

**COMMENTS ON THE THIRD FURTHER NOTICE OF PROPOSED RULE MAKING
FCC 11-105**

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III. A. (2) 18. “We seek comment on whether the Commission should take cognizance of the differing eligibility, licensing, and service rules for the translator and LPFM services in assessing the “needs of a community” for additional radio service. ... What specific translator application procedures should the Commission adopt to give effect to Section 5(2)?”

The Commission should consider reversing the restrictions on ownership of a non-fill-in FM translator using “alternative delivery means”. These restrictions are found in 74.1231(b). They require that a non-fill-in translator which receives the primary station via means other than over-the-air reception must be owned & operated by the licensee of the primary station.

The Commission should consider reversing this clause to require that such a translator not be owned & operated by the licensee of the primary station, and not receive material support from the primary station.¹

Such a reversal would make it far more likely non-fill-in translators would only exist in places where local residents want, and are willing to pay for, the programming of the primary stations they relay. Speculation – the licensing of a translator solely in the hope that someone will buy it at a markup – would be greatly limited, as the number of possible buyers would be limited. At the same time, in cases where a distant station offers programming of special interest to a local community, it would continue to be possible for that community to sponsor a non-fill-in translator to deliver that programming.²

III. A. (3) 20. “Given that the cut-off rules are a principal characteristic of the two services' co-equal status and that “stations” and “applications” were used interchangeably in the Commission proceeding before the LCRA was adopted, it seems reasonable to assume that Congress intended the same meaning when it used the term “station” in the LCRA. If so interpreted, the Commission would lack authority to adopt a processing policy which includes the dismissal of prior-filed translator applications in conflict with subsequently filed LPFM applications.”

If LPFM applications were filed later because potential LPFM operators “dragged their feet” -- didn't file promptly – then this might be a reasonable interpretation. However, it was the Commission's own filing window process that resulted in LPFM applications being filed later than translator applications. LPFM applications filed prior to translator applications would have been dismissed as prematurely filed. It seems both unfair, and inconsistent with the intent of the LCRA, to penalize LPFM applicants for Commission procedures beyond their control.

Should the Commission find it must consider prior-filed applications first, maybe an appropriate procedure would be to measure “prior-filed” in terms of how soon an application was filed after the appropriate window opened? For example, a LPFM application filed on the second day of a 2001 filing window would be regarded as “prior-filed” if compared to a translator application filed on the fourth day of a 1999 window. Such a procedure would factor out delays in FCC process and reflect the diligence of the respective applicants.

For future LPFM and translator applications, after existing applications are disposed of and a LPFM window is held, (presumably next year) the Commission should consider holding LPFM and translator filing windows simultaneously in the future.

III. C. 34. “We also seek comment on processing policies to deter the potential for speculative abuses among the remaining translator applicants.”

¹ The wording in 74.1232(d) and (e) might be helpful here.

² It might also allow for some creative situations not currently allowed – for example, the relay of foreign stations such as Canada's CBC into U.S. communities.

The Commission may wish to extend the multiple-ownership regulations applicable to full-service stations to translators. Both the per-market cap and the nationwide reach regulations might be applied.

III. D. 37. “Accordingly, we request comments on the issue of whether cross-service³ translators should remain limited to those authorized as of May 1, 2009 or whether the limit should be extended to include those applications which were on file as of May 1, 2009.”

As long as policies are adopted to limit speculation and ensure spectrum for LPFM, it is difficult to see a need to maintain any limits on which FM translators may be used to relay AM stations. (beyond the regulations prohibiting the relay of commercial stations on frequencies below 92MHz)

While possibly outside the scope of this proceeding, one risk inherent in allowing cross-service translators, is that the practice “props up” AM stations with very poor nighttime AM signals. Many Class D AM stations' nighttime operations contribute far more to the nighttime AM noise floor than they do to useful AM coverage. The Commission should consider requiring Class D stations using FM translators to shut down their AM transmitters at night.⁴

3 (FM translators relaying AM stations)

4 At the least, they should be required to shut down the AM transmitter at night if all areas within the nighttime AM 1mV/m contour are also within the FM translator's 60dBu contour – if the FM transmitter can be expected to replace all of the AM transmitter's nighttime coverage.