

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

In the Matter of)
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Amendment of Service and Eligibility Rules for) MB Docket No. 07-172
FM Broadcast Translator Stations) RM-11338
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COMMENTS OF CLEAR CHANNEL COMMUNICATIONS, INC.

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SUMMARY

AM radio, this country's first national medium for mass communications, has long been recognized by the Commission as a vital source of local programming. AM stations provide a wealth of local news and information and adoption of the proposals in the Commission's recently issued *Notice of Proposed Rulemaking* ("Notice") in this proceeding can further strengthen AM stations by allowing them to rebroadcast on fill-in FM translators.

Clear Channel strongly supports the Commission's proposal to enhance AM stations' ability to serve their listeners by using existing and authorized FM translators in the same way and for the same purpose as their FM counterparts – to provide fill-in service to hard-to-reach areas within their authorized service contours. In addition, FM translators will assist many AM stations in maintaining service to their local communities during the nighttime and early morning hours, when, in order to protect other AM stations, they must reduce power or cease operating entirely. Many local events such as election returns, weather advisories and local emergencies, government meetings, and high school sports, become unavailable at night to listeners within many AM stations' daytime contours, and there is often no other broadcast media alternative for these listeners to turn to for this local programming. Clear Channel believes that minority AM broadcasters also stand to gain from usage of FM translators. The proposed rule changes have the potential to increase the value of AM assets and spur further minority ownership opportunities while allowing the Commission to avoid potential constitutional difficulties. The vast majority of local AM broadcasters that have commented in this proceeding have overwhelmingly supported the proposed change to the FM translator rules. Clear Channel joins these broadcasters in recognizing the proposal's potential to serve the public interest by

furthering three essential Commission goals – enhancing competition, fostering localism and promoting diversity.

The Commission has already recognized the public interest benefits of allowing AM stations to operate on FM translators by granting Special Temporary Authority (“STA”) to several stations for that purpose. These stations have seized the opportunity to use their expanded service potential to provide their communities with more local coverage, including emergency weather alerts and broadcasts of high school basketball games. The rule changes proposed in the *Notice* would simply regularize the authorization procedures and are a logical outgrowth of the current process of granting STA requests. The rule changes would further simplify what has already been an orderly and beneficial process.

Clear Channel strongly supports the Commission’s proposal that FM translators remain a secondary service, and that no new interference protection be afforded to translators rebroadcasting AM stations. Additionally, Clear Channel believes AM stations should be able to utilize FM translators only to reach areas within the lesser of their licensed 2 mV/m daytime contour or a 25 mile radius of their transmitter, with no allowance for even minor extensions. Use of translators in that area will allow for improved local service to local communities. Clear Channel submits that concerns over an uncontrollable proliferation of translators and the ensuing harm that they will cause to the FM and LPFM services are completely without merit. The *Notice* does not create a new translator filing window, and the Commission’s recent actions in the Low Power FM docket actually decrease the number of pending FM translator applications.

Finally, in amending its FM translator rules to accommodate AM stations, Clear Channel believes the Commission must strive to make those amendments as consistent and compatible with the current FM translator rules as possible. Proposals that would create distinct rules for

AM stations, with the notable exception of allowing program origination at night, would undoubtedly lead to heavy administrative burdens for the Commission and should be avoided. Accordingly, to keep the AM rules consistent with those in the FM context, the Commission should reject calls for ownership limitations, usage restrictions or restrictions on time brokerage agreements between AM and translator licensees. However, it is essential for the Commission to craft a rule to allow daytime only AM stations to originate programming on translators in the evening. If translators are not permitted to originate programming in this limited fashion, communities will continue to be deprived of a local voice during the nighttime and early morning hours.

In sum, Clear Channel believes the Commission should enhance the local service provided by AM stations by amending its FM translator rules as proposed. In doing so the Commission will enhance competition, foster localism and promote diversity.

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COMMENTS OF CLEAR CHANNEL COMMUNICATIONS, INC.

Clear Channel Communications, Inc. (“Clear Channel”), by its attorneys, hereby submits its comments on the *Notice of Proposed Rule Making* in this proceeding.¹ As a general matter, Clear Channel joins the overwhelming majority of commenters in supporting the enhancement of AM stations’ ability to serve their communities by amending the Commission’s rules to allow AM stations to operate FM translators as fill-in stations. Clear Channel stresses, however, that the *Notice* does not and should not change FM translators’ status as a secondary service. FM translators should not receive displacement protection as a result of the proposed rule changes and allowing AM stations to rebroadcast their signals on fill-in FM translators should not create a new service or otherwise extend the coverage of AM stations beyond their current coverage areas. When the FM translator service was conceived by the Commission, it was understood that translators could not cause interference to any other service.² This rulemaking cannot and will

¹ *Notice of Proposed Rule Making* in MB Docket No. 07-172, 22 FCC Rcd. 15890 (Aug. 7, 2007) (“*Notice*”).

² *Operation of Low Power FM Broadcast Translator and Booster Stations*, 35 Fed. Reg. 15383, 15384 (1970).

not alter that reality.

Furthermore, fears that FM translators will uncontrollably proliferate as a result of the proposed rule changes or will have a detrimental impact on LPFM are completely unfounded. The number of FM translators available for use by AM stations will remain strictly limited to those already applied for, permitted or licensed. The *Notice* does not propose a new FM translator window – in fact, the Commission just recently decreased the number of pending applications it will consider from the most recent FM translator window.³

Finally, it is important to note that the proposed rule changes are already going through a trial period, with the Commission granting Special Temporary Authority (“STA”) to several AM stations wishing to rebroadcast on FM translators.⁴ The Commission’s process for handling the STA requests has proceeded smoothly, without disruption to existing primary services, and the proposed rule changes are a logical continuation of this process. Therefore, Clear Channel generally supports the proposed rule changes to enhance the competitive viability of AM stations.

Clear Channel strongly believes in the AM band’s power to serve local communities, and supports the use of FM translators by AM stations to enhance those stations’ ability to provide

³ *Creation of a Low Power Radio Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, MM Docket No. 99-25, FCC 07-204, ¶56 (Rel. Dec. 11, 2007) (“*LPFM Order*”).

⁴ See *Notice* at ¶8, n. 19; see also Letter from James D. Bradshaw, Deputy Chief Audio Division, Media Bureau to Tugart Properties, LLC, Re: SPECIAL TEMPORARY AUTHORITY, Tugart Properties, LLC, WSNW(AM), Seneca, SC, Facility ID No. 5969 (June 5, 2007) (“*Tugart Letter*”); Letter from James D. Bradshaw, Deputy Chief Audio Division, Media Bureau to Union-Carolina Broadcasting CO, Inc., Re: SPECIAL TEMPORARY AUTHORITY Union-Carolina Broadcasting CO, Inc. WBCU(AM), Union, SC, Facility ID No. 7088 (“*Union-Carolina Letter*”); Letter from James D. Bradshaw, Deputy Chief Audio Division, Media Bureau to Holston Valley Broadcasting Corporation, Re: SPECIAL TEMPORARY AUTHORITY Holston Valley Broadcasting Corporation, WOPI(AM), Bristol, TN, Facility ID No. 31405 (April 30, 2007) (“*Holston Letter*”); Letter from James D. Bradshaw, Deputy Chief Audio Division, Media Bureau to Our Three Sons Broadcasting, LLP, Re: SPECIAL TEMPORARY AUTHORITY Our Three Sons Broadcasting, LLP, WRHI(AM), Rock Hill, SC, Facility ID No. 50777 (Jan. 31, 2007) (“*Our Three Sons Letter*”).

more local service. The Commission has recognized that AM radio is “a vital provider of local broadcast service, offering programming specifically oriented to treat the specific needs and problems of the members of their audiences.”⁵ AM radio is often the only radio service available in some areas of the country, especially rural areas, and AM radio stations “commonly provide, unique, community-responsive formats to distinguish themselves in an increasingly competitive media market.”⁶ Currently, many AM stations are challenged in providing coverage of local issues, such as school closings, weather emergencies, local election returns, local government meetings and high school sports, because they occur during the early morning or evening when many AM stations are operating at reduced power or are off the air entirely. Usage of FM translators will allow AM stations to maintain their daytime level of service at night, reaching far more of their daytime audience with localized programming than is currently possible. It is unsurprising then, that the vast majority of previous commenters, especially those broadcasters who would be impacted most by the proposed rule changes, have urged the Commission to make the changes proposed in the *Notice*.⁷

Several AM stations that are operating on FM translators pursuant to STA have already been able to reach the daytime audiences in their communities with local nighttime broadcasts.⁸ For instance, pursuant to STA, WGNS(AM) was able to utilize its FM translators to provide the citizens of Rutherford County, Tennessee with emergency information at night and in the early morning, and took advantage of such an opportunity on the first day the FM translators were

⁵ *Notice* at ¶5.

⁶ *Id.*

⁷ See, e.g., Comments of Barbaroo Broadcasting Corporation, RM-11338 (Aug. 24, 2006); Comments of Prayer Tower Mission, WLWZ-LP (Cassopolis, MN), RM-11338 (Aug. 23, 2006); Comments of United Ministries, RM-11338 (Aug. 24, 2006); Comments of Withers Broadcasting Companies, RM-11338 (Aug. 24, 2006).

⁸ See, e.g., *Tugart Letter*; *Union-Carolina Letter*; *Holston Letter*; *Our Three Sons Letter*.

broadcasting, by providing information regarding tornado warnings to Rutherford residents.⁹ Listeners of WBCU(AM) in Union County, Alabama will soon be able to enjoy nighttime broadcasts of Union County High School basketball because of the station's ability to utilize an FM translator.¹⁰

Clear Channel believes that the proposed rule changes are a logical outgrowth of the Commission's current practice of granting STAs to permit AM stations to rebroadcast on FM translators. By granting STAs, the Commission has already recognized the public interest benefits in allowing AM stations to rebroadcast on FM translators.¹¹ Adoption of the proposed rule changes will merely alter the administrative process by which AM stations receive authorization to utilize FM translators. The rule changes will take what has become a straightforward and orderly authorization process and further simplify it by eliminating the need for the Audio Division of the Media Bureau to scrutinize *ad hoc* each STA request and then subsequently monitor and renew STA grants.

Clear Channel also believes that an amendment of the FCC rules to allow AM stations to broadcast on FM translators could have the beneficial effect of helping minority broadcast owners, and might also lead to a possible increase in overall minority ownership. The possible benefits for minority owners resulting from an amendment of the FM translator rules have already been recognized in the media ownership proceeding, and a rule change was recommended in the context of that proceeding by the Diversity and Competition Supporters (DCS), the party that has been the main impetus for encouraging minority ownership

⁹ WGNS, "Community Gets Local Service on FM 100.5 and FM 101.9," http://www.1450wgns.com/WGNS_Gets_FM.htm (last visited Jan. 2, 2008).

¹⁰ See AM-1460 WBCU, <http://wbcuradio.com/> (last visited Jan. 2, 2008); see also *Union-Carolina Letter*.

¹¹ See, e.g., *Tugart Letter*; *Union-Carolina Letter*; *Holston Letter*; *Our Three Sons Letter*.

initiatives.¹² As DCS and several commenters in this proceeding have noted, minority owned stations are often in the AM band, and allowing AM usage of FM translators will likely increase the asset value of AM stations by making them more competitive. This, in turn, could allow minority broadcasters to more easily raise capital to expand their holdings.¹³ Clear Channel strongly supports initiatives that increase minority ownership, and has a strong record of assisting this effort by selling stations to minority owners.¹⁴ Of course, one of the difficulties facing the Commission in adopting measures to increase minority ownership is the Supreme Court's requirement that any race-conscious or race-based measures must survive the difficult hurdle of strict scrutiny.¹⁵ As the proposed rule changes at issue in this proceeding are race-neutral despite their potential positive impact on minority ownership,¹⁶ this proceeding offers the Commission a rare opportunity to advance the interests of current and future minority broadcast owners while avoiding difficult constitutional questions.

Clear Channel also notes and agrees that the proposed rule changes do not change FM translators' status as a secondary service, and therefore do not afford FM translators any new interference protection – FM radio will maintain full interference protection from FM translators,

¹² Initial Comments of Diversity and Competition Supporters in Response to the Second Further Notice of Proposed Rulemaking, MB Docket 06-121, *et. al.*, at 50-51 (Oct. 1, 2007).

¹³ *See id.*; Reply Comments of the National Association of Black Owned Broadcasters and the Minority Media and Telecommunications Council, RM-11338, at 3 (Sept. 6, 2006); Joint Comments of Radio Broadcasters Association of Puerto Rico and Independent Spanish Broadcasters Association, RM-11338, at 4-5 (Aug. 24, 2006).

¹⁴ *See* Comments of Clear Channel Communications, Inc. on Second Further Notice of Proposed Rulemaking, MB Docket 06-121, *et. al.* (Oct. 1, 2007); *see also* Bill McConnell, *The greening of the MMTC*, Broadcasting & Cable, Sept. 9, 2002, available at <http://reedtelevision.com/article/CA242662.html?display=Washington>. (Discussing Clear Channel's sale of 40 radio stations to minority owners in connection with the AMFM merger.).

¹⁵ *Adarand Constructors v. Peña*, 515 U.S. 200, 227 (1995). Strict scrutiny requires the government to have a compelling interest in regulating in a race-based manner and that the regulation must be narrowly tailored to the proffered government interest. *Id.*

¹⁶ *See* Reply Comments of the Diversity and Competition Supporters in Response to the Second Further Notice of Proposed Rulemaking, MB Docket 06-121, *et. al.*, at 18-19 (Nov. 1, 2007).

even those being utilized by AM stations.¹⁷ The rule changes do not create a new service and will not expand the reach of AM stations beyond their current daytime coverage contours – AM stations using the FM translators will only be allowed to do so on a fill-in basis, utilizing translators that are located within the lesser of the 2 mV/m daytime contour or a 25 mile radius of the AM station’s transmitter. As the Commission makes clear in the *Notice*, “imposition of the proposed 2 mV/m and 25-mile translator site restrictions will limit [service] to those areas in which, and the listeners to whom, [AM stations utilizing fill-in FM translators] provide their core service.”¹⁸ The limited scope of the rule changes thus assures that the Commission can allow AM stations to rebroadcast on FM translators without opening the door to numerous administrative or technical problems.

Furthermore, concerns that adoption of the proposed rule changes will harm other services are totally without merit. For instance, Grant County Broadcasters speculates that allowing AM stations to utilize FM translators will lead to “thousands of additional translator stations on the FM dial.”¹⁹ This speculation is completely unfounded – new translator applications can only be filed if the Commission opens a window, and nothing in the *Notice* proposes to create such a window, nor does the *Notice* express any Commission intent to open a window. If AM stations are permitted to utilize FM translators, the only eligible translators will

¹⁷ Clear Channel notes that National Public Radio (NPR) has submitted comments, which, among other things, discuss the Commission’s methodology for authorizing an FM translator station whose interfering contour overlaps a full service station’s protected contour. *See* Statement of National Public Radio, Inc., RM-11338, at 10-14 (Aug. 24, 2006). Like NPR, Clear Channel is “troubled by the use of a U/D ratio in the context of licensing FM translators with prohibited overlaps” and believes that the Commission should return to enforcing §74.1204 of its rules as that section is written, not pursuant to the erroneous decision in *Living Way Ministries*. *Id.* at 13. At the very least, if the Commission is unwilling to enforce the text of §74.1204, it should, as NPR suggests, commence a rulemaking to determine if different enforcement mechanisms are necessary.

¹⁸ *Notice* at ¶19.

¹⁹ Comments of Grant County Broadcasters, RM-11338, at 2 (Aug. 23, 2006).

be those translators that are already permitted or licensed. AM stations may also be able to utilize FM translators that have been applied for in the *previous* translator filing window, but that window is now closed, and the Commission's recent *LPFM Order* will greatly reduce the number of applications eligible for grant.²⁰ It should also be noted that *any* AM station is currently eligible to apply for STA to rebroadcast on an FM translator. If Grant and other commenters' speculative conclusions about the implications of the proposed rule changes were correct, one would expect the Commission to be flooded with STA requests. There is no evidence that such a deluge has occurred, and there is no reason to believe the Commission will be besieged by countless requests to use translators if the proposed rule changes are adopted. The *LPFM Order* also renders Prometheus Radio Project's doomsday scenarios concerning the impact of the proposed rule changes on LPFM baseless.²¹ The *LPFM Order* makes clear that even under the current rules, future LPFM stations will be protected against any subsequently filed FM translator applications.²² The Commission stated that the next filing window for a non-tabled aural licensed service will be for LPFM, not FM translators, meaning that new LPFM applicants during this window will receive priority over all future FM translator applicants.²³

The Commission has also sought comment on a wide variety of administrative and technical matters concerning the implementation of the proposed rule changes. As a preliminary matter, Clear Channel firmly believes that the Commission should approach these matters with an eye towards keeping the rules for AM usage of FM translators as consistent as possible with the current rules for FM stations' use of translators. In the vast majority of situations, there is no

²⁰ See *LPFM Order* at ¶56.

²¹ Comments of Prometheus Radio Project in Opposition to Petition for Rulemaking, RM-11338 (Aug. 24, 2006).

²² *LPFM Order* at ¶84.

²³ *Id.* at ¶72.

principled policy or administrative rationale for adoption of a different rule for AM stations' use of FM translators.²⁴ In almost all areas, with the exception of program origination, adoption of distinct rules will only lead to a greater administrative burden on the Commission. The Commission should steer clear of this unnecessary prospect and simplify this rulemaking by adopting rules for AM stations that are as consistent and compatible as possible with the existing rules for FM stations.²⁵

Clear Channel submits the following more specific comments regarding the administrative and technical issues about which the Commission has inquired:²⁶

Timeline for making the rule changes effective: The Commission asks whether the rule changes should be made effective at once or phased in over time for different classes of AM stations.²⁷ Clear Channel supports the implementation of the proposed rule changes all at once for all AM stations, without a delay or phase-in. The rationale for a phase-in appears to be a concern by some parties that daytime-only stations and Class C stations, the stations that would presumably be most assisted by utilizing FM translators, would be precluded from doing so if not given a distinct time period in which they would be the only stations eligible to utilize FM

²⁴ As proposed in the *Notice*, the one rule that must be altered from the FM context is the program origination rule. *See* 47 C.F.R. §74.1231(f), (g). As discussed in more detail below, not allowing AM stations to originate programming over FM translators will completely undercut AM stations' ability to enhance their service capabilities, one of the main purposes behind this proceeding.

²⁵ While the text of *Notice* does not reference the procedures that AM stations will use to receive authority to rebroadcast on FM translators, Clear Channel assumes from the proposed amendment to §74.1284(b) in the Appendix that the Commission intends to use the same procedures in place for FM stations – submission by the translator licensee of notification to the Commission that the translator is rebroadcasting a different station. *See Notice*, Appendix A, §74.1284.

²⁶ At this time Clear Channel will reserve comment on the Commission's inquiry regarding whether eligibility to own and program FM Translators in the reserved band should be limited to AM licensees providing NCE programming service and otherwise satisfying FM reserved band eligibility requirements. *See Notice* at ¶18(e).

²⁷ *Notice* at ¶18(a), (b).

translators.²⁸ The on-going process for granting STA, however, shows that such a phase-in is unnecessary. Currently, all stations are eligible to apply for STA and reach an agreement with FM translator owners to rebroadcast the AM station. There is no evidence to suggest that daytime-only stations or Class C stations have been precluded from receiving STA or reaching such agreements.²⁹ Furthermore, a staggered implementation would create challenging administrative burdens for the Commission, as the Commission would be forced to develop a classification or phase-in plan and then administer compliance with that plan. The Commission can avoid these needless administrative difficulties by making the rule changes effective for all AM stations at once.

Ownership Limitations: The Commission inquires whether it would be appropriate to place a limit on an AM licensee's ability to use fill-in FM Translators depending on licensee ownership of FM stations in the same market.³⁰ Currently, there is no limitation on FM station licensees usage of fill-in translators,³¹ and there is no principled rationale for imposing a limitation on AM licensees. The Commission has made clear that the purpose of this proceeding is to reinforce the competitive viability of the AM band.³² Adopting ownership limits, however, will only serve to *impede* the competitiveness of AM stations, and is inconsistent with the FCC's goals.

If the Commission adopts ownership limitations, this is another area where the Commission would be faced with unnecessary administrative burdens. The Commission would

²⁸ See Notice at ¶15.

²⁹ See, e.g., *Tugart Letter* (granting STA to nighttime-limited WSNW(AM)).

³⁰ Notice at ¶18(c).

³¹ See 47 C.F.R. §74.1232.

³² See Notice ¶¶2-6.

be left in the unenviable position of developing and monitoring compliance with these limitations. Oversight could become particularly difficult as the Commission evaluates specific conduct. For instance, if the Commission adopts this type of rule, it will be forced to monitor AM licensees using FM translators to ensure they do not acquire an FM station in the same market. The Commission would also have to determine if this prohibition would be permanent or for a set period of time. This would be a resource depleting and needless exercise.

Usage Limitations: The Commission also inquires whether there should be a limit on the number of fill-in translators that an AM station can use and whether this number should vary depending on the class of the AM stations.³³ Clear Channel opposes any limitations of this kind. FCC rules impose no such limitation on fill-in translators for FM stations, and, again, there is no principled rationale for crafting a different rule for AM stations' usage of the same FM translators.³⁴ As a practical matter, Clear Channel believes AM stations should be limited to use of translators that serve areas wholly within the lesser of the AM's 2 mV/m daytime signal contour or a 25 mile radius from the station transmitter. Clear Channel believes that this practical limitation, in addition to the economic reality that an AM station will have to negotiate a separate contractual payment arrangement with owners of any translators that the station licensee does not own, should be sufficient.

Low Power FM Simulcasting: The Notice inquires whether it is appropriate for

³³ Notice at ¶18(d).

³⁴ See 47 C.F.R. §§74.1231; 74.1232(b). Clear Channel does believe, however, that AM stations should be prohibited from duplicating their programming by using multiple FM translators with overlapping contours. While §74.1232(b) prohibits the *ownership* of translators that serve "substantially the same area" absent a showing of technical need, the Commission has made it clear that it aims to prohibit the *duplication of programming* on multiple FM translators. See §74.1232(b); *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, 5 FCC Rcd. 7212, ¶¶70-75 (1990). Clear Channel strongly supports an amendment of §74.1232(b) to clarify that carriage of the same primary station (whether AM or FM) on translators with overlapping contours is prohibited.

licensees of AM daytime-only and Class C stations to simulcast and/or originate programming over LPFM stations as a fill-in service.³⁵ Clear Channel believes that this issue is outside of the scope of this proceeding and should be addressed in a proceeding that is specific to LPFM because authorizing simulcasting could require amendment of the LPFM rules.

FM Translator Time Brokerage Agreements: The Commission asks whether AM licensees should be able to broker time over FM translators in the non-reserved band as a fill-in service.³⁶ Clear Channel strongly supports AM licensees' ability to broker time in this fashion. The FCC's rules do not impose such a restriction on FM licensees for usage of fill-in translators,³⁷ and a restriction in the AM context would not only be unprincipled, it would dramatically limit the number of AM stations that could take advantage of the proposed rule changes and greatly harm the potential for the rule changes to foster competition. The Commission has not required ownership of the proposed translator in its previous STA grants,³⁸ and that policy should be maintained in the new rules.³⁹

Program Origination: The Commission also solicits comment on its tentative conclusion that daytime-only AM licensees should be permitted to originate programming over

³⁵ Notice at ¶18(g).

³⁶ Notice at ¶18(e).

³⁷ See 47 C.F.R. §74.1232(e).

³⁸ See, e.g., *Tugart Letter* (granting authority to licensee Tugart Properties, LLC to operate on a translator licensed by Ted McCall); *Union-Carolina Letter* (granting authority to licensee Union-Carolina Broadcasting CO, Inc. to operate on a translator licensed by Georgia-Carolina Radiocasting, LLC).

³⁹ Should the FCC ultimately agree with Clear Channel and other commenters that AM licensees should have the ability to broker time over an FM translator in the non-reserved band as a fill-in service, Clear Channel notes that the proposed text of amended rule §74.1232(g) included in Appendix A of the *Notice* must be changed to address the first sentence which reads, "An FM translator providing service to an AM fill-in area will be authorized only to the permittee or licensee of the AM radio broadcast station being rebroadcast." *Notice*, Appendix A, §74.1232(d). Clear Channel interprets this sentence to mean that an AM station utilizing an FM translator on a fill-in basis must own that translator. If time brokerage agreements are to be permitted, this sentence must either be deleted entirely or amended to clarify that it does not preclude such agreements.

fill-in FM translators during the nighttime hours when their stations are not authorized to operate or are authorized to operate at reduced power.⁴⁰ Clear Channel fully supports the Commission's tentative conclusion. The Commission soundly concludes that allowing the over 2000 AM stations which currently operate with restrictions on nighttime service to operate on FM translators at night will "instantly and dramatically change their viability in their local radio markets."⁴¹ Preventing these AM stations from originating programs on FM translators, on the other hand, will keep AM stations off the air, eliminating a distinct media voice from the market during the evening and early morning hours. It will also maintain an unacceptable *status quo* where these stations cannot deliver local content to their communities during the evening and early morning hours. The Commission must affirm its tentative conclusion to allow program origination for nighttime restricted AM stations in the effort to enhance competition and localism while fostering diversity.⁴²

Technical Issues:

Service Area: The Commission asks for comments regarding its tentative conclusion that AM stations utilizing FM translators on a fill-in basis may do so as long as no portion of the FM translator's 60 dBu contour exceeds the lesser of the 2 mV/m daytime contour or a 25 mile radius from the AM transmitter site.⁴³ Clear Channel supports the Commission's

⁴⁰ Notice at ¶19.

⁴¹ *Id.*

⁴² In providing for program origination, Clear Channel believes the rule must make clear that compliance with public interest and program content requirements remains the obligation of the licensee of the AM station originating the programming.

⁴³ *Id.* at ¶20. Clear Channel notes that currently, the proposed rules do not account for the possibility that an AM station wishing to use a FM translator may have separate transmitters for its daytime and nighttime operations. In these cases, Clear Channel believes that the 25 mile radius should be measured from the *daytime* transmitter site. The proposed rule, §74.1201(g) in the Appendix, should be revised accordingly to account for these situations.

tentative conclusion. Allowing AM stations to utilize FM translators according to these parameters will be adequate to enable stations to serve their local audiences with fill-in service.

The Commission also asks whether the rules should allow for some “de minimis” portion of the FM translator’s 60 dBu contour to extend outside the 2 mV/m daytime contour.⁴⁴

Clear Channel opposes any de minimis exception. Such an allowance would pose more administrative burdens on the Commission as it would be forced to determine what constituted a “de minimis” extension and then whether a station had indeed gone beyond such a boundary. The Commission need not embark on this cumbersome course when stations can easily comply with the rule’s requirements by using a directional antenna or by slightly reducing power or antenna height.

The Commission also seeks comment on whether the radius of the transmitter site should be 35 miles for FM translators in Zone II as proposed by Eastern Sierra Broadcasting.⁴⁵ Clear Channel supports a uniform rule change without distinct rules for FM translators in Zone II. Eastern’s comments appear to be based on a misunderstanding of the purpose for the distance component, and Clear Channel cannot discern what purpose would be served by adopting a 35 mile radius in Zone II. Stations with large 2 mV/m contours in Zone II should not be permitted to serve an area with a larger radius than their counterparts in other zones.

Measured Conductivity: Finally, the Commission asks whether measured conductivity should be allowed in calculating the 2 mV/m daytime contour of the AM station.⁴⁶ Clear Channel supports the use of measured conductivity data for stations that possess such

⁴⁴ *Id.* at ¶20(a).

⁴⁵ *Id.* at ¶20(b).

⁴⁶ *Id.* at ¶ 20(c).

information in determining the 2 mV/m daytime contour. The FCC has a long history of preferring measured data over estimates, and while stations should not be required to collect this more specific data, those stations that do have it should not be forced to utilize the generic Figure M-3 benchmarks.

In conclusion, Clear Channel supports this change in the Commission's FM translator rules to make AM stations better equipped to serve their local communities. The Commission has already begun a test program for these rule changes by allowing AM stations to apply for STA to utilize FM translators, a process that has been underway and operating smoothly for over a year. The proposed rule changes are a logical extension of this process and will benefit AM stations while maintaining FM translators status as a secondary service. In implementing these rule changes, the Commission should seek to keep the rules for AM stations as consistent and compatible as possible with the current rules for FM stations' use of translators. Doing so will promote good policy and ease the administrative burdens on the Commission.

Respectfully submitted,

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