

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

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

COMMENTS OF THE NATIONAL TRANSLATOR ASSOCIATION

National Translator Association (NTA) here submits comments in response to the Notice of Proposed Rule Making (NPRM) in this proceeding, released on October 31, 2013. NTA continues to advocate, as it has for the past 40 years, measures that extend and preserve free over the air broadcast television, especially to rural areas where other delivery mechanisms may be lacking. Since the inception of the FM translator service, NTA also has supported that service, as an important component of aural service, assuring the larger and more effective use of radio in the public interest.

The primary focus of this proceeding is on practical measures to help AM broadcasting, a service that is struggling and for which help is long overdue. The NTA offers these comments because the Commission has recognized, we think correctly, that FM translators rebroadcasting AM primary stations could go a long way toward helping the AM broadcast service survive, and even to expand from its present base.

We strongly support the idea of an AM-only filing window, using the restrictions noted in the NPRM. With FM translators in particular, the Commission has encountered problems with speculation and trafficking. Limiting filers to incumbent AM licensees and construction permit holders is a rational means of delimiting the scope of filings with a concomitant reduction of mutually exclusive groups and processing headaches that have beset past filing windows.

The critical issues in implementing such a window are (a) the definition of the area in which application can be made, in relation to the existing predicted coverage of the incumbent AM station; and (b) whether or not to permit more than one filing per applicant.

The proposal would permit AM applicants for an FM translator only where the translator would be used essentially as an AM fill-in to existing AM broadcast licensee's primary station coverage area, which should be defined as that AM station's 2 mV/m contour. We are concerned that this approach may be excessively harsh, especially in those areas where an inside-the-contour transmitter site could be difficult or impossible to locate. Several liberalizations are worth considering. First, the Commission could adopt a liberal policy of waiver, to permit exceptions where terrain and site selections problems warrant exceptions. Or second, the Commission could state, for example, that up to 25 percent of the square km area of the new FM translator could be outside the boundary of existing AM service. Third, the rules could provide that an application for a new FM translator would be accepted, provided that the proposed transmitter location were situated inside the

greater of the AM's 25-mile radius from its primary transmission site or within its daytime 2 mV/m contour.

Current restrictions on the placement of FM translators do not take into account the directionality of the numerous AM stations and the possibility that a null in the directional pattern of an AM station in many cases may exclude otherwise suitable and appropriate FM translator locations. In any case, an FM translator will be hard put to replicate any part of the AM directional pattern, created by different means in the different, much older technology. Relaxed placement rules are an appropriate means of enabling AM broadcasters to actually use and have the full benefit of FM translators.

Given these factors, NTA favors the third approach discussed above, because it provides the most flexibility, and it is easy for the applicant to make the showing and for reviewing staff to ascertain compliance. Better yet, a combination of these proposals very likely will result in an actual expansion of AM service in the direction selected by the AM applicant, the most desirable direction, instead of just having the incumbents tread water with a slightly improved transmission methodology. Here we submit that the secondary status of FM translators can work in favor of new approaches. There is less concern about a fair and equitable distribution of service under section 307(b) of the Act, 47 U.S.C. Sec. 307(b), where the facilities are merely secondary, and can be displaced by a higher use at any time.

The treatment of multiple applications to rebroadcast an AM station is more problematic. NTA, observing the FCC's struggles with past avalanches of applications, is very concerned about excessive numbers of conflicting applications, thus unduly delaying the benefits of these welcome measures. For this reason it may be best to proceed cautiously by allowing just one translator application per AM station in an initial window.

The NTA would propose that the FCC adopt new procedures during major filing windows for secondary services such as translators and low-power FM stations. We would like to see major filing windows revised and implemented in the following manner:

- 1: The FCC opens a major filing window and then closes that window in a timely fashion.
- 2: After some period of time, the FCC publishes MX applicants and immediately proceeds to process dismiss applications that are patently defective and to grant clean, uncontested applications (Singletons). NTA commends the staff for speed and efficiency in which it is implementing this step, since the close last November of the latest LowPower FM window.
- 3: After the publication of the MX applicants, the FCC should immediately proceed to open a settlement window of up to 180 days in which all applicants can communicate with each other in efforts to settle and resolve MX issues. During this period of time, applicants also should be allowed to make significant amendments to their applications that would normally be considered "major modifications," including channel changes to any available channel. These amendments would be

processed on a first-come first-served basis.

During filing windows, applicants naturally look for optimum channels, and without knowing what channels will be selected by their neighbors, unnecessary conflict can result even in locations where there is no shortage of channels. Permitting a broadened range of engineering changes to remove conflicts would allow applicants that would not normally prevail during an open filing window to be given a second opportunity to achieve a construction permit on a first-come first-served basis, assuming available spectrum and that the applicant is able to comply with the current rules and regulations. There would appear to be no downside cost, but the result will be more new service to the public and, in the context of this rule making, more robust AM enhancement than could be attained without it.

With respect to Mattoon waivers, we believe that the NPRM misconstrues the Commission's own role and the purpose of the waivers. This issue is not inherently related to AM enhancement at all, and now we see decisional law that is divided on the point. The initial decision, see fn. 33, stated that AM enhancement was just a factor, not a unique dispositive point favoring waiver.¹ Subsequently, in another decision, the staff ruled that these waivers would be entertained only where they were for purposes of AM enhancement.² The Commission will need to clarify its own decisional law, and should do so here.

¹ See *In re W263AQ, Mattoon, IL, DA 11-1495*, 26 FCC Rcd 12685 (2011).

² *Educational Media Foundation, W267AT, Oneonta, NY, Recon denied by Letter, October 31, 2013*, Application for Review filed on December 2, 2013.

From NTA's standpoint, however, the Mattoon waiver controversy presents less than meets the eye. As stated previously, applicants in a secondary service should have broad latitude to seek the most efficient usage of a proposed facility. Specification of a community of license in an FM translator application is not a matter of decisional significance, nor should it be. FM translators also are not required to serve any particular community to any specified extent. Thus, we disagree that multi-hop migration is *per se* an abuse of the Commissions process. That issue is easily met by verifying that construction has occurred as alleged. Indeed, multi-hop movement can well serve the public interest in expanded and more efficient service and should not be forbidden.

Likewise, where there is lack of overlap and an FM translator move is proposed, with a Mattoon waiver, the Commission should revise its rules here or at least clarify what it wants to see in the showing supporting a waiver request, meeting the "high hurdle" test for waiver. Such waivers requests should be entertained routinely beyond the proposed filing window. Bringing that topic back to the core of the AM enhancement proceeding, the Commission could state as policy that the best and most persuasive ground for a waiver would be for AM rebroadcast, with appropriate technical grounds clearly stated and in the future potentially codified as its own rule. But we see no reason to bar other grounds for a waiver, including a greater, more orderly or effective distribution of service among population, areas or communities.

With respect to items III. B, *Modify Daytime Community Coverage...* and III. C, *Modify Nighttime Community Coverage...* of the NPRM, the NTA would like to see uniformity between all services insofar as technical rules and regulations are concerned. These items specifically addressed community of license coverage standards for AM broadcasters. We would support a unified approach with respect to defining the area of coverage for broadcast stations in different services. In the NPRM, the commission proposed community coverage of 50% of the area or population. This number coincides with the number that is required for FM broadcasters. This threshold furthers simplicity and uniformity. It makes good sense.³

The NTA would support more frequent filing windows for all broadcast services. The last major filing window for translators was in 2003. Mattoon Waivers and market demands obviously show that there is a tremendous demand for translators which could be deployed to better serve the public. Likewise, the recent wave of Low Power FM filings shows pent-up demand since the last filing opportunity, way back in 2001. By allowing major filing windows on a more periodic basis, the Commission would provide a more continuous supply of new and expanded services the public interest.

³ While not strictly within the scope of this proceeding, NTA suggests that the Commission should treat translators and LPFMs technically and so far as possible on an equal footing as mandated by the Local Community Radio Act of 2010, Public L. 111-371. Harmonizing technical standards between services would help to accomplish this.

In conclusion, NTA believes that rule relaxations imparting more dynamism to the FM translator service generally benefit the public interest. The Commission has an opportunity here to enhance its objectives fostering localism. FM translators assisting in and enlarging the coverage of local broadcast stations, licensed to serve their local communities, should be supported through generous consideration of waivers, as in other ways. In that vein, the distinction between AM and FM, which the Commission here is very deliberately and wisely intending to soften, can work in other ways as well. If it enhances the delivery of local radio serve to the public, it warrants prompt implementation by that fact alone.

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