

DEC 16 2013

FCC Mail Room



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December 11, 2013

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

RE: In the matter of Revitalization of the AM Radio Service
 MB Docket number 13-249

Dear Ms. Dortch:

As managing member of Malkan Interactive Communications, LLC, and an owner of 1440 KEYS FM in Corpus Christi, TX, I submit the attached comments in the referenced matter regarding proposed AM revitalization.

An original and (4) four copies are enclosed. The Commission's thoughtful consideration of these comments will be greatly appreciated.

Respectfully submitted,

Hope Malkan, member
Malkan Interactive Communications, LLC
2117 Leopard St.
Corpus Christi, TX 78408

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Federal Communications Commission

FCC 13-139

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

In the Matter of)
)
Revitalization of the AM Radio Service) MB Docket No. 13-249

NOTICE OF PROPOSED RULE MAKING

Adopted: October 29, 2013

Released: October 31, 2013

Comment Date: (60 days after Federal Register publication)

Reply Comment Date: (90 days after Federal Register publication)

By the Commission: Acting Chairwoman Clyburn and Commissioner Pai issuing separate statements,

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I. INTRODUCTION

1. We adopt this *Notice of Proposed Rulemaking* ("NPRM") to introduce a number of possible improvements to the Amplitude Modulation, or AM, radio service and the rules pertaining to AM broadcasting.¹ We seek to revitalize further the AM band by identifying ways to enhance AM broadcast quality and proposing changes to our technical rules that would enable AM stations to improve

¹ See Subpart A of Part 73 of the Code of Federal Regulations, 47 C.F.R. §§ 73.1 – 73.190.

Modify AM Antenna Efficiency Standards. In addition, we seek suggestions for other reforms that could lead to revitalization of the AM service.

A. OPEN FM TRANSLATOR FILING WINDOW EXCLUSIVELY FOR AM LICENSEES AND PERMITTEES

11. FM translator stations can be used to rebroadcast the signal of a primary AM station on an FM frequency. Under the Commission's current rules, AM stations are allowed to use authorized FM translator stations (*i.e.*, those now licensed or authorized with construction permits that have not expired) to rebroadcast their AM signals, provided that no portion of the 60 dB μ contour of any such FM translator station extends beyond the lesser of (a) a 25-mile radius from the AM transmitter site, and (b) the 2 millivolts per meter (mV/m) daytime contour of the AM station.³⁶

12. When an AM broadcaster acquires an FM translator, the broadcaster typically must relocate the translator both to meet the station's needs and to comply with the coverage contour requirements outlined above. Under the Commission's current FM translator rules, changes to FM translator facilities can be either major or minor. A major change is one either proposing a translator frequency more than three channels from its currently authorized transmitting frequency that is also not an intermediate frequency, or a physical move to a location at which the proposed 1 mV/m contour does not overlap with the currently authorized 1 mV/m contour.³⁷ Applications for such major changes may only be made during specific announced filing windows.³⁸ However, an FM translator owner may make a minor change – which meets both channel and contour overlap requirements described above – at any time.

13. The regulatory distinction between major and minor changes has led some translator licensees to attempt what would otherwise be dismissed as impermissible major changes, by filing multiple minor modification applications to “hop” the translator to new locations.³⁹ Although no rule specifically prohibits this practice, the Media Bureau has concluded that “hopping” subverts the purpose of the Commission's minor change requirement and, therefore, that the Commission may deny applications resulting in multiple “hops” pursuant to Section 308(a) of the Communications Act of 1934, as amended (the “Communications Act”).⁴⁰ At the same time, however, the contour overlap requirements for relocating FM translators, coupled with the fill-in coverage area restrictions on locating FM translators for use by AM broadcasters, limit the supply of available FM translators for individual AM licensees. Although a new FM translator filing window might alleviate this situation, opening the window to all applicants would require AM broadcasters seeking to establish new fill-in translators to compete at auction with other, non-AM broadcaster applicants. Many of these competing applicants might foreclose opportunities for AM-rebroadcast translators by proposing mutually exclusive translator facilities, while others might apply within the contours of AM stations for the specific purpose of obstructing a local AM

³⁶ 2009 Translator Order, 24 FCC Rcd at 9642. See 47 C.F.R. § 74.1201(g).

³⁷ 47 C.F.R. § 74.1233(a)(1). In addition, any change in frequency relocating an unbuilt station from the non-reserved band to the reserved band, or vice-versa, is considered major.

³⁸ See 47 C.F.R. § 74.1233(d)(2)(i).

³⁹ See *Mattoon Waiver Ruling*, 26 FCC Rcd at 12687.

⁴⁰ *Id.* (“The purpose of the overlap requirement is ‘[t]o prevent . . . FM translator stations from abandoning their present service areas.’ The evident purpose of the serial applications is to achieve the prohibited result. No rule specifically prohibits such a practice, but the Commission can take appropriate enforcement action, including denial of applications that are intended to evade the requirement or subvert its purpose pursuant to Section 308(a) of the Communications Act of 1934, as amended, on the ground that that grant would not serve the public interest.”).

broadcaster from acquiring a translator station, forcing it to do business with the winning bidder.⁴¹ While there is a public interest in robust and competitive auctions in services subject to our competitive bidding procedures, as stated above we find there is also a compelling public interest in maintaining the vitality and utility of the AM service.

14. Accordingly, we tentatively conclude that we should afford an opportunity, restricted to AM licensees and permittees, to apply for and receive authorizations for new FM translator stations for the sole and limited purpose of enhancing their existing service to the public. We therefore propose to open a one-time filing window during which only AM broadcasters may participate, and in which each may apply for one, and only one, new FM translator station, in the non-reserved FM band,⁴² to be used solely to re-broadcast the broadcaster's AM signal to provide fill-in and/or nighttime service. We propose that the window would have the following conditions and limitations:

- a. Eligible applicants must be AM broadcast licensees or permittees, and may apply for only one FM translator per AM station. We tentatively conclude that this requirement is necessary, as AM broadcasters forced to rely on translators owned by other licensees and permittees run the risk that the FM translator owner might choose, for example, to relocate the translator to an area that does not fill in the AM station's daytime signal contour, or might opt to rebroadcast another primary station.
- b. Applications for FM translators in this window must strictly comply with the existing fill-in coverage area technical restrictions on FM translators for AM stations, that is, must be located so that no part of the 60 dB μ contour of the FM translator will extend beyond the smaller of a 25-mile radius from the AM station's transmitter site, or the AM station's daytime 2 mV/m contour.
- c. Any FM translator station authorized pursuant to this window will be permanently linked to the AM primary station acquiring it. That is, the FM translator station may only be authorized to the licensee or permittee of the AM primary station it rebroadcasts, rather than an independent party; the FM translator may only be used to rebroadcast the signal of the AM station to which it is linked (or originate nighttime programming during periods when a daytime-only AM station is not operating); and the authorization for such an FM translator station will only be issued subject to the condition that it may not be assigned or transferred except in conjunction with the primary AM station that it rebroadcasts and with which it is commonly owned. We tentatively conclude that these conditions are necessary to accomplish the goals of the proposed filing window, as stated above. It makes little sense to provide AM broadcasters with an opportunity to enhance their service by applying for and receiving authorizations for new FM translator stations if those stations may then be assigned or transferred to independent parties unaffiliated with the primary AM stations, or used to rebroadcast other primary station signals.

We seek comment on these proposals.

15. We seek comment as to whether this window can be limited to AM incumbents, as we have proposed. We tentatively conclude that this eligibility restriction is consistent with the *Ashbacker*

⁴¹ See generally *Creation of a Low Power Radio Service: Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Third Further Notice of Proposed Rule Making, 26 FCC Rcd 9986, 9999 (2011) (commenting on the speculation and trafficking in FM translator permits awarded from the Auction 83 FM translator filing window, noting that the top 15 filers in the Auction 83 filing window accounted for half of the 13,377 applications filed and that several applicants had engaged in the active marketing and sale of hundreds of translator construction permits awarded from that filing window).

⁴² Channels 221-300. See 47 C.F.R. § 73.501(a) (establishing the reserved band as Channels 200-220).

rules, and whether there are currently a sufficient number of FM translator stations that are technically suited to meet the demand for AM fill-in service. We also request that commenters address the impact of such an FM translator window on FM full-power licensees, small businesses, businesses owned by minority groups and women, other FM translator licensees, and low-power FM ("LPMF") broadcasters. Are there any obstacles or disadvantages to opening an FM translator filing window exclusively for AM licensees and permittees?

18. Given the unqualified success of the Commission's introduction of cross-service FM translators in 2009, we believe that a narrowly tailored filing window for such FM translators, as proposed above, could yield significant public interest benefits with little to no detriment either to the FM translator service or to licensing opportunities for LPMF stations, especially since the filing window proposed here will follow the 2013 LPMF filing window.⁴⁸ We solicit comment on both our proposal to open a filing window and the operational details of such a window, as well as the effects on the FM, FM translator, and LPMF services. We also seek comment on whether, between our relaxation of the limitation on FM translators that can be used to rebroadcast AM station signals,⁴⁹ and the AM-only FM translator window proposed here, there will no longer be a need for so-called "Mattoon Waivers."⁵⁰ If we do end the Mattoon Waiver policy, should it be eliminated upon adoption of the proposed AM-only translator window or upon the opening of that window?

B. MODIFY DAYTIME COMMUNITY COVERAGE STANDARDS FOR EXISTING AM STATIONS

19. Under the daytime community coverage rule, a commercial radio station must provide daytime coverage to its entire community of license,⁵¹ although the Commission has a "longstanding policy" to waive the rule, so long as the requesting licensee makes an appropriate showing that it will encompass 80 percent of the community of license's area or population within the station's 5 mV/m contour.⁵² The Commission adopted this rule in order to provide sufficient signal coverage to the designated community of license. The Minority Media Telecommunications Council ("MMTC"), in a 2009 petition for rulemaking filed with the Commission,⁵³ suggested that this rule, along with the inherent difficulties of finding suitable tower sites in urban areas, actually harms the public interest by "limit[ing] commercial stations from changing sites and making other improvements that benefit the public interest."⁵⁴ MMTC explains that if a commercial station wants to change its site or make improvements,

⁴⁸ *Creation of a Low Power Radio Service; Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15481 (2012) (announcing target date of October 15, 2013, for LPMF filing window). See also *Media Bureau Announces Availability of the Revised FCC Form 318 and the Filing Procedures for October 15 – October 29, 2013 Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 8854 (MB 2013).

⁴⁹ 2012 Translator Order, 27 FCC Rcd at 3395-96.

⁵⁰ See *supra* note 33.

⁵¹ See 47 C.F.R. §§ 73.24(i), 73.315(a).

⁵² *CMP Houston-KC, LLC*, 23 FCC Rcd 10656, 10657 n.8 (2008); see also *Barry Skidelsky*, 7 FCC Rcd 5577, 5577 ¶ 3 (1992) (citing *John R. Hughes*, 50 Fed. Reg. 5679 (1985)) ("The Commission traditionally accepts proposals that would cover at least 80 percent of the community of license as constituting substantial compliance with the rule").

⁵³ *Review of Technical Policies and Rules Presenting Obstacles to Implementation of Section 307(b) of the Communications Act and to the Promotion of Diversity and Localism*, MMTC Radio Rescue Petition for Rulemaking, RM-11565 (Jul. 20, 2009) ("Radio Rescue Petition"). See *Consumer and Governmental Affairs Bureau Reference Information Center Petitions for Rulemaking Filed*, Public Notice, Report No. 2899 (CGB Sept. 23, 2009) (announcing filing of the *Radio Rescue Petition* and seeking public comment).

⁵⁴ *Radio Rescue Petition* at 15.

III. DISCUSSION

1440 KEYS AM is a **heritage station** in Corpus Christi. It was the first radio station ever in the market and has reinvented itself over the decades in order to remain relevant to its listeners and the community at large. As the owner of this legacy station that has been in my family for over forty years, I am encouraged by the Commission's discussion of the revitalization of the AM band, and am particularly enthusiastic about the opening of a window to make available FM translators for operators like myself. I would like to outline some of the benefits that would accrue to new listeners by the addition of an FM signal.

Three years ago 1440 KEYS became an **ESPN affiliate**. We are the only radio station serving the Corpus Christi market that focuses programming on **local high school sports**. We collaborate with the local newspaper, The Corpus Christi Caller-Times, to cover sports in small nearby towns and communities that do not have their own local radio stations to do so. We know that more listeners will be able to find us on the FM band, and ESPN radio in Corpus can thereby gain a higher profile. An enhanced profile and listenership will give our talented local athletes more exposure to the prospective universities they are competing to attract.

1440 KEYS promotes local high school student athletes in the community each and every week through our "**Athlete of the Week**" program. KEYS highlights student athletes who excel in the classroom as well as in their respective sports. We've been told this is a tremendously beneficial message to spread in the youth sports community. Not only are students inspired to achieve academically, but each of our honored student athletes gains an edge in pursuing college scholarship opportunities.

1440 KEYS is the exclusive radio station for the **San Antonio Spurs** and the **University of Texas football** in the Corpus Christi market. We have a lot of Spurs and Longhorn fans in South Texas, and KEYS is where these folks can tune in to listen.

We have local content every afternoon that enables us to **promote local sporting events** in the community (even Lacrosse!) and to connect with our listeners. And we have tickets to give them to sporting events happening in the community. Yes, we get Longhorns tickets to give away too.

1440 KEYS promotes non-profit organizations by airing (:30) PSA messages. Currently 30% of the commercial inventory is devoted to these **PSA's**. The station also airs weekly interviews with non-profits discussing their work and promoting their fundraising events. An FM signal would help the station bring more awareness to these events and organizations by exposing the station to residents that do not tune to the AM dial for radio programming.

1440 KEYS is also the exclusive radio partner for the **Coastal Bend Better Business Bureau** in the Corpus Christi market. This is a longstanding partnership. Each week the station produces and airs (:30) second PSA's for the BBB to inform consumers of business scams and gives consumer reports. No doubt an FM signal would expand the reach of such information to new listeners.

IV. CONCLUSION

Malkan Interactive Communications supports the FCC's AM revitalization efforts and would enthusiastically embrace the opportunity to obtain an FM translator signal. We believe this would benefit our community and create a stronger, more viable base for our format.

Much of our AM infrastructure is very old and is requiring large capital investments to keep it functioning well. In the coming year we are planning to replace a lot of aging equipment. As an owner I feel much more confident in making such an expenditure when I have reason to believe in the longevity of the AM band. I am truly hopeful that the Commission will move forward with the ruling under discussion.