Commission should be able to waive the daytime city-grade contour limitation for site location if the public interest warrants it, or if necessary to permit the use of a uniquely suitable transmitter site.

10. Whatever the Commission decides should be the appropriate usable area in which to locate these FM translator stations, Morris urges the Commission to permit alternate delivery methods to feed these translators. Nighttime propagation and interference from distant AM signals will make the direct reception of the desired AM station at the available translator site impossible in

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<sup>5</sup> In Morris's service area for WIMG-AM, Channel 6 television station WPVI in Philadelphia will move to Channel 64 as a result of the DTV transition.

<sup>6</sup> Morris believes that AM broadcasters should not be required to locate their FM translators on their AM towers.

many instances. Since commercial FM translators providing fill-in service for commercial FM stations can use such signal delivery methods as microwave, telephone and dedicated fiber optic cable, such methods should apply here as well.

11. Morris acknowledges, as does NAB in footnote number 10 of its petition, that the Commission has been asked in the past for policy and rule changes similar to that which has been requested by NAB in this proceeding. Regardless of the Commission's actions in the past, the FCC must be flexible enough to react to changing times. For almost two decades now, AM broadcasters have been promised relief to provide better service. But, there have been no material changes. Morris submits that, if satellite radio providers such as XM Satellite Radio were permitted to apply for and license terrestrial repeaters to supplement their satellite service<sup>7</sup>, AM broadcasters should be able to supplement their traditional radio service, too.

12. Although many people in the industry argue that the perils of AM broadcasting will solve itself as more and more AM radio stations go dark, this "survival of the fittest" theory has not panned out. For every AM station that goes dark, a daytimer adds nighttime power or increases power, or a new rimshot allocation is shoe-horned in someplace. The number of AM radio stations in the United States has remained almost constant during the past two decades. Even in the face of high HD Radio conversion costs and the inability of many smaller AM radio stations to afford implementing HD Radio, the number of AM radio stations is not likely to drop fast enough to permit significant interference mitigation or a rebirth of the AM radio service with full-time HD Radio.

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<sup>7</sup> See, e.g., *Order, DA 01-2383 (released October 15, 2001)*.

13. As the Commission is well aware, most AM stations are not bothered by interference from other stations during the day, but maintaining their coverage at night is heavily undermined by the onslaught of skywave. Even AM radio stations that have decent daytime market coverage find that their nighttime coverage shrinks significantly. As a result, its ability to compete with FM radio stations is severely compromised.

14. Although HD Radio deployment is progressing nicely for the FM radio service, few AM broadcasters have stepped up and made commitments to HD Radio. So long as there remains the risk that nighttime AM radio service can cause interference, thereby forcing a reduction of operating power at night, HD Radio will not be the answer for AM daytimers.

15. The Commission should be reminded that, in other limited circumstances, AM radio stations have been authorized to utilize FM translators in the past. For example, the Commission has approved the use of FM translators for certain radio and TV stations in Alaska. *See, Wrangell Radio Group, 75 FCC 2d 404 (1980)*. Also, in 1990, the Commission approved the use of an FM translator during nighttime hours for Radio Station WAMB-AM at Donelson, Tennessee in response to severe interference arising from the operation of a Cuban AM radio station. WAMB-AM proved that there were no other viable solutions, and the Commission a granted special authority based, in part, on Section 303(g) of the Communication Act, which "mandates the Commission to provide for experimental uses of frequencies, and generally encourage the larger and more effective use of the radio in the public interest."/sup>8

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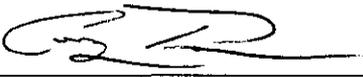
<sup>8</sup> *See, Letter by Donna Searcy, September 17, 1990, to Ann Bavender, Esquire. Therein, the Commission cited three other Florida AM radio stations which had authority to operate FM translators in conjunction with its AM service.*

16. Morris agrees with the NAB that the proposal now before the Commission is simple, technically feasible, pro-competitive and in the public interest. The use of FM translators by AM broadcast stations is clearly a logical extension of the Commission's long-standing efforts to support and improve the AM broadcast service.

WHEREFORE, the foregoing premises considered, Morris urges the Commission to adopt the NAB proposal.

Respectfully submitted,

**MORRIS BROADCASTING OF NEW JERSEY, INC.**

By:   
Cary S. Tepper

Its Attorney

***Booth, Freret, Imlay & Tepper, P.C.***

7900 Wisconsin Avenue  
Suite 304  
Bethesda, MD 20814-3628

(301) 718-1818

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