

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

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

Adopted: June 29, 2009

Released: June 29, 2009

By the Commission: Commissioner McDowell issuing a statement

I. INTRODUCTION

1. In this Report and Order, we adopt changes in our FM translator rules to allow AM stations to use currently authorized FM translator stations to retransmit their AM service within their AM stations' current coverage areas. Specifically, AM broadcast stations will be allowed to use currently authorized FM translator stations (*i.e.*, those now licensed or authorized in construction permits that have not expired) to rebroadcast their AM signals, provided that no portion of the 60 dBu contour of any such FM translator station extends beyond the smaller of: (a) a 25-mile radius from the AM transmitter site; or (b) the 2 mV/m daytime contour of the AM station. In addition, AM broadcast licenses with Class D facilities¹ will be allowed to originate programming on such FM translators during periods when their AM station is not operating. We take these steps to permit AM broadcasters to better serve their local communities and thus promote the Commission's bedrock goals of localism, competition, and diversity in the broadcast media.

II. BACKGROUND

2. On August 15, 2007, we released a Notice of Proposed Rule Making ("NPRM")² in this proceeding in response to a Petition for Rulemaking filed by the National Association of Broadcasters ("NAB")³ and the comments and reply comments submitted by a large number of parties after we placed the NAB Petition on public notice.⁴ Several hundred parties filed comments and reply comments in response to the NPRM, almost all in support of the proposal to allow AM stations to use FM translators as a "fill-in" service.

¹ See 47 C.F.R. § 73.21(a)(3).

² *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Notice of Proposed Rulemaking, 22 FCC Red 15890 (2007) ("NPRM").

³ "Petition for Rulemaking of the National Association of Broadcasters, RM-11338, filed on July 14, 2006 ("NAB Petition").

⁴ Public Notice, Report No. 2782 (rel. July 25, 2006). The NPRM summarized the comments and reply comments received in response to the Public Notice.

For decades, AM radio service has been an integral part of American life. AM radio remains an important component of the mass media landscape and a vital provider of broadcast service to local communities across the country. As the Commission has previously stated, AM often offers the only radio service to listeners in a variety of circumstances, particularly those living in and traveling through rural areas.⁵ AM radio stations commonly provide unique, community responsive formats to distinguish themselves in an increasingly competitive media market. All-news/talk, all-sports, foreign language, and religious programming formats are common on the AM band, as are discussions of local news, politics and public affairs, traffic announcements and coverage of community events such as high school athletic events. In fact, over 90% of all news/talk formats are on stations operating in the AM band.⁶

3. The NPRM noted, however, that the AM band's ability to serve local needs has been threatened by a well-documented shift of AM listeners to newer mass media services that offer higher technical quality and superior audio fidelity.⁷ Although the Commission has taken various steps to revitalize the AM band,⁸ there are inherent technical limitations to AM service for which there is no easy solution.⁹ AM broadcasts provide lower fidelity than other sources of audio programming, including FM broadcasts, satellite radio, personal media players and podcasts and audio streams provided through the Internet. In addition, the propagation characteristics of the AM band cause substantially increased interference among AM broadcasts at night.¹⁰ Accordingly, during nighttime hours, many AM stations

⁵ See *Review of the Technical Assignment Criteria for the AM Broadcast Service*, Report and Order, 6 FCC Red 6273, 6276 (1991) ("Expanded Band R&O"), recon. granted in part and denied in part, 8 FCC Red 3250 (1993) (subsequent history omitted).

⁶ See NAB Petition at 2.

⁷ NPRM, 22 FCC Red at 15891; see also *Expanded Band R&O*, 6 FCC Red at 6275.

⁸ *Id.*, 6 FCC Red at 6275-76. In 1991, after a comprehensive review of technical, legal, and policy issues relating to AM broadcasting, the Commission adopted an AM improvement plan comprised of three elements: new and revised AM technical standards intended to reduce interference within AM stations' primary service areas; the opening of ten "expanded band" frequencies (1605-1705 kHz) to select AM stations whose migration would significantly abate congestion and interference in the existing band; and various measures affording broadcasters greater latitude and incentive to reduce interference through non-technical means. *Id.* See *2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 23 FCC Red 5922, 5952-53 (2008) (summarizing implementation of AM expanded band plan). As discussed *infra*, these measures have not achieved their stated goal of "revitaliz[ing] the AM broadcast service by the year 2000." *Expanded Band R&O*, 6 FCC Red at 6274.

⁹ See generally *Report on the Status of the AM Broadcast Rules*, RM-5532 at 32-35 (Mass Media Bur. Apr. 3, 1986) ("Naturally occurring atmospheric noise found in the AM broadcasting band is a pervasive source of degradation to the AM service that generally limits the minimum usable field strength of the service during both daytime and nighttime hours. In addition to atmospheric noise, the minimum usable field strength of the AM service is further degraded by cochannel and adjacent channel interference from other AM stations and man-made noise. Man-made noise results primarily from the proliferation of electronic devices in the home as well as in the work place... [T]heoretically, any electrical device is capable of causing interference to AM reception.").

¹⁰ See generally *Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service*, 19 FCC Red 7505, 7521-22 (2004) ("During daytime hours, AM signals propagate principally via currents conducted through the earth, called groundwave propagation. Useful groundwave signals have a range of only about 200 miles for the most powerful AM stations, and less than 50 miles for many stations. After sunset, changes in the upper atmosphere cause the reflection of AM signals back to earth, resulting in the transmission of skywave signals over paths that may extend thousands of miles. Nighttime skywave propagation results in a much greater potential for inter-station interference. With the exception of powerful clear channel stations and relatively low-power local stations, many AM stations are required to cease operation at sunset. Most of those that remain on the air at night must reduce power or use directional antenna systems, or both."); *Report on the Status of the AM Broadcast Rules*, RM-5532 at 11-12. See Comments of Bart Walker, President, WNGS(AM), at 1: "Man-made interference is destroying AM service in large sections of most communities [and] sky wave interference creates

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are required to reduce their operating power substantially (and/or directionalize their signals), thereby eliminating service to certain swaths of their audience, while others (daytime-only stations) are prohibited from broadcasting at night.¹¹ This situation became worse as of last year, when Daylight Saving Time (“DST”) was extended.¹² DST now begins three weeks earlier than it previously did, and ends one week later. As a result, during those extended DST periods many AM facilities, and particularly daytime-only stations, either completely lose an hour of early morning drive-time programming or are forced to operate at very low power during that important period of the broadcast day. In addition to nighttime interference issues, the NPRM and commenters in this docket noted that increased electronic interference to AM signals occurs during all hours of the day from various sources.¹³ We expect such interference to increase in the future, particularly as sources of manmade interference continue to proliferate.¹⁴

4. The combination of higher fidelity alternatives to AM radio and increased interference to AM radio have caused an erosion of the AM radio audience and the loss of young listeners to other programming outlets. Fifty years ago, AM was the dominant form of audio entertainment. Until 1978, AM claimed more than half of all hours spent with radio. The most recent figures show that AM’s audience share has dropped to 17%. Among younger listeners, the decline is even more dramatic. Among persons aged 12-24, AM accounts for only 4% of listening, while FM accounts for 96%. Among persons aged 25-34, AM accounts for only 9% of listening, while FM accounts for 91%. The median age of listeners to the AM band is 57 years old, a full generation older than the median age of FM listeners.¹⁵

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even greater problems starting approximately two hours before sunset and continuing until around two hours after sunrise.”

¹¹ See NAB Petition at 3-4 (some stations lose 80-95% of their coverage area to protect clear channel AM stations often located hundreds of miles away). Some Class D AM stations are permitted to operate during pre-sunrise and post-sunset or nighttime hours only at extremely low power levels.

¹² See Energy Policy Act of 2005, Pub. L. No. 109-58.

¹³ See, e.g., Comments of Holston Valley Broadcasting Corp. at 2 (citing increased interference from power lines, computers, televisions and other electronic equipment, fluorescent and neon lighting and dimmers used for incandescent lighting, electric motors, traffic signal sensors, cable television systems, and even certain types of medical devices); Comments of WIFE Radio at 1 (“Our coverage at times is extremely minimal, especially with the increased local interference from home wireless devices, business security systems, etc.”); Comments of SB Communications at 1 (“Over the past 10 to 20 years there has been a substantial increase in manmade interference. This interference has dramatically reduced both our daytime and nighttime coverage . . . and made it difficult for our community minded station to fully serve our community of license, let alone the immediate surrounding areas.”); Comments of Stewart Broadcasting at 1 (“AM signals have great difficulty penetrating the growing number of steel and concrete buildings, and other interference factors that were not nearly as prevalent 20 years ago.”); Comments of Bud Janes at 1 (noting that many AM stations have a very limited or non-existent nighttime signal and in the daytime are handicapped by interference from a variety of sources, including modern lighting, power lines, computers and everyday appliances); NAB Petition at 5 (noting that metal utility poles, which are rapidly replacing wooden poles, can radiate AM signals, creating distortion and nulling a station’s signal along roads and highways, which are particularly significant coverage areas for radio stations); Joint Comments of State Broadcasters Associations at 6 (recounting a situation in which WDXY(AM), Sumter, South Carolina was unable to monitor its coverage of local election returns from the basement of a county courthouse located less than 2 miles from the station’s transmitter site due to interference from lighting, computers and shielding of the AM signal from the metal construction above and around them); NPRM, 22 FCC Red at 15891.

¹⁴ When the Commission previously examined this issue, many of the man-made sources of interference described in footnote 13 were rare or non-existent. We do not expect the proliferation of sources of interference to AM signals to slow down.

¹⁵ See Ex Parte Presentation letter filed by Richard F. Swift, Aug. 6, 2008; David Giovannoni, *Radio Intelligence: AM/FM Licensees Need Not Suffer the Tyranny of the AM Band*, CURRENT, Vol. 10, No. 16 (Sep. 2, 1991), at 1.

The story of AM radio over the last 50 years has been a transition from being the dominant form of audio entertainment for all age groups to being almost non-existent to the youngest demographic groups.

5. In view of the technical challenges faced by the AM service, the NPRM proposed allowing AM stations to use FM translators as a fill-in service. FM translator stations are low power facilities licensed for the limited purpose of retransmitting the signals of either an FM radio station or another FM translator station.¹⁶ FM translators were first authorized in 1970 to provide secondary FM service to areas and populations that are unable to receive satisfactory service due to distance or intervening terrain obstacles.¹⁷ To ensure that FM translator stations served their intended secondary role, the Commission adopted rules restricting their service, ownership, sources of financial support, and program origination.¹⁸ For example, FM translators are limited to a maximum effective radiated power of 250 watts and may not cause interference to the direct reception of the off-the-air signal of any authorized broadcast station.¹⁹ Further, FM translators are restricted to retransmitting the signals of other FM stations only during periods during which the primary station's signal is being broadcast.²⁰ FM translators are not permitted to originate their own programming, except to acknowledge or solicit financial support and to provide emergency warnings of imminent danger.²¹

6. The current rules preclude an FM translator from rebroadcasting the signal of any station other than that of an FM radio broadcast station or FM translator. As we discussed in the NPRM, in 1981 and again in 1990 the Commission considered and rejected proposals to permit AM stations to use FM translators to rebroadcast AM signals.²² When the Commission previously rejected proposals for cross-service translating, it believed that "the fundamental problems of AM radio – channel congestion, interference, and low fidelity receivers – will be resolved by [a] concerted effort with the broadcasting community and radio manufacturers" to improve the quality of AM radio through proceedings directed at reducing interference in the band.²³ The Commission also believed that AM stations did not have coverage holes necessitating fill-in service because primary AM signals are ground waves that are not impeded by irregular terrain.²⁴ We concluded that authorizing FM translators to rebroadcast AM signals "may exacerbate the fundamental problems of the service, rather than ameliorate them."²⁵

¹⁶ See 47 C.F.R. § 74.1201(a).

¹⁷ See *Amendment of Part 74 of the Commission's Rules and Regulations to Permit the Operation of Low Power FM Broadcasting Translator and Booster Stations*, Report and Order, 20 RR 2d 1538 (1970); see also 47 C.F.R. § 74.1231(a) and (b). Translator stations which provide service only within the primary FM station's protected service area are classified as "fill-in" stations and may use any terrestrial facilities to receive the signal that is being rebroadcast. See 47 C.F.R. § 74.1231(b). A fill-in FM translator's coverage contour must be contained within the primary station's coverage contour. See 47 C.F.R. § 74.1201(g).

¹⁸ *Id.* See also *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212 (1990), *recon. denied and clarified*, 8 FCC Rcd 5093 (1993) (tightening and clarifying a number of translator rules in order to return the service to its original secondary role).

¹⁹ See 47 C.F.R. §§ 74.1203(a) and 74.1235. The signals of the primary station may not be altered significantly in any way except for frequency and amplitude. See 47 C.F.R. § 74.1201(a).

²⁰ See 47 C.F.R. § 74.1263(b).

²¹ See 47 C.F.R. § 74.1231(f) and (g).

²² NPRM, 22 FCC Rcd at 15893.

²³ *Amendment of Part 74*, 5 FCC Rcd at 7224. See *supra*, n.8.

²⁴ *Id.* See *supra*, n.10. In 1981, when the Commission had first declined to allow cross-service translators, the Commission also noted certain technical problems with the potential simultaneous receipt by FM translators of multiple AM signals. See *Amendment of Part 74*, Memorandum Opinion and Order, 49 RR 2d 1499, 1500 (1981). That technical issue was resolved when the Commission allowed fill-in translators to use any terrestrial facilities

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7. The NAB Petition asked us to revisit the issue of AM-FM cross-service translating and amend the Commission's rules to allow AM broadcast stations to operate FM translator stations.²⁶ Based on the comments received in response to the NAB Petition and the NPRM, we have reached the conclusion that our efforts to improve conditions on the AM band have been useful, but those efforts simply cannot overcome the technical limitations of the AM band. Accordingly, we find that significant changes in the environment in which AM stations operate warrant a fresh look at allowing AM stations to use FM translators as a fill-in service.

III. DISCUSSION

8. Having largely completed the AM improvement proceedings that we undertook previously and having assessed the AM band as it exists today, we now conclude that cross-service translators will improve the ability of AM stations to provide service to their local communities by filling in service voids in their intended coverage areas. Our AM improvement efforts have provided some benefits to the AM band and the in-band on-channel (IBOC) digital terrestrial radio technology holds great promise for future improvements in AM audio quality. These developments, however, have not overcome the fundamental interference problems of AM radio, which have risen to higher levels than ever before. Those interference sources have changed the competitive posture of AM stations, because interference makes it impossible for many stations to provide a listenable groundwave signal in a substantial part of their primary service areas. Allowing these stations to use FM translators for fill-in service appears to be the best way to help them provide consistent service throughout their predicted service area, both in daytime and nighttime hours.

9. We disagree with CBS and others that the Commission's prior reasons for rejecting cross-service translating remain sound.²⁷ As indicated above, circumstances have changed dramatically since the FCC last addressed this issue. In 1990, having just completed a review of numerous technical, legal, and policy issues relating to AM broadcasting, the Commission's focus was on direct measures to achieve "revitalization of the AM broadcast service by the year 2000."²⁸ Those measures have now been implemented, but AM listenership has continued to decline.²⁹ Under the present circumstances, we agree with NAB that cross-service translating represents a logical extension of the Commission's longstanding efforts to support and improve the AM service that will provide licensees with additional flexibility to respond to the technical and economic conditions facing the AM service.³⁰ In addition, we can no longer

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available, including microwave stations and ISDN lines, to receive the signal being broadcast. See 47 C.F.R. § 74.1231(b).

²⁵ *Amendment of Part 74*, 5 FCC Red at 7224.

²⁶ NAB Petition at 12-15. As we noted in the NPRM, the American Community AM Broadcasters Association filed a similar petition for rule making. See NPRM, 22 FCC Red at 15892 n.12 (citing and summarizing the "Petition for Rulemaking of the American Community AM Broadcasters Association," RM-9419 (filed Aug. 13, 1997)). In light of our action taken here, we will dismiss that petition.

²⁷ CBS Comments at 1-2. See John Nathan Anderson Comments at 4; NPR Comments at 2-3.

²⁸ *Expanded Band R&O*, 6 FCC Red at 6274.

²⁹ See *supra*, para. 4. We also note that the number of licensed AM stations has dropped since 1990, while the number of licensed FM stations has increased considerably. See Broadcast Station Totals as of December 31, 1990, <http://www.fcc.gov/mb/audio/totals/bt901231.html> (4987 AM stations and 4392 commercial FM stations) and Broadcast Station Totals as of December 31, 2007, <http://www.fcc.gov/mb/audio/totals/bt071231.html> (4776 AM stations and 6309 commercial FM stations). This confirms the reduced viability of AM stations compared to FM stations.

³⁰ See NAB Petition at 15 (arguing that "another boost" is needed "to enhance AM stations' ability to serve audiences and compete in the ever-changing media marketplace.").

conclude that most AM licensees have no need for fill-in service facilities on the FM band. It is undisputed that many AM stations lose both nighttime and daytime coverage at various locations within their protected daytime coverage areas. The losses occur for different reasons than in the FM service, but the record clearly reflects that many AM licensees have a strong need and desire to supplement their stations' coverage with fill-in service. Cross-service translating would allow AM stations to ameliorate their signal losses and provide more continuous and consistent service throughout their protected service areas. Just as we have allowed FM stations to use FM translators to provide fill-in service within their predicted service areas, we believe AM stations likewise should be allowed to do so.³¹

10. In addition, we now have the benefit of examining the experience of stations that have received special temporary authority ("STA") to rebroadcast their AM signals on FM translators pursuant to the NPRM.³² This experience generally appears to indicate that cross-service translators have advanced the Commission's interest in localism, competition and diversity. Based on the record in this docket, we conclude that allowing AM stations to use FM translators for the limited purpose of filling any service voids in their intended coverage areas is a logical extension of our longstanding efforts to support and improve service on the AM band.

11. As we noted above, the comments filed in response to the NAB Petition were overwhelmingly in favor of allowing AM stations to use FM translators to retransmit their signals within each AM station's current coverage area.³³ Similarly, the overwhelming majority of comments filed in response to the NPRM support the proposed rule changes. Many commenters state that the Commission's proposed actions would provide much needed relief to the AM service from both competitive and technical standpoints, and would further the Commission's policy goals of promoting competition, diversity, and localism.³⁴ Several commenters claim that many AM station listeners have migrated over to newer media, such as satellite radio and Internet radio.³⁵ Commenters state that this fact, coupled with increased interference from a variety of sources such as power lines, computers and electronic appliances, have made it difficult for AM stations to remain competitive in the marketplace.³⁶

12. Commenters currently broadcasting their AM signals on FM translators pursuant to STAs state that they have greatly increased service to their communities of license and have expanded their local programming. One commenter claims that the positive feedback it has received from the

³¹ We disagree that cross-service translating will fundamentally alter the nature of translator service. See CBS Comments at 3-5; John Nathan Anderson Comments at 3. The proper role of FM translators is to provide secondary service to areas in which direct reception is unsatisfactory. See *Amendment of Part 74*, 5 FCC Rcd at 7219. Consistent with that role, the rules that we adopt herein will limit cross-service translators to providing fill-in service within AM stations' authorized service areas, rather than expanding service. To the extent that some AM stations will be able to expand their hours of operation, the purpose of that expansion likewise comports with the proper role of FM translators to allow continuous coverage within a primary station's service area.

³² As of March 19, 2009, the Media Bureau has issued 215 STAs to permit the rebroadcast of AM signals on FM translators.

³³ See n. 3 *supra*; see also Minority Media and Telecommunications Council/National Association of Black-Owned Broadcasters, Reply Comments at 2, RM No. 11338 (filed Sept. 6, 2006) ("promoting creativity, ingenuity and attentiveness to the needs of the public can best be achieved if the Commission adopts policies that tend to enhance opportunities for minorities and female ownership. It is well established that minority ownership must be considered in spectrum management proceedings." ("MMTC/NABOB Reply Comments").

³⁴ See, e.g., Comments of National Association of Broadcasters ("NAB") at 1.

³⁵ See Comments of Jon Thompson at 1; Comments of Named State Broadcasters Association at 6.

³⁶ See Comments of Bud Janes at 1; Comments of Urban Radio Licenses, LLC ("Urban Radio Licenses") at 1-2.

community has been “overwhelming,”³⁷ while another calls the Commission’s “trial” period in granting STAs an “unmitigated success.”³⁸

13. The licensee of WDXY(AM), Sumter, South Carolina, describes the station’s FM translator as “a god-send for the radio station and the Sumter community.”³⁹ The station had been suffering from a poor signal, low ratings and very lean business. Sumter and the surrounding area, including Shaw Air Force Base, long ago outgrew WDXY(AM)’s ability to cover the market. With the translator providing a pristine signal, advertising sales have improved and the station is operating at a profit for the first time in many years. The station has hired a new local news person, a new program director and a new producer and provides regular coverage of Shaw Air Force Base issues and more coverage of live events, including high school sports events that the station could not cover before. The station also is receiving and airing more public service announcements and airs holiday greetings from men and women serving abroad to their families in Sumter and the surrounding communities.⁴⁰

14. Similarly, Holston Valley Broadcasting Corporation, which operates three cross-service translators pursuant to STAs, reports that “enhancement of reception of the programming of these three AM stations in and around their home communities, especially during nighttime hours, has been substantial.”⁴¹ Listeners of the stations now have “excellent reception in areas where it had not been available in many decades,” allowing them to hear the stations’ local news and sports coverage, as well as the stations’ other varied programming.⁴²

15. Alan Miller, Managing Partner of the licensee of WRHI(AM), Rock Hill, South Carolina, describes the benefits of that station’s FM translator to the local community:

In many cases listeners within our own community have re-discovered what local radio is all about. In particular at night, we are now able to give our community a good clean signal to broadcast our city’s three high school football teams. The community is also excited about the upcoming basketball season and our ability to present live play-by-play of both our local high schools and Winthrop University basketball. We aired our first political debate on the translator during this past October and have been able to deliver other important news with evening reports.

We are also happy to report that we are now able to provide traffic and weather reports to our commuters leaving the county for Charlotte. With the shorter days in the Winter, we have previously been handicapped with limited coverage of 5-6 miles until after 7 am. As commuters returned home in the evening, we would have limited coverage after 5:30 PM. The translator NOW enables us to fully serve our early morning and late afternoon commuters with not only local traffic and weather, but also all the local news of the day. The FM translator has helped us restore the coverage that our community once enjoyed and needed.⁴³

³⁷ See Comments of Our Three Sons Broadcasting at 2.

³⁸ See Reply Comments of MG Media, Inc. at 1.

³⁹ Joint Comments of State Broadcasters Associations at 6.

⁴⁰ *Id.* at 6-7.

⁴¹ Comments of Holston Valley Broadcasting Corporation at 2.

⁴² *Id.*

⁴³ Joint Comments of State Broadcasters Associations at 4.

16. A few commenters oppose the proposal or question its effectiveness. National Public Radio states that the NPRM fails to explain adequately why circumstances have materially changed,⁴⁴ while CBS argues that the proposal may potentially weaken the AM band by drawing AM listeners to the FM band and thus adding to the migration of listeners away from the AM band.⁴⁵ Some commenters state that the proposal will do little to improve the condition of the AM service and will cause increased interference to the already congested FM band.⁴⁶ Others argue that the Commission should first address interference issues presented by digital audio broadcasting (“DAB”) in the AM spectrum rather than effectively allowing AM stations to operate as de facto FM stations.⁴⁷

17. Prometheus asserts that the proposal would take away possibilities from new low power FM (“LPFM”) entrants.⁴⁸ It argues that awarding FM translators to AM incumbents will do nothing to advance diversity since that channel will be merely duplicating an incumbent’s signal.⁴⁹ It emphasizes that the Commission should not allow the purchase or use of translators for the repetition of AM signals until the pending LPFM rulemaking⁵⁰ is concluded and the priority issues regarding LPFMs and translators are resolved.⁵¹

18. Several commenters claim that Prometheus’s concerns are unjustified. NAB states that Prometheus provides no supporting evidence for its contention that the Commission should elevate the public interest value of LPFM service over AM stations.⁵² Saga Communications and other commenters note that there is little risk that the proposed rule changes will adversely impact the availability of spectrum because AM stations must use already licensed or permitted translators until a window opens, and the Commission is expected to open different windows for different services over time to accommodate demand for non-translator services.⁵³ Some commenters observe that relatively few AM radio stations have applied for STAs to rebroadcast on an FM translator since the Commission began granting such authority almost a year ago, and conclude that there is no reason to expect thousands more

⁴⁴ See Comments of National Public Radio (“NPR”) at 2. We believe that the foregoing discussion fully addresses this concern.

⁴⁵ See Comments of CBS Radio Inc. (“CBS”) at 1. CBS also argues that the proposed rule change will allow fill-in translators will be able to operate at higher power than most FM stations, citing the 25-mile limit proposed for fill-in AM translators. *Id.* at 3-4. However, the existing effective radiated power limit of 250 watts will apply to these translators. See 47 C.F.R. § 74.1235(a). As we explain below, the 25-mile limit is simply a constraint to prevent high-power AM stations from using fill-in translators in locations outside their core service area.

⁴⁶ See Reply Comments of NPR at 2; Comments of CBS at 4; Comments of Aaron Read at 1; Comments of John Nathan Anderson at 2. We note, however, that FM translators operate on a non-interfering basis. See 47 C.F.R. § 74.1203(a)-(b). Accordingly, this modification of the FM translator service and eligibility rules will not result in new interference.

⁴⁷ Comments of John Nathan Anderson at 5-8. As we explain below, we do not intend to allow fill-in cross-service translators to be operated as surrogates for FM stations. The DAB interference issue is beyond the scope of this proceeding and is best addressed in our DAB radio docket, MM 99-325. See *Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service*, Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 22 FCC Red 10344 (2007).

⁴⁸ See Comments of Prometheus Radio Project (“Prometheus”) at 4. See also Comments of John Nathan Anderson at 2-3; Comments of Catholic Radio Association at 2.

⁴⁹ See Comments of Prometheus at 7.

⁵⁰ See *Creation of a Low Power Radio Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Red 21912 (2007) (“*LPFM Third Report*”), *recon. pending*.

⁵¹ *Id.* at 7-8.

⁵² Reply Comments of NAB at 6.

⁵³ Reply Comments of Saga Communications at 3; Reply Comments of Urban Radio Licenses at 4; Comments of NAB at 7.

if the proposed rule changes are adopted.⁵⁴ Other commenters note that the Commission's recent actions in the *LPFM Third Report* ensure that the current proposal will not jeopardize the LPFM service. For example, MG Media asserts that recent LPFM proposed rule changes and revised processing policies will open up more frequencies for LPFM, and that more spectrum will become available for LPFM with television stations vacating Channel 6 analog allotments after the DTV transition.⁵⁵ Clear Channel points out that the Commission has made clear that LPFMs, not translators, will have the next opportunity to file for additional spectrum.⁵⁶

19. We agree with the majority of commenters that changing the FM translator rules to allow AM stations to use FM translators as a fill-in service generally would serve the public interest.⁵⁷ This rule change will help AM stations retain and build their audiences, furthering our goal of service by stations to their local communities. The rule change will also promote diversity to some extent in the nighttime hours by allowing Class D stations to expand their programming to include nighttime coverage of local news, sporting events and issues of local interest. We agree with the commenters who have noted that our interim practice of allowing AM stations to obtain STAs to operate FM translators in this manner generally appears to have been successful in advancing the public interest goals of localism, competition and diversity. We conclude that allowing currently authorized FM translators – both licensed translators and existing construction permits that have not expired – to rebroadcast AM signals would benefit the public. Those licensees that are currently rebroadcasting AM signals pursuant to STAs must file written notifications specifying their AM primary stations pursuant to Section 74.1251(c) of the Rules⁵⁸ to continue such operations. We direct the Media Bureau to cancel all AM rebroadcast STAs and to dismiss all pending STA requests on the effective date of this *Report and Order*.

20. We believe, however, that Prometheus makes a valid point concerning the potential impact on the LPFM service if we allowed AM stations to use future FM translator authorizations, particularly those currently on file as applications in our FM translator “backlog.” We recently commented that the FM band is “maxed out.”⁵⁹ Although this comment did not apply to FM translators, which enjoy greater flexibility than full-service stations or LPFM stations under our licensing rules, we do believe that creating greater demand for future FM translator authorizations by allowing them to be used by AM as well as FM stations could adversely affect opportunities for new LPFM stations. Accordingly, we will limit the rule change being adopted here to currently authorized FM translators.⁶⁰ Specifically, the rule change will apply to those translator stations with licenses⁶¹ or permits⁶² in effect as of May 1, 2009.

⁵⁴ Comments of Clear Channel Communications, Inc. (“Clear Channel”) at 7; Reply Comments of NAB at 8.

⁵⁵ Reply Comments of MG Media at 4-5.

⁵⁶ Comments of Clear Channel at 7.

⁵⁷ As noted by NAB, minority and female owned stations “further the goal of the Commission’s diversity policy – ensuring that information is available from a multiplicity of sources . . . the action NAB suggests in this Petition would help AM stations remain viable and therefore continue to be relevant to their communities, and further the government’s interest in diversity. MMTC/NABOB Reply Comments at 2, *citing* NAB Petition for Rulemaking at 3. RM No. 11338 (filed July 14, 2006); *see also* MMTC/NABOB Reply Comments at 3 (“[s]uch an initiative would do much to increase AM stations’ asset values, and thereby enhance minority broadcasters’ ability to raise capital and expand their holdings”).

⁵⁸ 47 C.F.R. § 74.1251(c).

⁵⁹ *See LPFM Third Report*, 22 FCC Rcd at 21932 and 21944-45; *see also* Comments of John Nathan Anderson at 3.

⁶⁰ Given this limitation, we need not address the issue of priorities between LPFM stations and translators here. We will address that issue in the pending LPFM rulemaking.

⁶¹ As of March 1, 2009, there were 4,033 outstanding non-reserved band translator licenses, including more than 2,400 issued out of the 2003 FM translator filing window.

Subsequent modification of any such translator station will not affect its eligibility to rebroadcast an AM signal. A translator station's initial primary station designation is made in FCC Form 349. Thereafter, a permittee or licensee must submit written notification to the Media Bureau of any change in primary station designation. Any application or notification from an FM translator station initially authorized after May 1, 2009, will be dismissed or returned without further consideration if it specifies an AM primary station. Any request to rebroadcast an AM station with an expired translator station construction permit will be dismissed without further consideration. Almost two-thirds of all non-reserved band translator authorizations were issued out of the 2003 translator window. Accordingly, we believe the scope of the eligibility requirements we adopt today will provide ample flexibility to the nation's AM broadcasters.⁶³ In the longer term, we have already noted that LPFMs, not translators, will have the next opportunity to apply for new spectrum.⁶⁴ After that LPFM filing window occurs, we can revisit the issue of expanding opportunities for AM stations to use FM translators. In the meantime, we wish to emphasize in particular that we do not anticipate allowing any party to circumvent the limitation adopted here by obtaining special temporary authority for a new FM translator station for the purpose of rebroadcasting an AM station.

A. Program Origination for Class D Stations.

21. The NPRM tentatively concluded that daytime-only Class D AM stations should be permitted to originate programming over fill-in FM translators during the hours their stations are not authorized to operate at their daytime power levels. A number of parties support allowing Class D station licensees to originate programming over fill-in FM translators at night, but caution that the "rule change should not result in permitting wholesale program origination on FM translators."⁶⁵ Radio Broadcasters Association of Puerto Rico states that allowing Class D stations to originate local programming at night through the use of FM translators would "directly and immediately increase the amount of local content produced by AM licensees."⁶⁶ Other commenters argue that FM translators licensed to Class D AM stations should be able to broadcast 24 hours a day.⁶⁷ Northeast Indiana Broadcasting, Inc. asserts that "it doesn't make sense for an FM translator to be turned on and off," and that only full-day operation of an FM translator would "provide meaningful service to listeners."⁶⁸ A few commenters request that the

(Continued from previous page)

⁶² As of March 1, 2009, there were 112 outstanding construction permits issued out of the 2003 FM translator filing window.

⁶³ See also *Letter from the Honorable Mike Doyle, Lee Terry and John Spratt to Chairman Kevin J. Martin*, Sept. 23, 2008 (encouraging the Commission to allow AM stations to use only currently licensed translators and granted construction permits until the next LPFM window).

⁶⁴ See *LPFM Third Report*, 22 FCC Red at 21943 ("The next filing window for a non-tabled aural broadcast service will be for new LPFM stations."). We also intend to dispose of substantially all of the approximately 3,600 noncommercial educational FM applications filed in the October 2007 filing window prior to opening an LPFM window, to maximize the availability of spectrum for LPFM applicants.

⁶⁵ Comments of Sutton Broadcasting at 8. See also Comments of Christian Broadcasting at 4; Comments of AM Daytimers Association at 3-4; Comments of Radio Broadcasters Assoc. of Puerto Rico at 3; Comments of Timothy Cutforth at 2; Comments of Bart Walker at 3; Landmark Baptist Church at 3; Comments of Larry Langford at 5.

⁶⁶ See Comments of Radio Broadcaster Assoc. at 4.

⁶⁷ Comments of Progressive Broadcasting at 3; Comments of Northeast Indiana Broadcasting, Inc. at 2; Comments of MG Media at 5; Comments of Colquitt at 1; Comments of Richard Mangels at 1; Comments of E. Morgan Skinner, Jr. at 1.

⁶⁸ Comments of Northeast Indiana Broadcasting, Inc. at 2.

Commission allow AM stations to conform the FM translator call signs to their AM call signs in order to better inform the public that their programs were being carried on FM translators.⁶⁹

22. We agree with the commenters who argue that an FM translator should be permitted to broadcast programming of a Class D AM station during the hours that the AM station is not authorized to operate, provided that the FM translator complies with the fill-in restrictions defined by the AM station's daytime facility. These stations operate at a significant competitive disadvantage due to their shorter broadcast day and their inability to broadcast year-round during the entirety of the critical drive-time portion of their broadcast day. Permitting these stations to use FM translators to continue their service to the public during these important hours is consistent with the fundamental purpose of fill-in FM translators, which is to provide continuity of service within licensed service areas. Daytime-only stations exist only because of AM signal propagation differences at night versus daytime. FM translators do not suffer from the same limitation, so there is no point in applying that limitation to AM stations using FM translators for fill-in service. The comments filed on behalf of stations that are using FM translators pursuant to STAs confirm the significance of this change in policy for service to the public by Class D stations in particular.⁷⁰ Importantly, imposition of the proposed FM translator site restrictions will limit such operations to those areas in which, and those listeners to whom, these stations provide their core service. Accordingly, our rule changes will allow FM translators providing fill-in service for Class D AM stations to originate programming when the AM station is not operating.⁷¹ If the Class D AM station operates with a reduced power level during certain hours (*i.e.*, pre-sunrise and post-sunset or nighttime hours), then the FM translator may only rebroadcast the AM station's programming during those hours. We believe that this change will raise the level of service provided by Class D stations to their local communities. With respect to the issue of "conforming" call signs, adopting the proposed call sign naming system would be contrary to the current system utilized by other translator stations. Moreover, because the current system for FM booster call sign selection allows for conforming call signs, allowing FM translators also to conform their call signs could prompt potential conflicts with FM booster call signs. Therefore, we will continue to use the same translator call sign system in place for FM stations. Stations using fill-in FM translators can and do promote the availability of those translators with on-air announcements on their primary stations and other promotional techniques.

B. Implementation of Rule Changes.

23. While most commenters support the immediate implementation of the proposed rule changes, a few parties support a phased-in approach based on an AM station's hardship or due to concerns that implementation of the rules without restrictions would fail to provide relief to those in most need.⁷² Meridian Broadcasting notes that in most areas, the availability of FM translators to rebroadcast AM signals will depend on the willingness of the FM translator licensees to sell translators to AM

⁶⁹ Comments of North Palm Beach Broadcasting, Inc. at 3. *See also* Comments of Pee Dee Broadcasting at 3-4; Comments of Miller Communications, Inc. at 6-7; Reply Comments of Sutton Broadcasting at 3-4. Saga Communications, Inc. ("Saga") asserts that this is the current practice among LPTV licensees and requests amendment of Section 74.1283(a) of the Rules to allow such call sign changes. *See* Comments of Saga at 3-4.

⁷⁰ *See, e.g.*, Joint Comments of State Broadcasters Associations at 6-8.

⁷¹ We are not modifying the existing rules that allow FM translator stations to originate programming in certain other situations. *See* 47 C.F.R. § 74.1231(f) and (g) (permitting limited program origination by FM translator stations for emergency warnings of imminent danger or to seek or acknowledge financial support).

⁷² *See* Comments of James Foster at 3; Comments of Talley Broadcasting Corp. ("Talley Broadcasting") at 4; Comments of Broadcast Communications, Inc. at 3; Comments of Poehantans Communications Cooperative Corp. ("Poehantans") at 2. Talley Broadcasting also suggests that the Commission conduct a computer-based analysis and to provide each daytimer with at least one FM translator authorization so as to replicate the station's licensed daytime service area. Comments of Talley Broadcasting at 4.

licensees.⁷³ As such, it states that the public interest benefits to be gained from phased deployment of the new rules are not likely to outweigh the benefits of additional service that would flow from immediate implementation of the new rules.⁷⁴

24. Some commenters support the establishment of a priority system for the next translator filing window, or a “needs-based queue” for the Commission’s processing of applications.⁷⁵ Several commenters assert that the “daytime only” stations should receive priority.⁷⁶ Several argue that Class C stations should also receive first consideration, and that Class A and B stations should be secondary or considered on a case-by-case basis.⁷⁷ Some commenters maintain that other factors should be considered, such as: whether the station serves a minority audience; the size of the station’s market and competition in that market; whether the station is locally owned⁷⁸ or providing the only local service in its county;⁷⁹ whether the station is licensed on a noncommercial educational (“NCE”) basis; the proximity of the proposed translator site to the primary broadcast site; and, whether the station serves an area where no translator applications are pending and no translator service now exists.⁸⁰

25. We agree with the commenters who argue that immediate implementation of the rule changes is preferable to phased-in implementation. For the reasons stated above, the opportunity to use an FM translator for fill-in AM service will only exist where a translator is authorized and available. Accordingly, we see no need to phase in these rule changes. Our experience with interim STAs indicates that there is no need for phased-in implementation because the process has been open to, and pursued by, all types of stations. Accordingly, we do not see any meaningful benefit in phasing the rule changes in by excluding some stations from the process initially. Instead, we conclude that the public interest benefits from the rule changes will be realized more quickly with immediate implementation rather than phased-in implementation of the revised rules.

26. With respect to the suggestions of priorities or preferences in the next FM translator filing window, we find no basis in this docket for adopting any priorities or preferences. For the reasons explained above, we are limiting these rule changes to apply only to currently authorized FM translators. In the event the Commission later revisits this issue in anticipation of a new FM translator filing window, it can decide at that time whether any priorities or preferences would be appropriate.

⁷³ Comments of Meridian Broadcasting Inc. (“Meridian”) at 2.

⁷⁴ See *id.* See also Comments of Progressive Broadcasting Systems, Inc. (“Progressive”) at 2; Comments of Christian Broadcasting System, Ltd. (“Christian Broadcasting”) at 3; Comments of Astro Enterprises, Inc. at 2; Comments of Bart Walker at 2.

⁷⁵ See Comments of Mark D. Humphrey at 1; Comments of Broadcast Communications, Inc. at 4; Comments of MG Media at 3-4; Comments of Larry Langford at 3; Comments of Scott Bailey at 1. See also Comments of Urban Radio Licenses at 6 (stating that the rules should be effective all at once but that the Commission should prioritize applications); Comments of Larry Langford at 2 (suggests accepting applications all at once and then assigning certain weight to specific classes of stations where there is a conflict in geography or spectrum availability); Comments of AM Daytimers Association at 2 (suggesting that the Commission establish a “needs based queue”).

⁷⁶ Comments of Mark D. Humphrey at 1; Comments of Broadcast Communications, Inc. at 4; Comments of MG Media at 4; Comments of Larry Langford at 3; Comments of Scott Bailey at 1.

⁷⁷ Comments of Larry Langford at 3; Comments of Bob Bittner at 1 (supports giving AM daytimers priority); Comments of Scott Bailey at 1; Comments of Pocahantas at 2; Comments of Sutton Broadcasting Corp. (“Sutton”) at 6; Comments of Richardson Broadcasting Corp. (“Richardson”) at 5-6.

⁷⁸ Comments of Morris Broadcasting Company of New Jersey, Inc. (“Morris Broadcasting”) at 4.

⁷⁹ Comments of AM Daytimers Association at 2. See also Comments of Samuelson-Glushko Technology Law and Policy Clinic (“Samuelson-Glushko”) at 32 (stating that whether the AM station is NCE, and proximity of the proposed translator site to the primary broadcast site, should also be considerations).

⁸⁰ Comments of George Simmons at 2.

C. Potential Ownership Limits on FM Translators As AM Fill-ins.

27. The NPRM asked for comment on whether the ability to use an FM translator as an AM fill-in should be limited to those parties who do not own an FM station in the market.⁸¹ Most commenters oppose the idea of imposing limits on an AM station's use of an FM translator based on its ownership of an FM station in the same market.⁸² NAB states that whether an AM station is commonly owned with an FM station is "irrelevant to the number of translators the AM station should be allowed to use, and to impose such a restriction would be discriminatory."⁸³ Clear Channel and other commenters argue that FM translator rules currently do not provide for these limitations, and assert that the success of the interim STA grant process demonstrates that there is no justification for the Commission to adopt ownership-based and usage restrictions.⁸⁴

28. The NPRM asked whether there should be a limit on the number of fill-in FM translators allowed for an AM station, and if so whether the number should vary based on the class of the AM station.⁸⁵ Most commenters do not support limitations on the number of fill-in translators allowed,⁸⁶ or believe that the number should be restricted to the number of translators necessary to allow the AM station to cover its community of license.⁸⁷ Several commenters note that there is no corresponding limit on FM licensees' ownership of FM translators.⁸⁸ Some commenters suggest setting ownership limits on AM licensees in order to curb speculation, offering proposals ranging from one to ten translators.⁸⁹ The AM Daytimers Association suggests that AM licensees be required to rebroadcast the AM station programming on each of the FM fill-in translators, stating that an AM licensee would not be inclined to use FM translators that overlap since they will all carry the same programming.⁹⁰

29. We conclude that we need not impose either type of limit on AM stations using FM translators for fill-in service. These FM translators will be required to rebroadcast an existing AM signal during the hours that the AM station is authorized to operate, subject to the limited exception that a Class

⁸¹ 22 FCC Red at 15897.

⁸² See Comments of Progressive Broadcasting Systems, Inc. at 2; Comments of Christian Broadcasting at 3; Comments of Morgan Murphy Media at 3; Comments of Urban Radio Licenses at 7; Comments of Broadcast Communications, Inc. at 4. *But see* Comments of AM Daytimers Association at 3 (supporting limits if an AM licensee also owns an FM station); Comments of Larry Langford at 4 (stating that the Commission must exclude those AM stations whose owners have at least one FM station that covers substantially the same market area or where the 60 dBu contour overlaps the 2 mV/m contour of the AM station that is co-owned); Reply Comments of Prometheus at 7 (only standalone AM stations who do not own an FM station in the same market should be eligible for an FM translator).

⁸³ Reply Comments of NAB at 13.

⁸⁴ Comments of Clear Channel at 9.

⁸⁵ 22 FCC Red at 15897.

⁸⁶ See Comments of Meridian at 2; Comments of Progressive Broadcasting, Inc. at 2; Comments of Christian Broadcasting at 3.

⁸⁷ Comments of OneCom, Inc. at 3; Comments of Edward A. Schober at 3.

⁸⁸ See Comments of Urban Radio Licenses at 7; Comments of Clear Channel at 10; Landmark Baptist Church of Haines City, FL ("Landmark Baptist Church") at 2.

⁸⁹ Comments of Broadcast Communications, Inc. at 3-4 (suggesting limit of ten); Comments of MG Media at 3 (same); Comments of George Simmons at 6 (suggesting limit of four, stating that 10 is too high and might foster trafficking); Comments of Cliff Davis at 3 (suggesting limit of five); Comments of Colquitt Community Radio, Inc. ("Colquitt") at 1 (same); Comments of Larry Langford at 5 (suggesting 3-5 limit); Comments of Prometheus at 6 (suggesting limit of one); Comments of Poehontas at 2 (stating that the limitation on the number of translators should be based on class).

⁹⁰ Comments of AM Daytimers Association at 3.

D station may originate programming on the FM translator during the hours the Class D station does not operate. Given this limitation and the limitation on the allowed signal contour of this type of translator, the FM translator will not be an independent “voice” in the market. Similarly, we need not specifically limit the number of FM translators that an AM station can use for this purpose in light of other protections already in place. Section 74.1232(b) of our rules currently limits the ability to hold “same area” translator authorizations, requiring a showing of “technical need” for an additional translator serving substantially the same area as the first.⁹¹ This restriction will apply to FM translators used as fill-in AM translators to prevent an AM station from monopolizing the available spectrum in its area. The “technical need” requirement for a second FM translator serving an area substantially the same as the first translator will be applied as it has in the past.⁹²

30. We do not intend to allow these cross-service translators to be used as surrogates for FM stations or to circumvent our local radio ownership limits.⁹³ We would consider it an abuse of our rules for a licensee to use two or more cross-service translators to effectively create a *de facto* FM station. Similarly, we would consider it an abuse of our rules for a licensee to use two or more FM translators in a manner that circumvents the local radio ownership limits. In such cases, the Commission reserves the right to bar additional cross-service translators and use its revocation procedures⁹⁴ to terminate specific cross-service translator arrangements which it determines are inconsistent with our diversity, competition or localism goals. We also reserve the right to designate particular applications, including license renewal applications filed by any licensee apparently involved in any such abuse, for hearing pursuant to Section 309(c) of the Act.⁹⁵

D. Rebroadcast Consent Agreements.

31. The draft revision to Section 73.1232(d) attached to the NPRM provided that an FM translator providing service to an AM fill-in area will be authorized only to the permittee or licensee of the AM station being rebroadcast.⁹⁶ However, the NPRM asked whether, and in what circumstances, it would be appropriate to allow AM stations to enter into rebroadcast consent agreements with FM translator licensees.⁹⁷ The vast majority of commenters supports this proposal.⁹⁸ Many commenters state that the Commission should apply the same rules regarding financial support to AM as are applied to FM.⁹⁹ Sutton Broadcasting argues that rebroadcasts on unaffiliated out-of-market stations should also be allowed, as long as similar financial restrictions continue to be imposed.¹⁰⁰ Most commenters assert that an applicant seeking to avail itself of spectrum specifically reserved for NCE services must propose an

⁹¹ See 47 C.F.R. § 74.1232(b).

⁹² See *Amendment of Part 74*, 5 FCC Rcd at 7222 (“To support their applications for multiple translators in the same area, applicants will be required to describe any relevant terrain obstruction as a means of showing “technical need”, and, if useful, may include a shadowing study.”).

⁹³ See 47 C.F.R. § 73.3555(a).

⁹⁴ See 47 U.S.C. § 312.

⁹⁵ See 47 U.S.C. § 309(e).

⁹⁶ 22 FCC Rcd at 15904.

⁹⁷ *Id.* at 15897-98.

⁹⁸ See Comments of Christian Broadcasting at 3; Reply Comments of Urban Radio Licenses at 6; Comments of Holston Valley Broadcasting Corporation (“Holston”) at 3; Comments of OneCom, Inc. at 4; Comments of Eastern Sierra Broadcasting at 7; Comments of NAB at 10; Comments of Colquitt at 1.

⁹⁹ See Comments of Meridian at 2; Comments of Richardson at 7-8; Comments of Broadcast Communications, Inc. at 5; Comments of Sutton Broadcasting at 8-9; Comments of Timothy Cutforth at 3. *But see* Comments of Talley Broadcasting at 5-6 (opposes time-brokering).

¹⁰⁰ Comments of Sutton Broadcasting at 9.

NCE service and otherwise qualify as an NCE station.¹⁰¹ The AM Daytimers Association alone supports a commercial AM station's use of a reserved band FM translator, as long as its use is at nighttime or reduced power.¹⁰²

32. We conclude that we will allow AM stations to enter into agreements for the rebroadcast of their station on FM translators in the non-reserved band licensed to unrelated entities. Our goal here is to be flexible in finding ways to allow AM stations to overcome their signal limitations, and allowing this arrangement when an FM translator meets the contour restrictions for AM fill-in service will serve that goal. However, we will not extend this policy to FM translators in the reserved band. Historically, few NCE stations have operated on the AM band, and therefore we do not see a significant need for reserved band FM translators for AM fill-in service. We also believe that allowing rebroadcasting of AM stations by reserved band FM translators would undermine the distinction between the reserved and non-reserved bands and present the potential for abuse of our NCE rules by reserved band FM translators. We also will not modify our financial support rule to allow AM licensees to provide financial support for a translator in situations where an FM licensee cannot do so.¹⁰³ Our current financial support rule has worked well to prevent licensees from using FM translators to extend their signals beyond their protected coverage contour. We see no basis in the record for any departure from the rule for AM licensees.

E. Simulcasts or Program Origination on LPFMs.

33. The NPRM asked whether it would be appropriate to allow licensees of AM Class C and Class D stations to simulcast and/or originate programming over an LPFM station as a fill-in service similar to the proposed FM translator fill-in service at times when the AM station is not authorized to operate at its authorized daytime power. If this were deemed desirable, the NPRM asked for comments on how this could be accomplished in a manner that is consistent with the LPFM service and eligibility rules.¹⁰⁴ Most parties who commented on this issue supported the idea of allowing the simulcast and/or origination of programming over LPFM stations.¹⁰⁵ Several commenters support the proposal as long as the LPFM station's signal meets the criteria set forth for translators and the LPFM station's participation complies with the Commission's programming and technical rules governing LPFM service.¹⁰⁶ Three commenters argue that only AM stations that are licensed to the same community as the LPFM and/or completely encompass the LPFM's 60 dBu contour within the AM station's 5 mV/m day contour should be allowed to provide programming to the LPFM.¹⁰⁷ Another commenter supports allowing AM stations to simulcast/originate programming over an LPFM station, but the criteria should remain that the FM signal should always be the lesser of the (1) AM's 2 mV/m daytime contour or (2) within a 25-mile radius of the AM tower site, as long as harmful interference is not given to already licensed services.¹⁰⁸

34. Prometheus opposes the ownership or use of an LPFM station for the rebroadcast of an AM signal.¹⁰⁹ It notes that rebroadcast of AM station by an LPFM station would likely include commercials.

¹⁰¹ Comments of Holston at 4; Comments of Pocahontas at 2-3; Comments of OneCom, Inc. at 6; Comments of NPR at 5; Comments of Timothy Cutforth at 4.

¹⁰² Comments of AM Daytimers Association at 3.

¹⁰³ See 47 C.F.R. § 74.1232(e).

¹⁰⁴ 22 FCC Rcd at 15898.

¹⁰⁵ Comments of Christian Broadcasting at 4; Comments of Talley Broadcasting at 6; Comments of Morgan County Broadcasting Company, Inc. at 2.

¹⁰⁶ Comments of NAB at 11-12; Comments of Bart Walker at 3.

¹⁰⁷ Comments of James Foster at 3; Comments of Graig Jenkins at 1; Comments of Larry Langford at 1.

¹⁰⁸ Comments of Bart Walker at 3.

¹⁰⁹ See Comments of Prometheus at 1. See also Comments of Cullen Zethmayr at 3; Comments of James Whitaker at 4.

which are prohibited in the LPFM service.¹¹⁰ It further notes that, unlike the selection of AM broadcasters, LPFM licenses are awarded based on the applicant's "established community presence" and commitment to "local program origination."¹¹¹ Meridian Broadcasting, Inc. also opposes commercial LPFM operations as inconsistent with the NCE purpose of LPFM stations.¹¹² Progressive Broadcasting Systems, Inc. asserts that this proposal would turn the next round of LPFM applications into targets for "AM nighttime translators" with limited daytime value to the community.¹¹³

35. We agree with Prometheus that the LPFM service and eligibility rules generally are at cross-purposes with the idea of allowing LPFM stations to rebroadcast AM signals. Having recently addressed the LPFM service and eligibility rules, we do not see any benefit in modifying those service rules in the context of this unrelated rulemaking.¹¹⁴ To the extent that an LPFM licensee and an AM licensee may find a mutually beneficial way to cooperate in rebroadcasting the AM signal on the LPFM station in a manner that complies with the LPFM rules, they may do so.

F. Technical Issues.

36. The NPRM tentatively concluded that the appropriate limit for the coverage of an FM translator is 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.¹¹⁵ Several commenters express support for these criteria,¹¹⁶ while others contend that they are too restrictive and should be adjusted to reach the greater of the daytime contour or a 25-mile circle.¹¹⁷ OneCom argues that this approach will not introduce new market area to an AM station, but will "merely account for those AM stations which are directional during daytime hours with patterns that may not even allow the translator to be co-located at the AM transmitter site."¹¹⁸ Similarly, several commenters propose that the Commission should permit the carriage of AM signals on FM translators within the AM station's 0.5 mV/m contour, asserting that this would more accurately reflect the protected service contour of AM stations.¹¹⁹ Some commenters suggest that the Commission should amend the Rules to allow AM broadcasters using FM translators to operate above the current 250 watt limit set forth in Section 74.1235 of the Rules, arguing that such a revision would allow AM broadcasters to effectively use one translator as a fill-in, lower the number of translator license applications, and make more efficient

¹¹⁰ See Comments of Prometheus at 6. One commenter argues that the Rules should be amended to ensure that an LPFM will translate the AM signal without any alteration to eliminate the commercial content, arguing that the public would otherwise tune into the advertisement-free LPFM station, rather than the AM station. See Comments of James Foster at 3. See also Comments of Larry Langford at 5.

¹¹¹ See Reply Comments of Prometheus at 3.

¹¹² Comments of Meridian at 2. See also Comments of Pocahontas at 3; Comments of Landmark Baptist Church at 3; Comments of Cullen K. Zethmayr at 3-4.

¹¹³ See Comments of Progressive Broadcasting at 3.

¹¹⁴ See *LPFM Third Report*, 22 FCC Red at 21912.

¹¹⁵ 22 FCC Red at 15898.

¹¹⁶ Comments of NAB at 9-10; Comments of Morgan Murphy Media at 2; Comments of Clear Channel at 13; Comments of Hernando Broadcasting Company, Inc. at 2; Comments of Larry Langford at 6.

¹¹⁷ Comments of Progressive Comments at 4; Comments of Richardson Broadcasting Corp. at 6.; Comments of Pocahontas at 6; Comments of OneCom at 4-5; Comments of Sutton Broadcasting at 7-8. Comments of United Ministries at 1.

¹¹⁸ Comments of OneCom at 4.

¹¹⁹ Comments of Miller Communications Inc. at 2; Reply Comments of Urban Radio Licenses at 5-6; Comments of MG Media at 2.

use of the spectrum.¹²⁰ Big River Radio and other commenters assert that the Commission should permit alternate delivery method of a signal, such as telephone lines, microwave, or via fiber optic cable.¹²¹

37. Many commenters support allowing some *de minimis* portion of the translator's signal to extend outside the 2 mV/m contour,¹²² contending that a *de minimis* extension policy would provide a measure of flexibility that would be helpful in designing fill-in translator service.¹²³ Some commenters support the use of Figure M-3 values for measuring conductivity,¹²⁴ while others state that parties should be allowed to prove that the benchmark does not accurately portray the measured conductivity.¹²⁵ Richardson Broadcasting Corp. suggests that terrain shielding and Longley Rice are more accurate for predicting contour.¹²⁶ Several parties voice support for Eastern Sierra's proposal that the radius be extended to 35 miles for FM translators in Zone II due to the size of radio markets in Zone II.¹²⁷ Clear Channel supports a uniform rule change without distinct rules for FM translators in Zone II, stating that stations with "large 2 mV/m contours should not be permitted to serve an area with a larger radius than their counterparts in other zones."¹²⁸

38. Based on the comments received and our experience to date with our interim STA policy, we conclude that the proposed limit on the 60 dBu contour of the FM translator (*i.e.*, the entire 60 dBu contour must be encompassed by the lesser of the 2 mV/m daytime contour of the AM station or the 25-mile radius of the AM transmitter site) is appropriate. While we recognize that AM stations typically have a protected daytime contour of 0.5 mV/m, we believe the 2 mV/m daytime contour more accurately depicts the core market area for the majority of AM stations, operating at an effective radiated power level of 2.5 kW or less.¹²⁹ We also recognize that AM stations operating at a higher power level often have extremely large 2 mV/m daytime contours, and in this situation the 25-mile limit will apply to

¹²⁰ See Comments of Samuelson-Glushko at 36. See also Comments of Cullen K. Zethmayr at 1; Comments of Larry Langford at 1; Comments of D.J. Everett at 1; Comments of James Whitaker at 3; Comments of James Foster at 2; Comments of Eastern Sierra at 2-3. But see Reply Comments of Holston at 3 and Reply Comments of NAB at 12 (each stating that the limit should remain at 250 watts). CBS argues that the Commission's proposal would create "translators of a vastly different scale" with powers in excess of 50 kilowatts. Comments of CBS at 3.

¹²¹ Comments of Big River Radio, Inc. at 6. See also Comments of Holston at 6-7; Comments of Morris Broadcasting at 6-7; Comments of Timothy Cutforth at 2; Comments of Samuelson-Glushko at 33-34. Other commenters state that similar protections that were proposed in the recent *LPFM Third Report* should also be offered to FM translator stations, and that the filing of displacement applications should be allowed. See Comments of Richardson Broadcasting at 8-9; Comments of Broadcast Communications, Inc. at 5; Comments of Sutton Broadcasting at 10-11.

¹²² See Comments of Christian Broadcasting at 4; Comments of Pocahantas at 3 (supports *de minimis* but no more than 50 percent); Comments of MG Media at 6 (no more than 30 percent); Comments of OneCom at 5 (no more than 25 percent); Comments of Mark D. Humphrey at 2 (no more than 15 percent); Comments of Talley at 5 (no more than 10 percent); Comments of Broadcast Communications, Inc. at 5 (no more than 20 percent); Reply Comments of NAB at 15 (supports *de minimis* by waiver); Comments of Colquitt at 1 (*de minimis* amount should not exceed 1,000 persons). But see Comments of Clear Channel at 13 (opposes *de minimis*).

¹²³ See Comments of Meridian Broadcasting, Inc. at 4; Comments of Landmark Baptist Church at 3.

¹²⁴ Comments of OneCom at 6; Comments of Mark D. Humphrey at 1; Comments of Eastern Sierra at 5; Comments of George Simmons at 5; Comments of Bart Walker at 4; Comments of Larry Langford at 6.

¹²⁵ Comments of Meridian at 3; Comments of Progressive Broadcasting at 4; Comments of Talley Broadcasting at 5; Comments of MG Media at 2; Comments of Colquitt at 1.

¹²⁶ Comments of Richardson Broadcasting at 6-7.

¹²⁷ Comments of Astro Enterprises, Inc. at 3; Comments of Landmark Baptist Church at 3; Comments of Morgan Murphy Media at 2.

¹²⁸ See Comments of Clear Channel at 13.

¹²⁹ See Comments of Larry Langford at 6.

ensure that fill-in cross-service translators are used in the AM station's core market area, rather than in a fringe area that may be part of or near another radio market. We do not believe that allowing a *de minimis* exception to this standard, departing from our standard signal coverage methodology or applying a different standard to proposed translators in Zone II, would provide meaningful benefits, and we find that a single, clear-cut standard provides the benefits of administrative efficiency, predictability and minimization of disputes over compliance issues. Our decision here is intended to serve the limited purpose of allowing AM stations to fill in service voids, and not to expand service, even on a *de minimis* basis. Other suggestions made by commenters involve issues that apply to FM translators in general, rather than the specific issue of FM translators being used for AM fill-in service. Such issues are outside the scope of this proceeding. We note, however, that the Commission intends for its general FM translator rules¹³⁰ to apply to cross-service translators and we urge AM licensees to familiarize themselves thoroughly with the restrictions imposed in those rules prior to applying for approval to acquire such a translator.

IV. PROCEDURAL MATTERS

Final Regulatory Flexibility Act Analysis.

39. The Final Regulatory Flexibility Analysis is attached to this NPRM as Appendix B.

Final Paperwork Reduction Act Analysis.

40. This Report and Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 ("PRA").¹³¹ It will be submitted to the Office of Management and Budget ("OMB") for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002,¹³² we have considered how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees." We find that the modified information collection requirements must apply fully to small entities (as well as to others) to ensure compliance with our FM translator rules, as described in the Report and Order.

Congressional Review Act.

41. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.

Additional Information.

42. For additional information on this proceeding, contact Tom Hutton, tom.hutton@fcc.gov, or James Bradshaw, james.bradshaw@fcc.gov, of the Media Bureau, (202) 418-2700.

V. ORDERING CLAUSES

43. Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 1, 4(i) and (j), 301, 302, 303, 307, 308, 309, 319, and 324 of the Communications Act of 1934, as amended, 47 U.S.C §§ 151, 154(i) and (j), 301, 302, 303, 307, 308, 309, 319, and 324, this Report and Order and the rule modifications attached hereto as Appendix A ARE ADOPTED, effective upon the later of: (a) thirty (30) days after publication of the text or a summary thereof in the Federal Register; or (b) announcement in the Federal Register of OMB approval of those rules and requirements involving PRA burdens. It is our intention in adopting these rule changes that, if any of the rules that we retain, modify or adopt today,

¹³⁰ See, e.g., 47 C.F.R. § 74.1231.

¹³¹ The Paperwork Reduction Act of 1995 ("PRA"), Pub. L. No. 104-13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

¹³² Pub. L. No. 107-198, 116 Stat 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); see 44 U.S.C. 3506(c)(4).

or the application thereof to any person or circumstance, are held to be unlawful, the remaining portions of the rules not be deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.

44. IT IS FURTHER ORDERED that the "Petition for Rulemaking of the National Association of Broadcasters," RM-11338 (filed July 14, 2006) IS GRANTED TO THE EXTENT INDICATED HEREIN and IS OTHERWISE DENIED.

45. IT IS FURTHER ORDERED that the "Petition for Rulemaking of the American Community AM Broadcasters Association," RM-9419 (filed August 13, 1997) IS DISMISSED.

46. IT IS FURTHER ORDERED that the Media Bureau will cancel all AM rebroadcast STAs and dismiss all pending AM rebroadcast STA requests as of the effective date of this Report and Order.

47. IT IS FURTHER ORDERED that the Reference Information Center, Consumer Information Bureau, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rule Changes

Part 74 of the Code of Federal Regulations is amended as follows:

PART 74 -- EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. Section 74.1201 is amended by revising paragraphs (a), (b), (c), (d), (e), and (g), and adding paragraph (j), as follows:

§ 74.1201 Definitions.

(a) FM translator. A station in the broadcasting service operated for the purpose of retransmitting the signals of an AM or FM radio broadcast station or another FM broadcast translator station without significantly altering any characteristics of the incoming signal other than its frequency and amplitude, in order to provide radio broadcast service to the general public.

(b) Commercial FM translator. An FM broadcast translator station which rebroadcasts the signals of a commercial AM or FM radio broadcast station.

(c) Noncommercial FM translator. An FM broadcast translator station which rebroadcasts the signals of a noncommercial educational AM or FM radio broadcast station.

(d) Primary station. The AM or FM radio broadcast station radiating the signals which are retransmitted by an FM broadcast translator station or an FM broadcast booster station.

(e) AM or FM radio broadcast station. When used in this Subpart L, the term AM broadcast station or AM radio broadcast station or FM broadcast station or FM radio broadcast station refers to commercial and noncommercial educational AM or FM radio broadcast stations as defined in §2.1 of this chapter, unless the context indicates otherwise.

* * * * *

(g) Translator coverage contour. For a fill-in FM translator rebroadcasting an FM radio broadcast station as its primary station, the FM translator's coverage contour must be contained within the primary station's coverage contour. For purposes of this rule section, the coverage contour of the FM translator has the same field strength value as the protected contour of the primary FM station (*i.e.*, for a commercial Class B FM station it is the predicted 0.5 mV/m field strength contour, for a commercial Class B1 FM station it is the predicted 0.7 mV/m field strength contour, and for all other classes of FM stations it is the predicted 1 mV/m field strength contour). The coverage contour of an FM translator rebroadcasting an AM radio broadcast station as its primary station must be contained within the lesser of the 2 mV/m daytime contour of the AM station and a 25-mile (40 km) radius centered at the AM transmitter site. The protected contour for an FM translator station is its predicted 1 mV/m contour.

* * * * *

(j) AM Fill-in area. The area within the lesser of the 2 mV/m daytime contour of the AM radio broadcast station being rebroadcast and a 25-mile (40 km) radius centered at the AM transmitter site.

2. Section 74.1231 is amended by revising paragraphs (a) and (b), adding new paragraph (h), as follows, and changing existing paragraph (h) to (i):

§ 74.1231 Purpose and permissible service.

(a) FM translators provide a means whereby the signals of AM or FM broadcast stations may be retransmitted to areas in which direct reception of such AM or FM broadcast stations is unsatisfactory due to distance or intervening terrain barriers, and a means for AM Class D stations to continue operating at night.

(b) An FM translator may be used for the purpose of retransmitting the signals of a primary AM or FM radio broadcast station or another translator station the signal of which is received directly through space, converted, and suitably amplified, and originating programming to the extent authorized in paragraphs (f), (g), and (h) of this section. However, an FM translator providing fill-in service may use any terrestrial facilities to receive the signal that is being rebroadcast. An FM booster station or a noncommercial educational FM translator station that is operating on a reserved channel (Channels 201-220) and is owned and operated by the licensee of the primary noncommercial educational station it rebroadcasts may use alternative signal delivery means, including, but not limited to, satellite and terrestrial microwave facilities. Provided, however, that an applicant for a noncommercial educational translator operating on a reserved channel (Channel 201-220) and owned and operated by the licensee of the primary noncommercial educational AM or FM station it rebroadcasts complies with either paragraph (b)(1) or (b)(2) of this section:

(1) The applicant demonstrates that:

(i) The transmitter site of the proposed FM translator station is within 80 kilometers of the predicted 1 mV/m contour of the primary station to be rebroadcast; or,

(ii) The transmitter site of the proposed FM translator station is more than 160 kilometers from the transmitter site of any authorized full service noncommercial educational FM station; or,

(iii) The application is mutually exclusive with an application containing the showing as required by § 74.1231(b)(2) (i) or (ii) of this section; or,

(iv) The application is filed after October 1, 1992.

(2) If the transmitter site of the proposed FM translator station is more than 80 kilometers from the predicted 1 mV/m contour of the primary station to be rebroadcast or is within 160 kilometers of the transmitter site of any authorized full service noncommercial educational FM station, the applicant must show that:

(i) An alternative frequency can be used at the same site as the proposed FM translator's transmitter location and can provide signal coverage to the same area encompassed by the applicant's proposed 1 mV/m contour; or,

(ii) An alternative frequency can be used at a different site and can provide signal coverage to the same area encompassed by the applicant's proposed 1 mV/m contour.

Note: For paragraphs 74.1231(b) and 74.1231(i) of this section, auxiliary intercity relay station frequencies may be used to deliver signals to FM translator and booster stations on a secondary basis only. Such use shall not interfere with or otherwise preclude use of these frequencies for transmitting aural programming between the studio and transmitter location of a broadcast station, or between

broadcast stations, as provided in paragraphs 74.531 (a) and (b) of this part. Prior to filing an application for an auxiliary intercity relay microwave frequency, the applicant shall notify the local frequency coordination committee, or, in the absence of a local frequency coordination committee, any licensees assigned the use of the proposed operating frequency in the intended location or area of operation.

* * * * *

(h) An FM translator station that rebroadcasts a Class D AM radio broadcast station as its primary station may originate programming during the hours the primary station is not operating, subject to the provisions of Section 74.1263(b).

3. Section 74.1232 is amended by adding the following sentences to the end of paragraph (d):

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, or, in the case of an FM translator authorized to operate on an unreserved channel, to a party with a valid rebroadcast consent agreement with such a permittee or licensee to rebroadcast that station as the translator's primary station. In addition, any FM translator providing service to an AM fill-in area must have been authorized by a license or construction permit in effect as of May 1, 2009. A subsequent modification of any such FM translator will not affect its eligibility to rebroadcast an AM signal.

4. Section 74.1263 is amended by revising paragraph (b), as follows:

§ 74.1263 Time of operation.

(b) An FM booster or FM translator station rebroadcasting the signal of an AM or FM primary station shall not be permitted to radiate during extended periods when signals of the primary station are not being retransmitted. Notwithstanding the foregoing, FM translators rebroadcasting Class D AM stations may continue to operate during nighttime hours only if the AM station has operated within the last 24 hours.

5. Section 74.1284 is amended by revising paragraphs (b) and (c), as follows:

§ 74.1284 Rebroadcasts

(b) The licensee of an FM translator shall not rebroadcast the programs of any AM or FM broadcast station or other FM translator without obtaining prior consent of the primary station whose programs are proposed to be retransmitted. The Commission shall be notified of the call letters of each station rebroadcast and the licensee of the FM translator shall certify that written consent has been received from the licensee of the station whose programs are retransmitted.

(c) An FM translator is not authorized to rebroadcast the transmissions of any class of station other than an AM or FM broadcast station or another FM translator.

APPENDIX B

Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act ("RFA")¹ an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Notice of Proposed Rulemaking ("Cross Service FM Translator Notice")* to this proceeding.² The Commission sought written public comment on the proposals in the *Cross Service FM Translator Notice*, including comment on the IRFA.³ The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.⁴

Need for and Objectives of the Rules

2. The Commission's current rules preclude an FM translator from rebroadcasting the signal of any station other than that of any FM radio broadcast station or FM translator. The *Cross Service FM Translator Notice* proposed to amend the Commission's Rules to allow AM broadcast stations to license and operate FM translator stations. Based on the support for this proposal in the record and the experience gained by dozens of AM stations operating FM translators pursuant to special temporary authority as contemplated by the *Cross Service FM Translator Notice*, the Commission concluded that allowing AM stations to use currently authorized FM translators to provide fill-in service will benefit the listening public.

3. Specifically, allowing AM stations to use currently authorized FM translator stations to rebroadcast programming within their intended service areas will benefit the public by improving the signal quality and availability of AM programming, overcoming limitations imposed by interference, weak signal strength, channel congestion and receiver quality. This positive effect will further the goals of localism, competition and diversity in broadcasting. The use of an FM translator is at the option of the broadcast licensee, so this is a permissive rule change rather than a new requirement imposed on licensees.

4. The Order adopts rule changes based on the technical proposal submitted by the National Association of Broadcasters, which would allow AM stations to operate FM translators to retransmit their AM service as a fill-in service, as long as no portion of the 60 dBu contour of the FM translator extends beyond 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. In order to protect opportunities for future LPFM stations in the already crowded FM spectrum, the Order limits the scope of FM translators that can be used to retransmit AM programming to those FM translators authorized by the Commission through licenses or construction permits in effect as of May 1, 2009.

5. Prior to this Order, the Commission's FM translator rules excluded AM stations from eligibility for this service. Accordingly, the Order adopts certain rule changes necessary to expand the purpose and permissible service of FM translator stations to allow their use as a fill-in service for AM radio stations, including: (a) eligibility and ownership rules for FM translators, allowing AM licensees to acquire fill-in FM translator stations or enter into rebroadcast consent agreements with FM translator stations for fill-in service; and (b) the rule on FM translator program origination to allow Class D AM

¹ See 5 USC §603. The RFA, see 5 USC §601 - 612., has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

² *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Notice of Proposed Rulemaking, 22 FCC Red 15890, 15899 ¶ 21, and Appendix B.

³ *Id.*

⁴ See 5 USC §604.

stations to originate programming on fill-in FM translators during the hours that the Class D stations are not authorized to operate. The Order notes that AM licensees will not be allowed to use reserved band FM translators or low power FM stations for fill-in service. The Order also makes clear that the Commission will not allow licensees to use combinations of FM translator stations to create *de facto* FM stations.

Legal Basis

6. The authority for the action taken in the Report and Order is contained in Sections 1, 4(i) and (j), 301, 302, 303, 307, 308, 309, 319, and 324 of the Communications Act of 1934, as amended, 47 U.S.C §§ 151, 154(i) and (j), 301, 302, 303, 307, 308, 309, 319, and 324.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

7. The Commission received no comments in direct response to the IRFA. However, the Commission received comments that discuss issues of interest to small entities. These comments are discussed in the section of this FRFA discussing the steps taken to minimize significant negative impact on small entities, and the significant alternatives considered.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

8. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein.⁵ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁷ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁸

9. *Radio Stations.* The SBA defines a radio broadcast station as a small business if such station has no more than \$7 million in annual receipts.⁹ Business concerns included in this industry are those primarily engaged in broadcasting aural programs by radio to the public.¹⁰ According to Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database on September 23, 2008, about 10,520 of 11,012 commercial radio stations (or about 95 percent) have revenues of \$7 million or less and thus qualify as small entities under the SBA definition. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations¹¹ must be included. Our estimate, therefore, likely overstates the number of small entities that might be

⁵ 5 U.S.C. § 604(a)(3).

⁶ *Id.* § 601(6).

⁷ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration (“SBA”) and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁸ 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast radio. Accordingly, the Commission’s statistical account of radio stations may be over-inclusive.

⁹ See 13 C.F.R. § 121.201, NAICS Code 515112.

¹⁰ *Id.*

¹¹ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 C.F.R. § 121.103(a)(1).

affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

10. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

11. *FM translator stations and low power FM stations.* The same SBA definition that applies to radio broadcast licensees would apply to FM translator stations and low power FM (“LPFM”) stations. The SBA defines a radio broadcast station as a small business if such station has no more than \$7 million in annual receipts.¹²

12. Currently, there are approximately 4131 licensed FM translator and booster stations and 771 licensed LPFM stations.¹³ Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition.

Description of Projected Reporting, Recordkeeping and other Compliance Requirements

13. The Report and Order provides for no changes in the current application filing and processing procedures for FM translator stations, except that FCC Forms 303-S, 345, 349 and 350 (including related instructions) will be modified to reflect the revised purpose and eligibility changes in the rules applicable to FM translator stations. Unless otherwise indicated, the Report and Order provides for no changes in the reporting, recordkeeping and other compliance requirements for FM translator stations.

Steps Taken to Minimize Significant Negative Impact on Small Entities, and Significant Alternatives Considered

14. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹⁴

15. The Report and Order adopts rule changes that will benefit some AM radio stations by giving them the opportunity to address daytime and nighttime service problems by using an FM translator to provide better signal coverage. An example of a daytime service problem is interference from a man-made source such as fluorescent lights and computers. An example of a nighttime service problem is skywave interference from other AM stations. However, the use of FM translator stations by AM radio stations is not mandatory, and therefore some stations may not seek to use an FM translator for fill-in service. Other AM stations may not be able to locate and purchase an FM translator for their service areas. For these reasons, the potential benefits of the rule changes may not be realized by all AM radio stations.

¹² See 13 C.F.R. § 121.201, NAICS Code 515112.

¹³ See *News Release*, “Broadcast Station Totals as of December 31, 2006” (rel. Jan. 26, 2007) (http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-269784A1.doc).

¹⁴ 5 U.S.C. § 603(c)(1)-(c)(4)

16. With respect to the issue of the possible disparate impact of the proposed rules on smaller entities, we believe that many small business broadcasters will benefit from the opportunity to improve their local signal coverage as a result of the rule changes. The record in the proceeding also indicates that for AM radio stations using FM translators to provide fill-in service, there are benefits in signal coverage for smaller as well as larger entities. Furthermore, even if some smaller AM stations do not opt to use fill-in FM translators, the alternative benefits to the radio industry in general will offset this possible impact of the rules we adopt today. As a result of using fill-in FM translators, many AM stations will become more competitive by offering improved and more varied programming, much of which may advance service to local communities, the FM translator service will be improved, and the future of LPFM service will remain under existing protections.

17. Specifically, the record in the proceeding also indicates that licensees of FM translator stations will likely benefit from the expansion in the scope of permitted service by those stations, because this will increase the demand for, and the value of, their FM translators. The record in the proceeding includes arguments that the rule changes will harm the future development of LPFM service by limiting the availability of spectrum available for that service in future application windows. The Order acknowledges this potential for harm and addresses it by limiting the scope of the rule changes to FM translators already authorized by the Commission. The Commission has noted that the next opportunity for filing applications for new stations will be for LPFM stations, and the limitation adopted in the Order maximizes the opportunities that will be available to potential LPFM applicants in that window. The Order also specifically notes that the Commission does not intend to allow parties to circumvent this limitation through special temporary authority for new FM translator service to retransmit AM station programming.

18. One issue in the proceeding regarding small entities is whether the rule changes should be implemented immediately for all AM stations or phased in based on an AM station's class, ownership or competitive posture. The Commission determined that phased-in implementation is not necessary in light of the limitation of the rule change to already authorized FM translator stations. The Commission also found that the public interest benefits and the benefits to AM station operators will be realized more quickly with immediate implementation than with phased-in implementation because those benefits will be available at once to all AM licensees instead of being made available over time to different types of licensees.

Report to Congress

19. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.¹⁵ In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.¹⁶

¹⁵ See 5 U.S.C. § 801(a)(1)(A).

¹⁶ See *id.* § 604(b).

**STATEMENT OF
COMMISSIONER ROBERT M. MCDOWELL**

Re: Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, MB Docket No. 07-172, RM-11338; *Report and Order*

Today the Commission gives a much-needed and overdue shot in the arm to AM radio stations. With this Order, we provide AM stations an opportunity to strengthen the contributions that they make in furthering our long-standing public policy goals of localism, competition and diversity in broadcasting. By permitting the nation's oldest broadcast service to use existing FM translators to fill coverage gaps within their authorized contours, we hope to bolster AM stations' ability to clearly reach and attract local listeners throughout daytime *and* evening hours. The record in this proceeding shows that the Commission's previous efforts to assist AM broadcasters to overcome their technical constraints have not been successful – in part because other wireless uses have proliferated over time, fragmenting the audio marketplace while also exacerbating the interference problems that makes some AM stations hard to hear.

Competitive markets cannot deliver a full measure of benefits to consumers if consumers cannot take advantage of all of their options. AM stations' inability to reach all potential listeners within their existing authorized contours throughout the 24-hour day undermines our goals of fostering competition, localism and diversity because it deprives listeners of the news and talk programming that has become the hallmark of the AM band. The record before us confirms that many AM broadcasters do an excellent job of serving targeted demographics and interests within their communities. Furthermore, the evidence shows that AM broadcasters provide hyper-local information to many areas of the country, especially small towns and rural areas that might otherwise be deprived of such content. The rule changes we adopt here reflect a reasonable compromise to give AM broadcasters more options and, at the same time, allow for the future growth of new competitors in the low power FM service.

I am pleased that we adopt this relief measure during this extraordinarily difficult time for broadcasters. Traditional media in general face unprecedented challenges to their survival. Facing fierce competition from a plethora of "new media" market entrants, traditional media's decades-old business models are being shaken to their core. At the same time, the most severe economic downturn in generations is forcing both broadcast stations and daily newspapers out of business. As a result of these two "perfect storms" colliding, we have lost some of those diverse media "voices" that we counted upon in the past to inform and educate our citizenry. I hope today's deregulatory action will help give AM broadcasters the relief they need to compete more effectively in this tumultuous marketplace.