

**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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REPLY COMMENTS OF CLEAR CHANNEL COMMUNICATIONS, INC.

Clear Channel Communications, Inc. (“Clear Channel”), by its attorneys, hereby submits its reply to comments filed in response to the *Notice of Proposed Rulemaking* in the above captioned proceeding.¹ Clear Channel is pleased to join the overwhelming majority of commenters in supporting changes to the Commission’s rules that will enable AM stations to use FM translators on a fill-in basis. As Clear Channel expressed in its previous comments, Clear Channel believes that these changes will benefit AM broadcasters while furthering the Commission’s goals of fostering competition, localism and diversity.² But, while Clear Channel supports the proposed rule changes in the *Notice*, it stresses here again that these changes are narrow in scope and represent only a modest alteration of the translator service. The *Notice* does not propose to create more

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

² *See generally* Comments of Clear Channel Communications, Inc., MB Docket 07-172 (Jan. 7, 2008) (“*Clear Channel Comments*”).

translators by opening a filing window, and the proposed rule changes do not create a special class of translator service or change the interference priorities for translators vis-à-vis other services. AM stations are already operating on FM translators pursuant to Special Temporary Authority (“STA”),³ and the proposed rule changes are essentially an extension of this ongoing process for granting STA, a process that thus far has proceeded with little or no consequence to other broadcast services. To facilitate the smooth implementation of AM stations’ usage of FM translators and ensure that other broadcast services remain undisrupted, Clear Channel reiterates that it is essential for the Commission to adopt rules that are as consistent and compatible as possible with the existing rules for FM translators. As Clear Channel expressed in its initial comments, keeping the amended rules consistent with current rules will promote good policy and ease the administrative burdens on the Commission.⁴

Clear Channel believes that AM broadcasters take seriously their obligations to serve local communities. Hence, Clear Channel fails to comprehend the objections of purported public interest advocates that urge the Commission to reject rule changes that will assist existing local broadcasters in better serving their communities. The comments submitted by many broadcasters demonstrate that enabling AM stations to use FM translators will allow these stations to improve their local service.⁵ Several broadcasters are already rebroadcasting AM stations on FM translators pursuant to STA and report

³ See *Notice* at ¶8, n. 19.

⁴ See *Clear Channel Comments* at 7-14.

⁵ See, e.g., Comments of Sutton Radiocasting Corporation at 5-6, MB Docket No. 07-172 (Jan. 7, 2008) (“*Sutton Comments*”); Comments of Morris Broadcasting Company of New Jersey at 1-2, MB Docket No. 07-172 (Dec. 20, 2007) (“*Morris Comments*”); Comments of MG Media, Inc. at 1-2, MB Docket No. 07-172 (Dec. 17, 2007) (“*MG Comments*”).

that usage of FM translators has permitted these AM stations to serve portions of their communities with service previously not possible due to interference difficulties or nighttime power restrictions.⁶ The record provides demonstrable evidence that AM stations can benefit from the use of FM translators, and supports the Commission's decision to abandon outdated rationales for restricting usage of translators that some parties cite in their arguments against adopting the proposed rule changes.⁷

The fact that several AM stations have already been permitted by the Commission to use FM translators not only reinforces Clear Channel's and the majority of commenters' assertions that the *Notice's* proposed rule changes will be in the public interest, it undermines claims by opponents to the contrary. The process of granting STA to stations has thus far been completely open – the Commission has allowed any AM station to apply for STA. Yet despite this openness, only a modest number of stations has applied for this authority. This reality debunks the doomsday scenarios of commenters who claim that AM stations will overwhelm the FM band or hinder other services, namely LPFM.⁸ Clear Channel believes that both business and practical considerations explain why applications have been limited. Most AM stations likely are content with their level of local service, and thus see no business justification for attempting to reach

⁶ See Comments of Michael Butler Broadcasting, LLC at 4-5, MB Docket 07-172 (Jan. 7, 2008) (“*Butler Comments*”); Comments of Miller Communications, Inc. at 2-5, MB Docket No. 07-172 (Jan. 7, 2008) (“*Miller Comments*”); Comments of Richardson Broadcasting Corporation at 6, MB Docket No. 07-172 (Jan. 7, 2008) (“*Richardson Comments*”).

⁷ See, e.g., Comments of National Public Radio, Inc. at 2, MB Docket No. 07-172 (Jan. 7, 2008) (“*NPR Comments*”).

⁸ See Comments of Catholic Radio Association at 5, MB Docket No. 07-172 (Jan. 7, 2008) (“*CRA Comments*”); Comments of John Nathan Anderson at 2-3, 8, MB Docket No. 07-172 (Jan. 7, 2008) (“*Anderson Comments*”); *NPR Comments* at 3; Comments of Prometheus Radio Project at 5, MB Docket No. 07-172 (Jan. 7, 2008) (“*Prometheus Comments*”).

agreements with FM translator owners to rebroadcast their station's signal. Stations have also been precluded from using translators because of the practical limitation that there is a fixed number of translators available for use.

Should the Commission amend its rules to allow AM stations to use FM translators, these same considerations will continue to limit the number of AM stations that will take advantage of the rule changes. Thus, forecasts of a "2003 style rush" for FM translators or an overcrowded FM band are without basis.⁹ Similarly, just as the STA grants have had little to no impact on LPFM service, changing the rules to formally allow AM stations to rebroadcast on FM translators will leave the LPFM service undisturbed. Allowing AM stations to use FM translators will not prevent LPFM stations from gaining access to spectrum – AM stations will only be able to utilize existing or applied for translators, and the Commission has taken action to eliminate many of the currently pending translator applications.¹⁰ Because the translators available for AM stations' potential use have already been authorized or applied for, LPFM stations would not have access to this spectrum in any event. Moreover, the Commission has made clear that going forward, LPFM, not translators, will have the next opportunity to apply for available spectrum in a new filing window, and any LPFM application in that window will have priority over any subsequently filed translator application.¹¹

Clear Channel wishes to stress that this proceeding and the contemplated rule changes are exceedingly modest and adoption of the rules will leave the translator service

⁹ See, e.g., *Anderson Comments* at 3, 8; *NPR Comments* at 3.

¹⁰ *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*").

¹¹ *Id.* at ¶¶72, 84.

in substantially the same position it is in today. Contrary to the desires of some commenters,¹² this proceeding does not contemplate, much less create, a new filing window for translators.¹³ This proceeding also does not contemplate creating a new class of translator service or changing translators' status as a secondary service. While one major broadcaster has expressed fears over "elephant" translators¹⁴ and other broadcasters have urged the Commission to make AM stations rebroadcasting on translators a primary service,¹⁵ the actual language of the proposed rules will only allow AM stations to use FM translators to serve their local communities pursuant to current translator technical parameters.¹⁶

Clear Channel strongly believes that this is the correct approach – the Commission should open FM translator usage to AM stations on substantially the same

¹² Comments of Big River Radio, Inc. at 4 n. 3, MB Docket No. 07-172 (Jan. 7, 2008) ("*Big River Comments*"); Comments of Christian Broadcasting System, Ltd. at 3, MB Docket No. 07-172 (Jan. 7, 2008); Comments of Larry Langford at 2, MB Docket No. 07-172 (Sept. 7, 2007).

¹³ Clear Channel notes that many commenters expressed opinions with respect to priorities that the Commission should assign to applications in the event that the Commission opens a new filing window for translators. *See, e.g., Big River Comments* at 4-5; Comments of Crossroads Investments, Inc. at 3-4, RM-11338 (Aug. 21, 2006). Because the *Notice* does not contemplate a new filing window for translators and the Commission has not otherwise announced such a window, Clear Channel will reserve comment on these prioritization proposals.

¹⁴ Comments of CBS Radio Inc. at 3, MB Docket No. 07-172 (Jan. 7, 2008) ("*CBS Comments*"). CBS claims that the proposed rules would permit translators with 60 dBu contours of 25 miles and in certain circumstances, these translators could have a effective radiated power (ERP) of over 50 kilowatts. *Id.* While CBS recognizes that Section 74.1235 currently limits fill-in FM translators to an ERP of 250 watts, *see id.*, CBS overlooks the fact that the *Notice* does not propose any amendment to Section 74.1235. *See Notice*, Appendix A. Thus, if the Commission changes its rules to allow AM stations to rebroadcast on FM translators, those AM stations will still be bound by the 250 watt limit for fill-in translators enumerated in Section 74.1235. *See* 47 C.F.R. § 74.1235(a).

¹⁵ *See* Comments of Bart Walker, President, WGNS(AM), Murfreesboro, TN at 4, MB Docket No. 07-172 (Jan. 3, 2008) ("*Walker Comments*"); *Morris Comments* at 3. Some commenters also suggested that the Commission afford translators similar protections as those recently afforded to LPFM stations in the *LPFM Order*. *See Butler Comments* at 6-7; *Richardson Comments* at 8; *Sutton Comments* at 10-11.

¹⁶ *See Notice*, Appendix A.

terms as are currently available to FM stations.¹⁷ Thus, the Commission should reject calls by some commenters who seek to place limitations on AM stations' usage of translators based on their ownership or station status.¹⁸ The FM translator rules currently in effect do not provide for these limitations,¹⁹ and the success of the STA grant process demonstrates that there is no justification for the Commission to adopt ownership-based and usage restrictions, which would almost certainly create a daunting administrative burden for the agency.

The Commission should also strive to keep its technical rules for AM stations using translators consistent with those currently in effect for FM stations. The current rules only allow "fill-in" translator service within certain contours depending on FM station class and make clear that translator contours that exceed these limitations are not considered fill-in.²⁰ These limitations ensure that fill-in service is actually local and limited to areas where stations provide their "core service."²¹ Clear Channel reiterates its support for the Commission's tentative conclusion that limiting AM fill-in service to a radius of the lesser of the AM station's 2 mV/m contour or 25 miles from the AM transmitter site is an appropriate means to ensure that AM fill-in service will be similarly

¹⁷ As Clear Channel explained in its initial comments, the one main exception to this approach is allowing AM daytime only stations to originate programming from the FM translator. *See Clear Channel Comments* at 8 n. 24, 11-12.

¹⁸ *See, e.g., Big River Comments* at 3; *CRA Comments* at 4; Comments of Mariana Broadcasting, Inc. at 4, MB Docket No. 07-172 (Jan. 7, 2008); Comments of WIN Radio Broadcasting Corp. at 3, MB Docket No. 07-172 (Jan. 7, 2008).

¹⁹ *See* §74.1232.

²⁰ *See* §74.1201(g).

²¹ *See Notice* at ¶19.

local to the currently allowable FM fill-in service.²² Several commenters have asked the Commission to enlarge the allowable contour for fill-in service by changing the 2 mV/m-25 mile restriction in some manner,²³ while other comments suggested that the Commission adopt a *de minimis* exception to allow fill-in service outside the 2 mV/m-25 mile restriction.²⁴ The Commission should affirm its tentative conclusion notwithstanding these comments. Expanding the allowable area for fill-in service will erode the local nature of this service and will impose significant administrative burdens on the FCC. Moreover, AM stations should not be afforded a *de minimis* exception for service area extensions when FM stations are not afforded a similar right, especially when simple technical alterations, such as using a directional antenna, reducing power or changing antenna height, can ensure the translator contour does not exceed the allowable area.

In conclusion, Clear Channel, like the majority of other commenters in this proceeding, supports the Commission's proposal to amend its rules to allow AM stations to use FM translators. These rule changes, while modest in scope, nevertheless will create public interest benefits, benefits that have already been established in the record by

²² Notice at ¶20.

²³ See, e.g., *Miller Comments* at 2 (arguing limitation should be the lesser of 0.5 mV/m contour or 25 miles); Comments of OneCom Inc. at 4-5, MB Docket No. 07-172 (Jan. 7, 2008) ("*OneCom Comments*") (arguing limitation should be greater of the 2 mV/m or 25 miles); *Richardson Comments* at 6 (same); *Sutton Comments* at 7 (same). CBS urges the Commission to adopt a *smaller* radius using the 5 mV/m contour, out of fear that adopting a radius using the 2 mV/m contour would allow translators with a 50 kilowatt ERP. *CBS Comments* at 3. As Clear Channel notes above, the ERP rule for translators will not be altered by adoption of the rule changes proposed in the *Notice*, and CBS does not provide any additional justification for using a smaller contour to define fill-in service.

²⁴ See, e.g., *MG Comments* at 3; *OneCom Comments* at 5; *Walker Comments* at 3.

those AM stations using FM translators pursuant to STA. These stations, already operating according to the proposed rules, are evidence that the narrow scope of the proposed rule changes will allow some AM stations to better serve their local communities while not disrupting other broadcast services. As the Commission moves forward with these rule changes, Clear Channel strongly urges the Commission to adopt rules that are as consistent and compatible as possible with the rules that govern the use of FM translators by FM stations. There is simply no justifiable rationale for deviating from the structure of these rules, and doing so will only unnecessarily increase administrative burdens on the Commission. The translator rules have proved valuable in the FM context and can similarly benefit AM stations without causing harm to other services or placing significant burdens on the Commission.

Respectfully submitted,

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