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

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| In the Matter of | ) | |
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| Amendment of Service and Eligibility Rules | ) | MB Docket No. 07-172 |
| for FM Broadcast Translator Stations | ) | RM-11338 |
| | ) | |

## COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters ("NAB")[1] respectfully submits comments on the above-captioned Notice of Proposed Rulemaking.[2] NAB strongly endorses the rule changes proposed in the Notice as a means to enhance AM radio service for the benefit of listeners, and enable AM radio stations to better compete in the ever-changing media marketplace.

The Commission rightly recognizes the important role that AM radio service plays in Americans' lives, noting that AM service has long been a "unifying force throughout the country;" one that has "revolutionized the fabric of our daily lives, our dialogue and our democracy."[3] AM radio service is also vital to fulfilling the

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[1] NAB is a nonprofit trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Commission and the Courts.

[2] *Notice of Proposal Rulemaking*, *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, MB Docket No. 07-172, RM-11338, 22 FCC Rcd 15890 (2007) ("Notice"). The issues explored in the Notice arise from a Petition for Rulemaking filed by NAB. Petition for Rulemaking, National Association of Broadcasters, RM-11338 (filed July 14, 2006) ("NAB's Petition").

[3] Notice, 22 FCC Rcd at 15890-91 citing *Report and Order, Review of the Technical Assignment Criteria for the AM Broadcast Service*, MM Docket No. 87-267, 6 FCC Rcd

Commission's goal of broadcast localism. AM broadcasters air programming that is responsive to the needs and interests of their communities every day. As GA-MEX Broadcasting stated in comments on NAB's Petition, "AM broadcasters especially serve a local 'niche' . . . broadcasting such things as local high school sporting events, evening town meetings, and local emergency information."[4]

However, AM service faces several unique technical obstacles to delivering a high quality signal to listeners. Many stations must reduce, or turn off, their power at night to avoid interference among AM broadcasts, causing some of these stations to lose as much as 80% to 95% of their coverage areas during the nighttime hours.[5] As a result, many AM stations are unable to broadcast during the critical morning and evening drive times or may serve only a small fraction of their audience. These stations cannot relay timely information on weather emergencies, traffic conditions, school closings, live candidate debates and town hall meetings. Importantly, this directly impacts consumer choice among sources of local information.[6]

AM stations also face challenges during the daytime hours. The Commission cites power lines, computers and television, fluorescent lighting, and traffic signal sensors among other sources of electromagnetic interference to AM radio signals.[7] MonsterMedia, LLC, for example, has described the interference it receives from the

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6273, 6274 (1991); *recon. granted in part and denied in part*, 8 FCC Rcd 3250 (1993) ("*Expanded Band R&O*")

[4] Comments of GA-MEX Broadcasting, Inc., Azteca Communications, Inc. and Azteca Communications of Alabama, Inc., RM-11338 (filed Aug. 24, 2006).

[5] As noted by the Commission, this problem has been exacerbated by the extension of Daylight Saving Time (DST), starting in 2007. Notice, 22 FCC Rcd at 15891.

[6] *See, e.g.*, Joint Comments of the Named State Broadcasters Associations, RM-11338 (filed Aug. 24, 2006) ("State Associations Comments"), at 2-4.

[7] Notice, 22 FCC Rcd at 15891.

local utility company's newly installed metal polls.[8] Daytime AM service can also be interrupted by mountains, canyons or tall buildings that reduce the strength of AM radio signals in certain directions.

Accordingly, given the valuable community-responsive service provided by AM radio stations, the Commission has wisely decided to explore granting AM stations the right to operate FM translators. The use of translators would provide listeners improved AM programming, fill-in coverage holes, so they can better serve their local communities, and in turn help ensure the continued viability of the AM radio service. Specifically, the Commission seeks comment on NAB's proposal, which would require that no portion of the 60 dBu contour of the FM translator could exceed the lesser of (1) the 2 mV/m daytime contour of the AM station or (2) a circle with its center at the AM transmitter site and a radius of 25 miles.

The Commission poses a series of questions designed to develop a record of best practices for AM stations' use of FM translators. Below, NAB respectfully offers its views on certain of these questions.

The Commission asks generally about the public interest benefits of the proposed rule changes.[9] As described in numerous comments filed in response to NAB's Petition, permitting AM stations to operate FM translators would further the Commission's policy goals of promoting competition, diversity, and localism. Regarding competition, the recent explosion in the number and variety of competing media outlets is readily apparent. There has been a tremendous increase in the

[8] Comments of MonsterMedia, LLC, RM-11338 (filed Aug. 24, 2006), at 2.
[9] Notice, 22 FCC Rcd at 15897.

number of radio and television stations since 1991.[10] AM stations also face expanded competition from satellite radio service in their local markets and Internet radio, among others. Allowing AM radio stations to use translators will help AM stations deliver free, clear, and consistent service within their coverage areas throughout the day and during the very important early morning and late evening drive time hours, which will foster competition by helping to ensure the continued viability of AM radio service.

Regarding diversity, we note that ownership of AM stations is very diverse. As noted in NAB's Petition, there are some 2,452 different owners of the 4,814 AM stations licensed.[11] The Commission's most recent reports on minority and female broadcast ownership (which do not include information on licenses held by sole proprietors or partnerships composed solely of natural persons) show that there are at least 154 minority owners and at least 161 female owners that hold the licensees for approximately 438 AM stations.[12] Improving the service these diverse owners can provide will help them succeed in their markets and improve the public's access to information from diverse sources. Indeed, this is why the National Association of Black Owned Broadcasters (NABOB), the Minority Media Telecommunications Council (MMTC), the Radio Broadcasters Association of Puerto Rico, and the Independent

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[10] As of December 31, 1991, the Commission had licensed 11,062 radio stations and 1,489 full power television stations. By the end of 2005, those figures had grown to 13,660 radio stations and 1,750 TV stations, plus 675 newly licensed low power FM stations. FCC News Release, *Broadcast Stations Totals as of December 31, 1991* (Jan. 3, 1992); FCC News Release, *Broadcast Stations Totals as of December 31, 2005* (Feb. 23, 2006).
[11] BIA Media Access Pro Database (as of July 6, 2006).
[12] NAB Petition at 2-3.

Spanish Broadcasters Association, among others, favor the proposed rule changes.[13] For example, NABOB/MMTC state that enabling AM stations to operate translators will help AM stations remain viable and relevant and thereby further diversity.[14] NABOB/MMTC commend the proposal as a race-neutral, gender-neutral means of fostering minority and female ownership of radio stations. These organizations explain that the rule changes will improve AM service, thereby increasing the asset values of AM radio stations, which in turn, will enhance minority broadcasters' ability to raise capital and expand their holdings.[15]

With respect to localism, allowing AM stations to operate FM translator stations as a fill-in service will mitigate many AM coverage problems allowing these stations to improve reception within their service areas. Commenters enumerate various problematic situations. For example, listeners residing less than three miles from WRHI(AM)'s tower in Rock Hill, South Carolina complain that interference blocks them from hearing the station's broadcasts of school lunch menus, election coverage, weather emergency information, and local news.[16] Similarly, Wisconsin Public Radio explains that use of an FM translator would make more of its local programming available to Wisconsin residents in Madison and surrounding areas, including daily local newscasts and daily local talk programs featuring interviews with local community

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[13] Reply Comments of the National Association of Black Owned Broadcasters and the Minority Media and Telecommunications Council, RM-11338 (filed Sep. 6, 2006); Joint Comments of the Radio Broadcasters Association of Puerto Rico and the Independent Spanish Broadcasters Association, RM-11338 (Filed Aug. 24, 2006).
[14] NABOB/MMTC Comments at 2.
[15] *Id.* at 3.
[16] State Associations Comments at 3-4.

leaders, authors, professors, and other experts.[17] Wagonwheel Communications, licensee of KUGR-AM in Green River, Wyoming describes the hurdles it faces. KUGR's core listeners work at local mine sites and gas fields that operate 24 hours a day. During nighttime hours, KUGR's signal is "sharply restricted by interference," a problem that is compounded by the metal buildings, warehouses and employee shelters often found at these worksites. As a result, a substantial portion of KUGR's audience is unable to receive the station's coverage of closed roads, weather emergencies, and the like. In particular, KUGR frequently receive complaints from listeners who work in the evenings and cannot hear the station's broadcast of the local high school sporting events in which their children participate.[18] Although anecdotal, these examples represent the kind of industry-wide public interest benefits that will result from enactment of the proposed rule changes.

The kinds of problems described above are not limited to any particular AM broadcasters. For these reasons, NAB submits that all AM radio stations should be permitted to operate FM translators, regardless of station class, or whether the station currently has authority to operate during nighttime hours, or whether a station is a stand-alone entity or part of a co-owned group. The Commission should not attempt to distinguish among which kinds of stations are more deserving of an FM translator. Listeners of these stations are not concerned about the corporate structure of the station or its class of service. Listeners want and should have better reception and better access to the AM radio programming they value. The most equitable way to

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[17] Comments of the University of Wisconsin System and the State of Wisconsin Educational Communications Board ("WPR"), RM-11338, at 3.
[18] Comments of Wagonwheel Communications, RM-11338, at 1.

serve the needs of listeners would be to allow all stations, regardless of class or ownership structure, a fair opportunity to obtain authorization to operate one or more FM translators. The only suggested exception to this approach that NAB would support is Wisconsin Public Radio's recommendation that eligibility for FM translators in the reserved band be limited to noncommercial AM licensees.[19] Such a restriction is perfectly consistent with the Commission's rules governing noncommercial services.[20]

The Commission has asked for comment on the potential impact of changing this rule on existing full power and low power FM ("LPFM") services.[21] NAB does not anticipate any significant impact on either. Existing full power stations will continue to have primary status in the market, and FM Translators will continue to be secondary, under the Commission's rules.[22] Similarly, existing low power services or those with pending applications who will be entitled to continue to provide their service as licensed no matter what new users may be authorized for FM translators. Some parties may speculate that allowing AM stations to better serve their communications with the help of FM translators will somehow diminish the amounts of spectrum available for new LPFM services. There is no reason to believe that new LPFM services would have lesser access to spectrum. The Commission has just announced plans to enhance LPFM access to spectrum that will not be diminished by granting AM stations the ability to deploy translators.[23] Moreover, we anticipate that a substantial

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[19] WPR Comments at 4.
[20] *See, e.g.*, 47 CFR § 73.501.
[21] Notice, 22 FCC Rcd at 15897.
[22] *See, e.g.*, 47 CFR § 74.1203 (setting forth FM translator interference restrictions).
[23] *Third Report and Order and Second Further Notice of Proposed Rulemaking, Creation of a Low Power Radio Service*, MM Docket No. 99-25 (*rel.* Dec. 11, 2007).

percentage of the translators that AM stations will operate under the proposed rule changes will probably come from the pool of licensed translators and translator construction permits already granted in given markets, especially in midsized and major markets. Under these circumstances, the impact on existing services is not expected to be significant and certainly such unsupported speculation will not outweigh the potential public benefit of permitting AM stations to have access to FM translators to fill in service gaps.

The Commission also asks whether the rule changes should be phased-in or take place immediately.[24] NAB finds no reason to implement the rule on a phased-in basis. The Commission's tentative conclusion that enabling AM stations to operate FM translators counsels against any unnecessary delay in implementing the rule changes. As the record demonstrates, AM listeners have long been frustrated by interference to their favorite stations, and AM broadcasters are anxious to deliver coverage of rush-hour traffic and other events that typically occur at night, such as local political events and high school sports, as well as to improve service in areas inhibited by man-made and natural obstacles.

A phased-in approach in which certain types of AM stations are granted various levels of priority to receive authority to operate FM translators could unduly postpone the predicted benefits of the rule changes, while the Commission sorts out which stations are most worthy of a translator. A staged implementation also could lead to confusion and disputes within the broadcast industry, which could make it difficult for the Commission to assign accurate values or priorities to stations based on their

[24] Notice, 22 FCC Rcd at 15897.

alleged relative "need" for an FM translator. The Commission would be forced to engage in time-consuming and costly adjudications of interference claims and ultimately have to choose which members of the public deserve earlier enhancement of their local AM radio service. Therefore, it would seem much more equitable and efficient to implement the proposed rule changes immediately after adoption.

The Commission seeks comment on whether any limits should be placed on the number of fill-in translators allowed for a particular AM station.[25] The dual goals of NAB's proposal are to help AM stations improve their service for the benefit of listeners, while at the same time ensuring that AM broadcasters only use translators as a fill-in service, and not to expand their coverage areas. For these reasons, NAB proposed to limit the service of such translators to the smaller of a 25-mile radius from the AM transmitter site or the 2 mV/m daytime contour of the AM station. Given these restrictions, it is unnecessary for the Commission to impose a ceiling on the number of translators an AM station may deploy. AM stations have no incentive to incur the added costs of multiple translators, including electricity, maintenance, and insurance, unless absolutely necessary. In most cases, using multiple translators to provide overlapping service would make little sense. On the other hand, it may be more practical in certain situations for a station to utilize multiple translators to improve service within portions of its regular daytime contour which cannot be

[25] Notice, 22 FCC Rcd at 15897. The Commission also asks whether the number of FM translators that an AM station may operate should depend on the station's common ownership of FM stations in the same market. *Id.* There has never been ownership limits on translators, and there is no reason to overhaul this rule now. Translators are merely an enhancement or supplement to a licensee's normal service; not a separate or distinct service. As such, use of a translator should not be relevant to or affected by a licensee's ownership relationship to other broadcast stations.

reached by a single transmitter, but which also falls within the lesser of the 25-mile boundary or the 2 mV/m contour. In these situations, it would be wholly appropriate for the Commission to permit a station to operate multiple translators for the same public interest reasons as those underlying the Commission's proposed rule changes that would allow an AM radio station to operate a sole FM translator. Technical obstacles in such areas could be alleviated. Service would improve, and most importantly, listeners' access to community-responsive AM radio service would be expanded. Therefore, in the somewhat unlikely event that an AM station requires multiple FM translators to better serve its listeners, imposing a ceiling on the number of translators, at least within the confines of NAB's suggested restrictions, would contradict the logic for implementing the rule changes in the first place.

The Commission also asks about various time brokerage situations. For example, the Commission queries whether an AM licensee should be able to broker time over a non-owned FM translator.[26] NAB sees no problem with such an approach. There may be circumstances in which it is more practical or economical for an AM station to broker time on a third party's FM translator instead of licensing or owning or otherwise operating an FM translator 24 hours a day. NAB would support flexibility in this regard as a means to enable as many AM stations as possible to leverage the benefits of an FM translator, presuming that the AM station operates the translator only on a fill-in basis and in compliance with all relevant Commission policies. This would best serve the Commission's purpose for allowing AM broadcasters to deploy FM translators as their needs dictate.

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[26] Notice, 22 FCC Rcd at 15897.

Similarly, the Commission seeks comment on whether it would be suitable to expand the proposed rule changes to cover LPFM stations, so that AM stations could simulcast programming over an LPFM station in the same manner as an FM translator, under the rules proposed herein.[27] NAB also supports this practical extension of an AM's ability to enhance its service. As the Commission mentions in the Notice, although the Prometheus Radio Project vehemently opposes NAB's Petition, more than a few individual LPFM broadcasters support the rule changes, and encourage the Commission to allow LPFM stations to function like FM translators, within the limits of NAB's proposal.[28] For example, LPFM broadcaster Prayer Town Mission states that scheduling "local programming 24 hours day is a lot harder than we thought. When we are not doing live programming we revert to automated music."[29]

NAB is pleased to stand with these on-the-ground LPFM broadcasters to find ways to work together for the benefit of both services and all radio listeners.[30] It is apparent that many LPFM stations do not have the resources to broadcast important community information like election results and emergency notifications, while AM broadcasters with long experience in their communities can provide coverage of these kinds of events, but need better signal reception in the community. Together, AM and LPFM could combine forces in this context to improve the utility of both services. Accordingly, NAB finds no problem with allowing AM stations to simulcast over LPFM

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[27] *Id.*
[28] *Id.* at 15894.
[29] Comments of Steven Weddington, Prayer Town Mission, WLWZ-LP (Cassopolis, MI) in RM-11338.
[30] The main argument proffered by Prometheus is an unsupported assertion that AM broadcasters want to "hoard" the FM band. Comments of Prometheus Radio Project, RM-11338, at 1.

stations, under the same conditions they may use FM translators, so long as LPFM stations continue to comply with their relevant regulations.

NAB also supports the Commission's tentative conclusion to allow AM daytime-only radio stations to originate programming on FM translators during nighttime hours when they are not authorized to operate.[31] This approach will also greatly benefit the 1125 AM stations that must operate at secondary very lower power at night, as well as their listeners. As the Commission recognizes, all of these AM broadcasters face unique competitive disadvantages because of their inability to compete during the all-important morning and evening "drive time" hours.[32] Allowing daytime-only stations and stations that must operate at "flea power" at night to use FM translators will radically improve these stations' competitive position by significantly improving their service, particularly to their core audiences located within the proposed 2 mV/m or 25-mile proposed restriction. The Commission's flexibility in this regard would be a practical, forward-thinking modification of its rules. In particular, listeners could finally obtain access to the community-responsive programming that AM radio stations deliver during nighttime hours, thereby fostering the Commission's goal of localism.

Finally, the Commission seeks comment on a few technical issues, including the reasonableness of restricting the coverage of an FM translator to the lesser of (a) the 2 mV/m daytime contour of the AM station or; (b) the 25-mile radius of the AM transmitter site.[33] As discussed at length in NAB's Petition, these proposed boundaries guarantee that AM stations will only deploy an FM translator(s) as a fill-in

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[31] Notice, 22 FCC Rcd at 15898.
[32] *Id.*
[33] *Id.*

service and not as a means to extend their coverage areas. NAB has no interest in raising interference or competitive issues beyond these borders. However, we recognize that in certain situations it may be impossible for a translator to exactly replicate these boundaries, in which case the Commission may deem it practical to permit a certain *de minimis* portion of a translator's signal to extend beyond the AM station's daytime 2 mV/m contour. NAB has no comment at this time on what portion of such a signal would be reasonable, but we respectfully reserve the right to offer our views should a particular proposal be offered.

For the reasons stated above, NAB respectfully requests that the Commission enact the rule changes proposed in the Notice.

Respectfully submitted,

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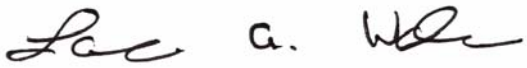

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