

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

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

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (“NAB”)¹ respectfully submits reply comments on the Notice of Proposed Rulemaking captioned above.² The overwhelming majority of initial comments filed in the record strongly support the Commission’s proposal to allow AM radio stations to operate FM translators as a fill-in service.³ The record demonstrates that the proposed rule changes will benefit AM radio listeners by enhancing broadcast localism and diversity, while helping to ensure the continued competitive viability of AM radio service.

¹ NAB is a nonprofit trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Commission and the Courts.

² Notice of Proposal Rulemaking, *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, MB Docket No. 07-172, RM-11338, 22 FCC Rcd 15890 (2007) (“Notice”). The issues raised in the Notice emanate from a Petition for Rulemaking filed by NAB. Petition for Rulemaking, National Association of Broadcasters, RM-11338 (filed July 14, 2006).

³ Although numerous parties suggest adjustments to various aspects of the Commission’s proposal, NAB could identify only two parties with substantive objections to the premise of the proposal. Comments of Prometheus Radio Project, MB Docket No. 07-172 (Jan. 7, 2008) (“Prometheus Comments”); Comments of National Public Radio, Inc., MB Docket No. 07-172 (Jan. 7, 2008) (“NPR Comments”).

As noted by several parties, permitting AM radio stations to operate FM translators is a long overdue, practical solution to the interference obstacles that have plagued AM radio service for many years;⁴ problems that have increased substantially in recent years and that are expected to continue to increase going-forward. In particular, NAB agrees with SBA's observation that, in a world where consumers are accustomed to news and information that is readily available on-demand, AM radio faces unique challenges as perhaps the only media service that is not available 24 hours a day, 7 days a week, or reliably depending on one's location within a station's coverage. SBA Comments at 1-2. The inherent limitations of AM radio were less troublesome decades ago, before FM radio service, cable and satellite television, radio, and the Internet. However, given the changing marketplace and technology advances, AM radio's limitations are now simply unacceptable to many consumers. *Id.* As the FCC works toward increasing the availability of local service to communities,⁵ utilizing this simple means of improving service available from AM radio is plainly in the public interest. Enabling AM radio stations to utilize FM translators will help revitalize this information source and facilitate AM radio's ability to serve their communities.

Others note that over the past year the Commission has already recognized the public interest benefits of the proposed rule changes by authorizing a series of AM radio

⁴ See, e.g., Comments of the State Broadcasters Associations, MB Docket No. 07-172 (Jan. 7, 2008) ("SBA Comments"); Comments of Clear Channel Communications, Inc., MB Docket No. 07-172 (Jan. 7, 2008) ("Clear Channel Comments"); Comments of Bart Walker, President, WGNS(AM), Murfreesboro, TN, MB Docket No. 07-172 (Jan. 7, 2008) ("WGNS Comments"); Comments of Holston Valley Broadcasting Corporation, MB Docket No. 07-172 (Jan. 7, 2008) ("Holston Valley Comments").

⁵ *Report on Broadcast Localism and Notice of Proposed Rulemaking*, MB Docket No. 04-233 (rel. Jan. 24, 2008) ("Localism Report").

stations to use FM translators pursuant to Special Temporary Authority (“STA”).⁶ The results of this “trial period” underscore the logic of the Commission’s proposal. These AM stations have been able to deliver a clearer, more consistent signal to their listeners, carrying expanded coverage of local news, information and emergencies, and all without disrupting or interfering with existing FM radio services.⁷ For example, only a few hours after launching service via FM translator on March 1, 2007, WGNS(AM) was able to broadcast an overnight tornado warning to citizens of Rutherford County, Tennessee.⁸

Similarly, many listeners to Holston Valley’s three AM stations now simulcast via FM translators are able to hear its coverage of local evening news and high school sports for the first time. Reception has also been substantially improved during the daytime because Holston Valley can now utilize FM translators to overcome persistent interference from power lines, computers, traffic signal sensors, and other electromagnetic interferers. Holston Valley Comments at 2-3. This is direct real-world evidence that enactment of the Commission’s proposal will benefit the public. Moreover, as Clear Channel states, adopting the proposed rule changes is a much better procedure than the heretofore *ad hoc* process of reviewing individual STA requests. Clear Channel Comments at 4. Having a clear rule will be fairer to all and will help conserve Media Bureau resources.

⁶ SBA Comments at 3-4; Clear Channel Comments at 2-3.

⁷ Clear Channel Comments at 2. Indeed, the Commission itself extols the localism virtues of this proposal in its recently issued Broadcast Localism Report and Notice. Localism Report at ¶¶ 51-54.

⁸ WGNS, *Community Gets Local Service on FM 100.5 and FM 101.9*, available at <http://1450wgns.com/WGNS_Gets_FM.htm> (last visited Jan. 24, 2008).

The record is replete with additional examples of how the proposed rule changes will benefit the public:

- The Pocahontas Communications Cooperative Corporation states that WVMR(AM) in Frost, West Virginia has never been able to adequately satisfy the needs of its audience because of interference caused by rugged, mountainous terrain, poor ground conductivity, and co-channel services.⁹
- Northeast Indiana Broadcasting, Inc. notes that WAWK(AM) is the only radio station that broadcasts local news, sports and public affairs to residents of the small community of Kendallville, Indiana. Use of an FM translator would allow WAWK to offer such information, as well as public safety and other announcements, at night and during the periods when listeners are going to and from work.¹⁰
- Hernando Broadcasting Company, Inc. states that listeners of WWJB(AM) in Brooksville, Florida who are located as few as three miles away from the station's transmitter often complain that they are unable to receive service. An FM translator would enable WWJB to expand and enhance its coverage of hurricanes, including the direction of the storm, power outages, and the locations of evacuation shelters.¹¹

These are only a few situations in which use of an FM translator would allow AM radio to better inform and educate their audiences. Indeed, in some cases, an FM translator might mean the difference between a listener receiving potentially life-saving information or not. It also bears noting that certain external factors will exacerbate the interference challenges that AM broadcasters face. First, as discussed in the Notice, Congress' recent extension of Daylight Savings Time hours has caused many AM stations to forfeit an hour of morning drive-time coverage for an additional four weeks a year, given their obligations to turn down or off power at sunset. Notice, 22 FCC Rcd at

⁹ Comments of the Pocahontas Communications Cooperative Corporation, MB Docket No. 07-172 (Jan. 7, 2008) ("Pocahontas Comments").

¹⁰ Comments of Northeast Indiana Broadcasting, Inc., MB Docket No. 07-172 (Jan. 7, 2008) ("Northeast Indiana Comments").

¹¹ Comments of Hernando Broadcasting Company, Inc., MB Docket No. 07-172 (Jan. 7, 2008) ("Hernando Comments").

15891. Second, under the recently enacted Energy Independence and Security Act of 2007, the incandescent light bulb will be phased out beginning in 2012. As a result, fluorescent lighting, which can interfere with AM radio signals, will experience a tremendous surge in use likely leading to more obstacles for AM stations during daytime hours. Translators will help allay some of these problems.

The record also demonstrates that the proposed rule changes will further the Commission's interest in broadcast diversity. The Commission recognizes that enabling AM radio stations to operate FM translators should increase the asset values of such stations, thereby making them more viable and more competitive. Notice, 22 FCC Rcd at 15894-95. As NAB noted in our opening comments, there is considerable diversity of ownership in AM radio; improving the viability of this service will help that diversity to continue and grow. In addition, new entrants may find easier access to capital if AM stations become more competitive. As NABOB and MMTC noted in their comments, this is a rare opportunity for the Commission to help increase diversity of ownership, including minority ownership, of broadcasting properties via race-neutral rule changes.¹²

The use of FM translators will enable AM broadcasters to deliver a clearer, more reliable signal to more listeners, which in turn, will help ensure the continued viability of the AM radio service. The public interest benefits of these rule changes are evident, and perhaps the reason for the apparent softening of opposition to the proposal by both Prometheus and NPR. For example, even Prometheus acknowledges that AM radio stations face certain problems. Prometheus Comments at 2 and 4. Nevertheless,

¹² See, e.g., Reply Comments of the National Association of Black Owned Broadcasters and the Minority Media and Telecommunications Council, RM-11338, at 3 (Sep. 6, 2006).

Prometheus repeats its resistance to the Commission's proposal and continues to suggest that full power broadcasters are trying to "hoard" the FM Band. In reality, however, it is Prometheus that is attempting to hoard the spectrum for its favored service – LPFM. That is the real reason that Prometheus suggests that the Commission impose certain biased, anti-competitive, unduly regulatory conditions, such as a requirement that LPFM applicants be allowed to apply for construction permits before any AM stations are permitted to operate FM translators. *Id.* at 5.

Prometheus' views are unsound on several levels. First, they would have the Commission conclude that only LPFM services promote localism and diversity and ignore the vast record of community-responsive service of AM radio stations. Nowhere do they acknowledge that most all-talk and all-news formats are found on AM radio, or that AM radio broadcasters are typically the primary outlet for local religious, civic affairs, and niche entertainment programming such as Southern Gospel, Jazz, and local sporting events. Nor do they recognize the Commission's own finding that AM radio service has long been a vital "unifying force" throughout the country, providing a plethora of local news, information, education, political and entertainment programming. Notice, 22 FCC Rcd at 15890. It is plain that Prometheus would have the FCC favor its constituents' voices over those of AM radio. It would be entirely improper and unconstitutional for the Commission to favor so blatantly one set of speakers over another.

Prometheus' apparent contention that the FCC should elevate the public interest value of LPFM service over that of AM stations has no supporting evidence. Prometheus alleges (wrongly, as discussed below) that enabling AM radio stations to

operate FM translators would impede the introduction of new LPFM stations and would have the Commission assume that it would undermine localism and diversity.

Prometheus Comments at 1. The premise of this argument is false, however, as Prometheus glosses over the indisputable fact -- noted repeatedly in this proceeding by broadcasters as well as the Commission -- that an FM translator will not only improve reception for listeners who currently receive partial or unreliable signals, but will provide *new* service to listeners currently unable to receive any reception at all. Thus, enacting the proposed rules changes is tantamount to introducing new AM radio service to large numbers of consumers who are currently unable to receive their local AM radio stations, both during the day and particularly during nighttime hours. Moreover, a significant percentage of the listeners who would benefit from FM translators reside in small- and mid-sized markets, with access to relatively fewer radio stations than found in larger markets. In this light, NAB strenuously objects to Prometheus' assertion that introducing LPFM service in certain markets is more important than introducing AM radio service to many additional listeners. Indeed, it is difficult to imagine another Commission development in the radio industry that would be more beneficial to large populations of consumers, and more consistent with the public interest goals of fostering localism and diversity, than enabling AM stations to utilize FM translators.

There is no validity to Prometheus' view that, in the context of this proceeding, permitting AM radio's access to FM translators would prevent LPFM stations from providing service. As NAB explained in our opening comments, existing LPFM stations would suffer no loss from the proposed rule change. New LPFM stations would have access to available frequencies pursuant to FCC licensing procedures. Those

procedures should be designed to promote efficient and beneficial use of this spectrum. Prometheus' argument in this regard is simply a blatant attempt to hoard spectrum that could be used to provide better service to the public by AM radio. There is no reason for the FCC to contort its rules to favor unknown LPFM services that may or may not become available in the future.

There is also little risk that enacting the proposed rule changes will unleash a deluge of additional translator stations that will crowd the FM band. The Commission has not expressed any intention of opening a new translator window; therefore, the only translators deployed under this proposal are likely to come from among those already licensed or permitted, at least for the foreseeable future. And since only about a dozen AM radio stations have applied for an STA to operate an FM translator since the Commission began granting such applications almost a year ago, there is no reason to expect thousands more if the proposed rule changes are adopted. Clear Channel Comments at 6-7.

Similarly, NPR expresses concerns that allowing AM stations to use FM translators will crowd an already congested FM band, which may diminish opportunities for FM stations to establish new or relocate existing FM translators. NPR Comments at 3-4. It bears repeating that full power FM stations will remain protected by FM translators under the Commission's rules. 47 C.F.R. §§ 47.1203 and 47.1204. Under the proposal, translators will remain secondary, at risk of displacement by primary operators. Regarding NPR's second point, as noted above, many if not most of the translators sought by AM stations will come from the already identified pool of translators under license or construction permits, and that most parties do not anticipate

the rule change to invite a flood of additional translator applications, should the Commission open a new window. Therefore, NPR's fears concerning increased congestion of the band are unfounded, or at a minimum premature.

The Commission also raises various specific technical and processing issues related to implementation of the rule changes, some of which NAB addresses below.

The Commission asks whether the rule changes should be phased-in or implemented immediately.¹³ Several daytime-only AM radio broadcasters favor a phased-in approach that would grant them priority in obtaining translators.¹⁴ These parties assert generally that daytime-only AM stations are "most deserving" of FM translators,¹⁵ and therefore should be considered first during a phased-in implementation. Others believe that Class C stations should receive first consideration, along with AM daytimers, while Class A and B AM stations are moved to the back of the line,¹⁶ or considered only a case-by-case basis. Bailey Comments at 1.

NAB submits that immediate implementation of the rule changes is the best course of action. First, as discussed in our initial comments, the Commission's tentative conclusion that allowing AM stations to operate FM translators would benefit the public interest would be undermined by any process that unduly delays implementation for any particular type of AM station, and those stations' listeners. NAB Comments at 6. A

¹³ Notice, 22 FCC Rcd at 15897.

¹⁴ See, e.g., Comments of Scott Bailey, President/General Manager WMRO-AM, Gallatin, Tennessee, MB Docket No. 07-172 (Jan. 7, 2008); Comments of Mark D. Humphrey, MB Docket No. 07-172 (Jan. 7, 2008); Comments of Pocahontas Communications Cooperative Corporation, MB Docket No. 07-172 (Jan. 7, 2008); Comments of Sutton Radiocasting Corporation, MB Docket No. 07-172 (Jan. 7, 2008).

¹⁵ Comments of Richardson Broadcasting Corp., MB Docket No. 07-172 (Jan. 7, 2008), at 5-6.

¹⁶ Pocahontas Comments at 2.

phased-in approach whereby the Commission tries to assign varying levels of priority to certain classes of stations, or considers applications on a case-by-case basis, would needlessly postpone the predicted benefits of the rule changes while the Commission attempts to figure out which stations are most worthy of a translator. Aside from impeding consumers from enjoying the benefits of the proposed rule changes, such an approach also would be equivalent to merely extending the current *ad hoc* STA process indefinitely, at the expense of both Commission and industry resources.

Second, although certain classes of AM stations may encounter more interference than others, all listeners of all AM stations deserve the same opportunity for better reception of AM service regardless of the type or class of AM station they want to tune in. Whether an AM radio station is a stand-alone, or part of a group, or daytime-only, is immaterial to listeners.¹⁷ Many of the stations that will seek deploy an FM translator will be unprofitable, regardless of their class, but all will provide the type of locally-oriented programming that is deserving of improved coverage. *Id.*

Finally, there is no evidence that daytime-only or Class C stations are more desirous of FM translators, given the Commission's experience in reviewing STAs applications. Clear Channel Comments at 9. As a general matter, the Commission should seek to implement the rule changes as consistently as possible with its existing translator rules, to avoid confusion or unintended consequences in the marketplace. Accordingly, it would seem most evenhanded and economical to implement the proposed rule changes immediately after adoption for all AM stations.

¹⁷ See, e.g., Comments of Withers Broadcasting Companies, MB Docket No. 07-172 (Jan. 7, 2008), at 2; Comments of Morgan County Broadcasting Company, Inc., MB Docket No. 07-172 (Jan. 7, 2008), at 2; Holston Valley Comments at 2.

The Commission also seeks comment on whether the number of fill-in translators an AM station may own or operate should turn on the Commission's ownership rules, or whether the AM station is commonly owned with an FM station in the same market or some other characteristic.¹⁸ Although Prometheus seems to find merit in capping the number of FM translators per AM station at one, and allowing only stand-alone AM stations that are not commonly owned with same-market FM stations to operate FM translators,¹⁹ the overwhelming majority of comments support the need for pragmatic flexibility in how the Commission implements the rule changes.

NAB notes that there have never been ownership limits on translators. 47 C.F.R. § 74.1232. Translators are merely a supplement to a licensee's normal service; not a separate or distinct service. *Id.* at § 74.1201. There are no limits or restrictions on an FM station's use of FM translators, so imposing one only on AM stations would be discriminatory. Rather, the Commission should allow technology to govern how many translators a station may operate. Under the Commission's proposal, translators will be used only for "fill-in" service, and not to extend or expand a station's coverage area. This is why the proposal includes a restriction that translators may deliver service to an area equal to the lesser of a 25-mile radius from the AM transmitter site or the 2 mV/m daytime contour of the AM station. In many situations, one translator will be sufficient to satisfy a station's goals within these limits. Elsewhere, given the Commission's rules that cap the maximum effective radiated power level of FM translators at 250 watts,²⁰ it may be appropriate for a station to deploy non-overlapping multiple translators to

¹⁸ Notice, 22 FCC Rcd at 15897.

¹⁹ Prometheus Comments at 5.

²⁰ 47 C.F.R. § 74.1235.

enhance service in parts of its daytime contour that cannot be reached by a single transmitter, but which also fall within the lesser of the 25-mile boundary or the 2 mV/m contour.²¹

In this vein, neither the Notice nor NAB's Petition explicitly states that Section 74.1235 of the Commission's rules restricting translators to a maximum effective radiated power level of 250 watts will apply to FM translators that AM stations use pursuant to the proposed rule changes. Although most parties, including NAB, presumed no change in this area, CBS Radio apparently construed this oversight to mean that AM stations could deploy a translator at considerably higher power levels than 250 watts in order to fill-in a 25-mile radius.²² To avoid any possible confusion, NAB respectfully clarifies that our proposal is based on the assumption that the 250 watts ceiling in Section 74.1235 will continue to apply to all FM translators, including translators used by AM stations under our proposal, and we respectfully request that the Commission also clarify that adoption of the proposed rule changes will not affect application of Section 74.1235 to FM translators. NAB understands that, given this clarification, CBS Radio has no objections to the rule changes proposed in the Notice.

Finally, given this clarification, the same Commission justification for allowing a station to use one translator is just as applicable to allowing a station to use multiple translators: to improve listeners' access to community-responsive local AM radio service. It would make no sense to enable an AM radio station to enhance service for some listeners but not others. The only practical limit on the number of translators that

²¹ Comments of Urban Radio Licenses, LLC and Zimmer Radio, Inc., MB Docket No. 07-172 (Jan. 7, 2008) at 8; Comments of Progressive Broadcasting Systems, Inc., MB Docket No. 07-172 (Jan. 7, 2008) at 2.

²² Comments of CBS Radio Inc., MB Docket No. 07-172 (Jan. 7, 2008).

one station should be allowed to operate is whatever number the station needs to fill-in service, in keeping with the proposed geographic criteria. No numerical limits should apply.²³

Similarly, 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 needlessly discriminatory. As Progressive states, “AM owners, including those who own overlapping FM stations, have invested in their stations in order to serve their communities beyond what they can do with one frequency. In markets where most FM stations are co-owned by one or two major owners, preventing an AM owner from getting an FM translator simply because they have an FM voice gives more power to the large multi-FM owners.” Progressive Comments at 2. Thus, given that there are no similar restrictions on FM stations’ use of translators, the only entities harmed by such a proposal would be AM broadcasters, which of course runs counter to the entire premise of the Commission’s proposal.

Also harmed are AM listeners. The public’s need for additional local programming on the AM band is not contingent on whether an FM station in the same market is licensed to an AM daytime licensee or another party. Under any scenario, the public interest will be advanced by the additional or enhanced local programming that AM stations could provide, and that objective is not determined by the identify of the licensee of an FM station in the same market.²⁴

²³ Comments of OneCom, Inc., MB Docket No. 07-172 (Jan. 7, 2008) at 3.

²⁴ Comments of Broadcast Communications, Inc., MB Docket No. 07-172 (Jan. 7, 2008) at 4; Comments of Urban Radio Licenses, LLC and Zimmer Radio, Inc., MB Docket No. 07-172 (Jan. 7, 2008) at 7; Comments of Morgan Murphy Media, MB Docket No. 07-172 (Jan. 7, 2008) at 3.

The Commission also asks about various time brokerage arrangements, such as whether to permit AM stations to broker time over a non-owned FM translator or an LPFM station.²⁵ Most commenters found no problem with either possibility. The former scenario would be a reasonable method for enabling as many AM stations as possible to utilize an FM translator to improve their service. With respect to the latter, Prometheus is again alone in its opposition. Prometheus, as LPFM's primary advocacy organization, objects to any rule changes that might run contrary to their aims for LPFM. Prometheus Comments at 6.

Of course, Prometheus' views are inconsistent with the majority of individual LPFM licensees participating in this proceeding. For example, LPFM broadcaster Prayer Town Ministry reiterates its support for flexibility to rebroadcast the signal of local AM stations.²⁶ AM broadcasters also favor this proposal, so 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. WGNS Comments at 4. As Prometheus notes, the direct rebroadcast of a commercial AM station on an LPFM station would violate the Commission's LPFM rules. Prometheus Comments at 6. In any case, enabling AM stations to work with willing LPFM stations to enhance the AM station's signal would be a win-win-win proposition for both the AM and LPFM stations, and most importantly, listeners.

Finally, the Commission seeks comment on the reasonableness of limiting the coverage of an FM translator to 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. Several commenters

²⁵ Notice, 22 FCC Rcd at 15897.

²⁶ Comments of Craig Jenkins, Prayer Town Ministry, MB Docket No. 07-172, at 1.

express support for these criteria,²⁷ while others contend that they are too restrictive and should be adjusted to allow a translator to reach the *greater* of the daytime contour or a 25-mile circle.²⁸ Still others urge the Commission to permit some *de minimis* portion of the translator's signal to extend outside the 2 mV/m contour, perhaps pursuant to waiver. These parties explain that despite a broadcaster's best efforts, it will be extremely difficult to stop the translator's signal at the city limits or wherever the 2 mV/m AM signal is measured.²⁹

NAB continues to support the criteria proposed in the Notice and NAB's Petition as a reasonable method of ensuring that AM stations only deploy FM translator(s) as a fill-in service and not as a means to extend their coverage areas. Nevertheless, we recognize that in some situations it may be impossible for a translator to exactly replicate these boundaries, in which case the Commission may decide it is more pragmatic to allow a *de minimis* portion of a translator's signal to extend beyond the AM station's daytime 2 mV/m contour, perhaps by waiver. Therefore, NAB remains open to sensible technical adjustments to the proposal offering in the Notice.

²⁷ See, e.g., NAB Comments at 9-10; Morgan Murphy Comments at 2; Clear Channel Comments at 13; Comments of Hernando Broadcasting Company, Inc., MB Docket No. 07-172 (Jan. 7, 2008) at 2.

²⁸ See, e.g., Progressive Comments at 4; Comments of Richardson Broadcasting Corp., MB Docket No. 07-172 (Jan. 7, 2008) at 6.

²⁹ See, e.g., Walker Comments at 3; Comments of Landmark Baptist Church, Inc., MB Docket No. 07-172 (Jan. 7, 2008) at 3; Comments of Christian Broadcasting System, Ltd., MB Docket No. 07-172 (Jan. 7, 2008) at 4.

For the reasons stated above, NAB respectfully requests that the Commission enact the rule changes proposed in the Notice.

Respectfully submitted,

NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street, NW
Washington, DC 20036
(202) 429-5430

A handwritten signature in black ink, appearing to read "Lawrence A. Walke".

Lynn Claudy
John Marino
David Layer
NAB Science & Technology

Marsha J. MacBride
Jane E. Mago
Lawrence A. Walke

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