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

FILED/ACCEPTED
DEC - 6 2007
Federal Communications Commission
Office of the Secretary

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

NOTICE OF PROPOSED RULE MAKING

Adopted: August 7, 2007 **Released: August 15, 2007**

Comment Date: [60 days after date of publication in the Federal Register]
Reply Comment Date: [90 days after date of publication in the Federal Register]

By the Commission:

I. INTRODUCTION

1. On July 14, 2006, the National Association of Broadcasters ("NAB") filed a Petition for Rulemaking proposing that the Commission amend its rules to allow AM broadcast stations to operate FM translator stations.[1] The NAB Petition proposed that AM stations be permitted to license and/or use FM translator stations to retransmit their AM service as a fill-in service. Specifically, the NAB proposed that AM stations be allowed to use FM translator stations to rebroadcast the AM signal, 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. We received over 500 comments on the NAB Petition, with the overwhelming majority supporting the proposal. With this Notice of Proposed Rule Making ("NPRM"), we propose rules permitting the use of FM translators by AM stations and examine the issues related to such a rule change, including the issue of program origination at night over FM translators by AM daytime-only stations.

II. BACKGROUND

2. For decades, AM radio service has been an integral part of American life. In 1991, the Commission observed:

> AM radio was this country's first national medium of electronic mass communications and, for more than half a century, its contribution to daily life in America was unquestioned. The AM service was a unifying force throughout the country, providing a wealth of news, information, entertainment, education, and political dialogue readily accessible to

[1] "Petition for Rulemaking of the National Association of Broadcasters," RM-11338, filed on July 14, 2006 (the "NAB Petition"). We solicited comments and reply comments on the NAB Petition by public notice. *See* Public Notice, Report No. 2782 (rel. July 25, 2006). *See* Sections 1.4 and 1.405 of the Commission's Rules (the "Rules"), 47 C.F.R. §§ 1.4, 1.405.

virtually all Americans. In the process, it revolutionized the fabric of our daily lives, our dialogue and our democracy.[2]

3. However, as we have recognized, the AM band's viability 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.[3] Although the Commission has taken various steps to revitalize the AM band,[4] there are inherent technical limitations that present challenges for which there is no easy solution. For example, the propagation characteristics of the AM band cause substantially increased interference among AM broadcasts at night. Accordingly, during nighttime hours, many AM stations 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.[5] This situation will be worse as of this year, when recent actions by Congress to extend Daylight Savings Time ("DST") became effective.[6] DST began three weeks earlier, starting on the second Sunday of March 2007, and will end one week later, starting on the first Sunday in November 2007. As a result, many AM facilities, and particularly daytime-only stations, will either completely lose an hour of early morning drive-time programming or be forced to operate at very low power during that important period of the broadcast day.

4. The AM band's technical problems involve more than just this nighttime service issue. During all hours of operations, increasing electromagnetic interference to AM transmissions emanates from power lines, electronics equipment such as computers and televisions, fluorescent and neon lighting and dimmers used for incandescent lighting, electric motors, traffic signal sensors, RF from cable lines and equipment, and certain kinds of medical equipment. In addition, some commenters have argued that the introduction of in-band, on-channel ("IBOC") digital radio broadcast transmissions will create a new factor of interference to AM listeners, particularly to those tuned to low power AM stations that operate on channels adjacent to those of 50 kW stations which have initiated IBOC operations.[7]

5. Despite these difficulties, AM radio remains an important component of the mass media landscape and a vital provider of local broadcast service, offering programming specifically oriented to treat the specific needs and problems of the members of their audiences, in a manner consistent with the "public interest, convenience, and necessity."[8] 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.[9] 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, 91.5% of all news/talk formats are over stations operating in the AM

---

[2] *Review of the Technical Assignment Criteria for the AM Broadcast Service*, Report and Order, 6 FCC Rcd 6273, 6274-5 (1991), *recon. granted in part and denied in part*, 8 FCC Rcd 3250 (1993) ("*Expanded Band R&O*").

[3] *Id.*, 6 FCC Rcd at 6275.

[4] *Id.*, 6 FCC Rcd at 6275-76.

[5] *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 daytime-only stations are permitted to operate during sunrise and sunset hours at extremely low power levels.

[6] *See* Energy Policy Act of 2005, Pub. L. No. 109-58.

[7] *See* "Comments of Baraboo Broadcasting Corporation" at 1-3; "Comments of Romar Communications Inc." at 5.

[8] *See* 47 U.S.C. § 309(a).

[9] *See Expanded Band R&O*, 6 FCC Rcd at 6276.

band.[10] The Commission's commitment to localism in the broadcast service, including the AM service, is firmly established: "Localism is rooted in Congressional directives to this Commission and has been affirmed as a valid regulatory objective many times by the courts."[11]

6. In view of the undisputed importance of the AM service within the media landscape, we have decided to pursue the rule revisions proposed in the NAB Petition as a means to help ensure the continued viability and survival of stations in the service.[12] The following sections will describe the current regulatory status of FM translator stations, summarize comments filed in response to the NAB Petition, and seek public comments on the rule revisions proposed herein and the questions raised by those revisions.

III. NOTICE OF PROPOSED RULE MAKING

A. Regulatory Status of FM Translators

7. 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.[13] 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.[14] To ensure that FM translator stations serve their intended secondary role, the Commission adopted rules restricting their service, ownership, sources of financial support, and program origination.[15] For example, FM translators are limited to a maximum effective radiated power of 250 Watts and may not cause interference to the direct reception by the public of the off-the-air signal of any authorized broadcast station.[16] Further, FM

---

[10] *See* NAB Petition at 2.

[11] *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620, 13711-47 (2003), *aff'd in part and remanded in part, Prometheus Radio Project, et al. v. FCC*, 373 F.3d 372 (2004), *stay modified on rehearing*, No. 03-3388 (3d Cir. Sep. 3, 2004), *cert. denied*, 73 U.S.L.W. 3466 (U.S. June 13, 2005) (Nos. 04-1020, 04-1033, 04-1045, 04-1168, and 04-1177).

[12] A similar, but broader, petition for rule making was filed earlier by the American Community AM Broadcasters Association ("ACAMBA"). *See* "Petition for Rulemaking of the American Community AM Broadcasters Association," RM-9419 (filed Aug. 13, 1997). Based on comments filed in that proceeding and in this proceeding, we have decided to consider rule changes pursuant to the NAB Petition. Similarly, we note that another pending rule making petition seeks a rule change to allow FM translators to offer locally-originated programming. *See* "Petition to Allow FM Translator Licensees to Locally Originate Programming," RM-11331 (Miller Communications, Inc., *et al.*, filed April 27, 2006). As we note herein, we will explore the issue of program origination on FM translators by AM daytime-only stations during the hours the AM station is not in operation in this proceeding. We will not consider in this proceeding whether a broader rule change involving program origination on FM translators is warranted. *See* ¶ 19 *infra*.

[13] *See* 47 C.F.R. § 74.1201(a).

[14] *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 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).

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

[16] *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).

translators are restricted to retransmitting the signals of other FM stations only during periods during which the primary station's signal is being broadcast.[17] 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.[18]

8. 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.[19] The Commission has twice considered and rejected proposals to permit AM stations to hold the authorizations for and operate FM translators. In 1981, the Commission rejected a request by the Rocky Mountain Broadcasters Association to amend its rules to permit AM stations to use FM transmitters to retransmit their signals in areas beyond the predicted 1 mV/m field strength contours of existing AM and FM stations.[20] The Commission found that the distinct technical differences between AM and FM services militated against extending the current FM translator authorization to include the rebroadcast of AM signals, as proposed. Specifically, because the groundwave propagation characteristics of AM signals normally do not leave service voids or "shadowing" similar to those in the FM band,[21] the Commission found no reason for AM licensees to establish FM translators to provide the service proposed.

9. In 1990, the Commission rejected another proposal to allow AM stations to operate FM translators.[22] Although the Commission recognized the possibility that permitting AM stations to use FM translators could resolve problems of nighttime reductions in service experienced by many AM licensees, the Commission was not persuaded that actual improvements in AM service could be gained by allowing FM translators to rebroadcast AM stations.[23] Further, the Commission explained that it was conducting a comprehensive proceeding to improve the quality of AM radio service and that the general use of FM translators by AM stations would contravene the goals of that proceeding.[24]

10. The NAB Petition asks 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.[25] Further, another pending rule making petition, filed by Miller Communications, Inc., *et al.*, proposes a rule change

---

[17] *See* 47 C.F.R. § 74.1263(b).

[18] *See* 47 C.F.R. § 74.1231(f) and (g).

[19] The Media Bureau has granted rule waivers to allow FM translators to rebroadcast AM station signals in 11 cases. The Bureau may continue to waive the rules and issue special temporary authorizations on a case-by-case basis to permit the rebroadcast of AM station signals on already-authorized FM translators consistent with the parameters of the Petition discussed herein. Any authorizations issued pursuant to these procedures will be subject to the outcome of this proceeding.

[20] *See Amendment of Part 74, Subpart L of the Commission's Rules*, Memorandum Opinion and Order, 9 RR 2d 1499 (1981). Petitioner stated that granting its request would enable rural communities where there was no local service to obtain a primary reception service.

[21] *Id.* at ¶ 4. FM stations propagate in a line-of-sight pattern such that man-made and other obstructions interfere with reception. AM stations, in contrast, propagate along the surface of the earth and are not impeded by irregular terrain in the manner of FM signals.

[22] *See Translator R&O.*

[23] *Translator R&O*, 5 FCC Rcd at 7224. The Commission again emphasized the unique propagation characteristics of AM signals which normally do not result in voids in AM service like that in FM service.

[24] *See Expanded Band R&O.*

[25] NAB Petition at 12-15. As we noted above, ACAMBA has filed a similar petition for rule making. *See* note 12 *supra*. ACAMBA seeks to modify Section 74.1231 of the Rules to allow for use of FM translator stations as a fill-in service for AM stations with a licensed daytime power not exceeding 2,500 watts and nighttime power not exceeding 500 Watts.

to enable FM translator stations to locally originate programming.[26] As noted earlier, in this proceeding we will explore the issue of program origination on FM translators by AM daytime-only stations during the hours the AM station is not in operation.

B. Comments on the Proposal for AM Stations' Use of FM Translators

11. As we have stated above, the comments in this proceeding are overwhelmingly in favor of allowing AM stations to use FM translators to retransmit their signals within each AM station's current coverage area. Many commenters took the opportunity to note coverage deficiencies in AM stations that they operate or listen to, as well as the potential to expand coverage of local news and events by adopting the proposal advanced by the NAB.[27]

12. Trade associations representing minority broadcasters commented in favor of the NAB Petition. The National Association of Black Owned Broadcasters ("NABOB") and the Minority Media and Telecommunications Council ("MMTC"), in joint reply comments, argue that adopting the proposal would help reverse the sharp downward trend in minority ownership by improving the viability and value of AM stations.[28] Their comments endorsed the following statement by the Radio Broadcasters Association of Puerto Rico and Independent Spanish Broadcasters Association in support of the NAB Petition:

> By allowing use of FM translators with AM stations to improve the integrity of the AM band, the Commission would enhance the ability of AM stations to compete with other media sources. Such competition, in turn, drives creativity, ingenuity and attentiveness to the needs of the public in the marketplace as a whole.[29]

13. Several commenters oppose the NAB Petition. For example, Prometheus Radio Project asserts that the proposal would have a devastating impact on the development of the Low Power FM ("LPFM") radio service.[30] Prometheus argues that ongoing proceedings involving access to the FM band, such as MM Docket No. 99-25 (our pending proceeding involving LPFM rules), should first be resolved before consideration is given to opening the FM band to AM licensees.[31] Prometheus argues that, although AM licensees may face interference issues, they at least have a current outlet, whereas many potential LPFM licensees are waiting for authorizations to provide service and should not be pushed aside by AM licensees. However, some LPFM licensees supported the NAB proposal, and urged that it should be expanded to allow AM daytime-only stations to simulcast and/or originate programming over an LPFM station operating within the AM station's 2 mV/m daytime contour during periods in which the

---

[26] *See* note 12 *supra*.

[27] *See, e.g.*, "Comments of the AM Daytimers Association" at 1-2; "Comments of Community First Broadcasters" at 1; "Comments of Don Moore, WAWK Radio" at 2-3; "Comments of Jane Elizabeth Davis Pigg, WCRE(AM)" at 1; "Comments of Debbie Beal, WRGS(AM)" at 1; "Comments of Our Three Sons Broadcasting" at 1-3; "Comments of Chris McGinnis, WRUS(AM)" at 1; "Comments of C.R. Communications, Inc." at 1-3; "Comments of Richard A. Ford, WERT(AM)" at 1; "Comments of Mark and Arlene Bohach, WLOH(AM)" at 1; "Comments of Beverly Broadcasting Company, LLC" at 1-2; "Comments of Paul Hayden" at 1; "Comments of La Porte County Broadcasting Co." at 1; "Comments of Jerdon Broadcasting" at 1; "Comments of Miller Communications, Inc., *et al.*" at 1-2.

[28] *See* "Reply Comments of the National Association of Black Owned Broadcasters and the Minority Media and Telecommunications Council" ("NABOB and MMTC Comments") at 3-4.

[29] *Id.* at 1.

[30] *See* "Comments in Opposition to Petition for Rulemaking" by Prometheus Radio Project" ("Prometheus").

[31] *Id.* at 4 (citing the proceedings discussed above, as well as Prometheus's Comments and Emergency Freeze request in MM Docket 99-25).

AM station is not operating at full power.[32] NABOB and MMTC believe that Prometheus raises a fair point, and that the Commission should address the issue by repealing the third adjacent channel restrictions, which they describe as "outdated rules, long rendered irrelevant by advances in receiver technology."[33]

14. Other commenters maintain that the NAB's proposal would not remedy the problems in the AM band, but would clutter up the FM band and perhaps ultimately undermine the AM service by shifting more listeners from the AM band to the FM band.[34] Other parties argued that suggestions that the change would undermine AM radio are unfounded.[35] Some commenters share the position of Prometheus that the Commission should first finalize the pending FM translator proceeding in MM Docket No. 99-25.[36] In addition, National Public Radio, Inc., while not opposing the NAB Petition, argues that the Commission should first address the potential for interference to full-power FM stations by FM translators and finalize MM Docket No. 99-25 to reform the Commission's procedures for issuing FM translator permits.[37]

15. A number of parties addressed the FM translator program origination issue presented by the NAB Petition. Several supported the NAB Petition, but noted that they oppose "wholesale" program origination by FM translator stations, which we take to mean the proposal in RM-11331.[38] Others argued that daytime-only AM stations should be provided first priority to use FM translators, presumably to originate programming at night.[39]

16. Closely related to the question of program origination are certain eligibility issues. The NAB Petition argues that AM "stations" should be allowed to use FM translator stations, but it does not

---

[32] *See* "Comments of Prayer Tower Mission" at 1-2; "Comments of the Vandalia Citizens Council" at 1-3. *See also* "Comments of REC Networks" at 1-2 (operator of Internet-only radio stations and representative of LPFM interests supports the NAB Petition for stand-alone AM stations).

[33] *See* NABOB and MMTC Comments at 4 n. 11.

[34] *See, e.g.,* "Comments of Station Resource Group" at 1-2 and 4-5; "Comments of Grant County Broadcasters, Inc." at 1-2; "Comments of George McLam"; "Comments of the Catholic Radio Association" at 1-2; "Comments of Gary L. Kneisely" at 1-2; "Comments of Hans Laetz" at 1.

[35] *See, e.g.*, "Comments of Holston Valley Broadcasting Corporation" at 7 (comparing the proposal to the change that allowed UHF TV stations to operate VHF TV translator stations, to the benefit of the viewing public); "Comments of Withers Broadcasting Companies" at 2.

[36] *Id.* at 3-4.

[37] *See* "Statement of National Public Radio, Inc." *See also* Comments filed by Wisconsin Public Radio ("WPR Comments").

[38] *See* note 12 *supra*. *See, e.g.*, "Comments of GA-MEX Broadcasting, Inc., *et al.*" ("GA-MEX Comments") at 3; "Comments of Handsome Brothers, Inc." at 2-3; "Comments of Sutton Radiocasting Corporation" at 7-8; "Comments of Wilson Broadcasting, Inc." at 2-3; "Comments of Union-Carolina Broadcasting Company, Inc." at 6-7; "Comments of Proctor-Williams Broadcasting, Inc." at 2. These comments generally favor a preference for daytime-only AM stations in any auction process for FM translators, so they apparently support program origination on FM translators at night by daytime-only AM stations.

[39] *See, e.g.*, "Comments of the Fifteen Fifty Corporation" at 3; "Comments of Priority Radio, Inc." at 3; "Consolidated Comments of Big River Radio, Inc., *et al.*" at 4; "Comments of Sheyenne Valley Broadcasting, Inc." at 4; Comments of Eastern Shore Radio, Inc." at 4; "Comments of Broadcast Towers, Inc."; "Comments of WYGR Broadcasting" at 3-4; "Comments of Crossroads Investments, LLC" at 3; "Comments of Emerald Wave Media" at 3; "Comments of Five Towns College" at 4; "Comments of Morris Broadcasting Company of New Jersey, Inc." at 4-5; GA-MEX Comments at 2; "Comments of Handsome Brothers, Inc." at 2; "Comments of Monstermedia, LLC" at 4; Comments of Sutton Radiocasting Corporation" at 6-7; "Comments of Wilson Broadcasting, Inc." at 2; "Comments of Union-Carolina Broadcasting Company, Inc." at 5-6; "Comments of Proctor-Williams Broadcasting, Inc." at 2.

explicitly address who should be deemed eligible for such operation. Wisconsin Public Radio argues that only AM licensees should be eligible to use FM translators for the proposed fill-in service,[40] and states that there should be a reasonable limit on the number of FM translators (perhaps 10) authorized as a fill-in service for any AM station.[41] Wisconsin Public Radio also maintains that eligibility for reserved band FM translators as an AM fill-in service should be limited to noncommercial educational ("NCE") AM licensees.[42] Some commenters contend that eligibility for FM translators providing AM fill-in service should be limited to licensees of daytime-only AM stations, Class C AM stations, and other AM facilities that either have serious nighttime coverage deficiencies or can convincingly demonstrate that they are subject to Cuban interference or other electrical interference that degrades their signals so as to make their transmissions unusable within the FM translator's fill-in service area.[43] Others maintain that eligibility to operate an FM translator as a fill-in service should be limited to licensees of stand-alone AM stations with serious nighttime coverage deficiencies.[44] A number of commenters argue that AM licensees should be able not only to own FM translators providing AM fill-in service, but also to enter into time brokerage agreements with FM translator licensees to provide AM fill-in service.[45]

17. Several commenters propose variations on the technical component proposed in the NAB Petition. Some argue that the FM translator station should be limited to serving the area within the AM station's 5 mV/m daytime contour.[46] Others suggest that the NAB proposal should be liberalized, by, for example, eliminating the 25-mile restriction,[47] or using the AM station's 1 mV/m contour instead of the 2 mV/m contour,[48] or limiting the FM translator's primary service contour to the greater, rather than the lesser, of the AM station's 2 mV/m daytime contour or a 25-mile radius of its transmitter site.[49] Some commenters argue that the NAB proposal should be liberalized slightly to allow 15-20% of the FM translator's primary service contour to fall outside the AM station's 2 mV/m daytime contour.[50] Eastern

---

[40] WPR Comments at 4.

[41] *Id.*

[42] *Id.*

[43] "Comments of Saga Communications, Inc." at 1-2; "Comments of InterMart Broadcasting Southwest Florida, Inc. and InterMart Broadcasting Collier County, Inc." at 1-2; *see also* "Comments of L. William Langford" (series of comments urging restriction of FM translators as a fill-in service for AM daytime-only stations, Class C stations, and Class B stations with serious nighttime coverage deficiencies).

[44] *See, e.g.*, "Comments of John Pavlica, Jr." at 3-4; "Comments of Central Seminary" at 1; "Comments of Prayer Tower Mission" at 1-2. *See also* "Comments of REC Networks" at 2.

[45] *See, e.g.*, GA-MEX Comments at 3; "Comments of Handsome Brothers, Inc." at 3; "Comments of Sutton Radiocasting Corporation" at 8; "Comments of Wilson Broadcasting, Inc." at 3; "Comments of Union-Carolina Broadcasting Company, Inc." at 7; "Comments of Proctor-Williams Broadcasting, Inc." at 3.

[46] *See, e.g.*, "Comments of Broadcast Towers, Inc." at 3; "Comments of Five Towns College" at 5 (supporting the 5 mV/m contour as a service limit, but arguing that the Commission should waive this limit in special circumstances); "Comments of Morris Broadcasting Company of New Jersey, Inc." at 5 (same).

[47] *See, e.g.*, "Comments of Andrew W. Hilger" at 3-4.

[48] *See, e.g.*, "Comments of John Pavlica, Jr." at 2; "Comments of WOLF Radio, Inc." at 2-3 (the former not supporting a separate mileage limitation, but the latter endorsing the NAB's proposed 25-mile limitation in addition to the service contour limitation).

[49] *See* "Comments of United Ministries" at 1.

[50] *See, e.g.*, "Comments of Holston Valley Broadcasting Corporation" at 9 (either allow waivers of the 2 mV/m contour limitation for *de minimis* situations, or require that 80% of the primary service contour of the FM translator be within the 2 mV/m daytime contour of the AM station); "Comments of Withers Broadcasting Companies" at 4-5 (same); "Comments of Romar Communications Inc." at 6-7 (require that 85% of the primary service contour of the FM translator be within the 2 mV/m daytime contour of the AM station).

Sierra Broadcasting supports the NAB's proposal, but argues that it should be liberalized in two respects: (a) the FM translator's primary service area contour should extend to the AM station's 0.5 mV/m daytime contour if it does not extend past the AM station's designated market area; and (b) for FM translators in FM Zone II, the mileage limitation should be 35 miles rather than 25 miles, because stations in FM Zone II operate in larger radio markets.[51]

C. Expansion of Purpose and Permissible Service of FM Translators

18. Based on the comments received in this proceeding, we seek comment on several proposed rule changes to expand the purpose and permissible service of FM translator stations to allow their use to provide fill-in service for AM radio stations. We have attached proposed revisions to Sections 74.1201, 74.1231, 74.1232, 74.1263, and 74.1284 of the Rules that would allow such service, subject to the limitations discussed herein, including those described below.[52] We request comments on the benefits and detriments of these proposed rule changes, including their impact on the AM, FM, FM translator and LPFM radio services (particularly on small business entities) and the listening public. We seek comments on the issues discussed above in connection with these proposed rule changes. We seek comments as to whether, on balance, the proposed rule changes would serve the public interest. We also seek comments on the following issues:

(a) If we adopt these rule changes, should the changes be made effective at once for all AM stations, or should they be phased in over time for different classes of AM stations, based on their specific needs or priorities?

(b) If the changes are to be phased in over time, in what manner should the Commission phase in the new rules proposed in this NPRM? For example: (i) a one-year initial implementation period for daytime-only stations and Class C stations; (ii) a one-year initial implementation period for daytime-only stations, Class C stations, and stations that can show that their nighttime interference-free contour is 10 percent or less of the daytime interference-free contour; or (iii) a series of implementation periods based on needs or priorities (*e.g.*, one initial implementation period for stations with nighttime coverage limitations, followed by an implementation period for AM stand-alone stations, followed by all-AM implementation)? Comments should address not only the benefits that phased-in implementation would provide to the listening public, but also the cost to the listening public of delaying the rule changes for stations not eligible to participate immediately.

(c) Would it be appropriate to place any limits on AM licensees' ability to use FM translators as a fill-in service depending on their ownership of FM stations in the same market as the AM station?

(d) What is the appropriate limit on the number of fill-in translators allowed for an AM station, and should the number vary depending on the class of the AM station?

(e) The Commission's FM translator rules generally prohibit a translator station from receiving any financial support from a commercial FM station where the translator station's coverage contour extends beyond the protected contour of such FM station.[53] However, this prohibition does not apply to fill-in translators. Should this same policy apply to commercial AM stations, thereby permitting an AM licensee to broker time over an FM translator in the non-reserved band as a fill-in service? Is it appropriate to limit eligibility to own and to broker time over FM translators in the reserved band to AM

[51] "Comments of Eastern Sierra Broadcasting" at 2-3.

[52] A number of parties have expressed opinions on issues involving eligibility for auctions for FM translators, priorities in such auctions, and bidding credits in such auctions. In addition, several expressed views about taking action in MM Docket No. 99-25 or otherwise addressing pending FM translator issues. We view these matters as beyond the scope of this proceeding.

[53] *See* 47 C.F.R. § 74.1232(e).

licensees providing NCE programming service and otherwise satisfying the FM reserved band eligibility requirements?

(g) Is it appropriate to allow licensees of AM daytime-only and Class C 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 during periods during which the AM station is not authorized to operate at its authorized daytime power? If this is deemed desirable, we seek comments on how this can be accomplished in a manner that is consistent with the LPFM eligibility and service rules, including Sections 73.853, 73.858, and 73.860 of the Rules.[54]

D. Program Origination Issue

19. As explained above, the Commission has prohibited, with narrow exceptions, program origination over FM translator stations.[55] Nevertheless, we tentatively conclude that daytime-only AM licensees should be permitted to originate programming over fill-in FM translators during the nighttime hours when their stations are not authorized to operate. There are 788 AM stations, constituting 17 percent of all AM stations, which operate with daytime-only authorizations. An additional 1125 AM stations hold authorizations which permit secondary very low power service at night. These stations operate with 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. As discussed earlier, this disadvantage will be exacerbated by the expansion this year of Daylight Savings Time.[56] Permitting these stations to use FM translators to operate at night would instantly and dramatically change their viability in their local radio markets. Importantly, imposition of the proposed 2 mV/m and 25-mile translator site restrictions will limit such operations to those areas in which, and the listeners to whom, these stations provide their core service. We seek comment on our tentative conclusion to permit AM daytime-only stations to originate programming in the limited circumstances described herein. We also seek comment on any potential abuses which could arise as a result of permitting such program origination and what measures the Commission should consider to prevent such abuses. We also seek comments on the impact this proposed rule change would have on the FM and LPFM radio services.

E. Technical Issues

20. The proposed rule changes for which we seek comment are based on the NAB Petition's technical proposal, which would allow AM stations to operate FM translators to retransmit their AM programming as a fill-in service, as long as no portion of the 60 dBu contour of the FM translator exceeds 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. We tentatively conclude that these are appropriate technical limitations, but we request comments on these limitations. We also seek comment on the following issues:

(a) Should the proposed rule change allow some de minimis portion of the FM translator's 60 dBu contour to extend outside the 2 mV/m daytime contour of the AM station, and if so, what portion?

(b) Should the proposed rule change be uniform throughout the country, or should the radius of the transmitter site be 35 miles for FM translators in Zone II, as proposed by Eastern Sierra Broadcasting?

(c) Should measured conductivity be allowed in calculating the 2 mV/m daytime contour of the AM station, or should the Figure M-3 benchmark for conductivity be applied in all cases?

---

[54] 47 C.F.R. §§ 73.853, 73.858, and 73.860.

[55] *See* ¶ 7 *supra.*

[56] *See* ¶ 3 *supra.*

IV. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Act Analysis

21. The Initial Regulatory Flexibility Analysis is attached to this NPRM as Appendix B.

B. Initial Paperwork Reduction Act of 1995 Analysis

22. This NPRM has been analyzed with respect to the Paperwork Reduction Act of 1995 ("PRA"),[57] and contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the proposed information collection requirements contained in this Notice, as required by the PRA.

23. Written comments on the PRA proposed information collection requirements must be submitted by the public, the Office of Management and Budget (OMB), and other interested parties on or before **[60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,[58] we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

24. In addition to filing comments with the Office of the Secretary, a copy of any comments on the proposed information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 12th St, S.W., Room 1-C823, Washington, D.C., 20554, or via the Internet to Cathy.Williams@fcc.gov; and also to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, N.W., Washington, D.C. 20503, or via Internet to Kristy_L._LaLonde@omb.eop.gov, or via fax at 202-395-5167.

25. *Further Information.* For additional information concerning the PRA proposed information collection requirements contained in this NPRM, contact Cathy Williams at 202-418-2918, or via the Internet to Cathy.Williams@fcc.gov.

C. Ex Parte Rules

26. *Permit-But-Disclose.* This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under section 1.1206(b) of the Commission's rules.[59] *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.[60] Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

---

[57] 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.).

[58] The Small Business Paperwork Relief Act of 2002 ("SBPRA"), 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).

[59] *See* 47 C.F.R. § 1.1206(b); *see also* 47 C.F.R. §§ 1.1202, 1.1203.

[60] *See id.* § 1.1206(b)(2).

D. Filing Requirements

27. *Comments and Replies.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules,[61] interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System ("ECFS"), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.[62]

28. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs/ or the Federal eRulemaking Portal: http://www.regulations.gov. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

29. *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

30. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

31. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: http://www.fcc.gov.

32. *Additional Information.* 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.

---

[61] *See id.* §§ 1.415, 1419.

[62] *See Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322 (1998).

V. ORDERING CLAUSES

33. Accordingly, IT IS ORDERED that pursuant to Sections 1, 4(i) and (j), 301, 302, 303, 307, 308, 309, 319, and 324 of the Communications Act of 1934, 47 U.S.C §§ 151, 154(i) and (j), 301, 302, 303, 307, 308, 309, 319, and 324 that NOTICE IS HEREBY GIVEN of the proposals and tentative conclusions described in this Notice of Proposed Rule Making.

34. IT IS FURTHER ORDERED that the Reference Information Center, Consumer Information Bureau, shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rule Changes

The Federal Communications Commission proposes to amend 47 C.F.R. Part 74 as set forth below:

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

1. We propose to amend Section 74.1201 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 FM broadcast service to the general public.

(b) Commercial FM translator. An AM or FM broadcast translator station which rebroadcasts the signals of a commercial 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. The coverage contour for an FM translator providing "fill-in" service is congruent with its parent station: For a fill-in translator for a commercial Class B station it is the predicted 0.5 mV/m field strength contour; for a fill-in translator for a commercial Cass B1 station it is the predicted 0.7 mV/m field strength contour; and for a fill-in translator for all other classes of commercial stations as well as all noncommercial educational stations it is the predicted 1 mV/m field strength contour. A fill-in FM translator's coverage contour must be contained within the primary station's coverage contour. The coverage contour of an FM translator rebroadcasting an AM radio broadcast station must be contained within the lesser of the 2mV/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. We propose to amend Section 74.1231 by revising paragraphs (a) and (b), adding new paragraph (h), and changing (h) to (i), as follows:

§ 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 daytime-only 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 an AM radio broadcast station may originate programming during the hours the AM radio broadcast station is not authorized to operate.

(i) FM broadcast booster stations provide a means whereby the licensee of an FM broadcast station may provide service to areas in any region within the primary station's predicted, authorized service contours. An FM broadcast booster station is authorized to retransmit only the signals of its primary station which have been received directly through space and suitably amplified, or received by alternative signal delivery means including, but not limited to, satellite and terrestrial microwave facilities. The FM booster station shall not retransmit the signals of any other station nor make independent transmissions, except that locally generated signals may be used to excite the booster apparatus for the purpose of conducting tests and measurements essential to the proper installation and maintenance of the apparatus.

Note: In the case of an FM broadcast station authorized with facilities in excess of those specified by § 73.211 of this chapter, an FM booster station will only be authorized within the protected contour of the class of station being rebroadcast as predicted on the basis of the maximum powers and heights set forth in that section for the applicable class of FM broadcast station concerned.

3. We propose to amend Section 74.1232 by revising paragraphs (c) and (d), as follows:

§ 74.1232 Eligibility and licensing requirements.

(c) Only one input and one output channel or frequency will be assigned to each FM translator. Additional FM translators may be authorized to provide additional reception. A separate application is required for each FM translator and each application shall be complete in all respects.

(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. An authorization for an FM translator whose coverage contour extends beyond the protected contour of the commercial primary station will not be granted to the licensee or permittee of a commercial FM radio broadcast station. Similarly, such authorization will not be granted to any person or entity having any interest whatsoever, or any connection with a primary FM station. Interested and connected parties extend to group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members and business associates. For the purposes of this paragraph, the protected contour of the primary station shall be defined as follows: the predicted 0.5mV/m contour for commercial Class B stations, the predicted 0.7 mV/m contour for commercial Class B1 stations and the predicted 1 mV/m field strength contour for all other FM radio broadcast stations. The contours shall be as predicted in accordance with § 73.313(a) through (d) of this chapter. In the case of an FM radio broadcast station authorized with facilities in excess of those specified by § 73.211 of this chapter, a co-owned commercial FM translator will only be authorized within the protected contour of the class of station being rebroadcast, as predicted on the basis of the maximum powers and heights set forth in that section for the applicable class of FM broadcast station concerned. An FM translator station in operation prior to March 1, 1991, which is owned by a commercial FM (primary) station and whose coverage contour extends beyond the protected contour of the primary station, may continue to be owned by such primary station until March 1, 1994. Thereafter, any such FM translator station must be owned by independent parties. An FM translator station in

operation prior to June 1, 1991, which is owned by a commercial FM radio broadcast station and whose coverage contour extends beyond the protected contour of the primary station, may continue to be owned by a commercial FM radio broadcast station until June 1, 1994. Thereafter, any such FM translator station must be owned by independent parties.

4. We propose to amend Section 74.1263 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 daytime-only AM stations may continue to operate during nighttime hours only if the AM station has operated within the last 24 hours.

5. We propose to amend Section 74.1284 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

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA")[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") concerning the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making* ("*Notice*"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in Section IV.D of the *Notice*. The Commission will send a copy of the *Notice,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.[3]

B. Need for and Objectives of the Proposed Rules

2. The *Notice* proposes rules that will permit AM station licensees to use FM translator stations as a fill-in service within the service area of their daytime operating contour, to overcome nighttime coverage losses and daytime interference-related losses. The record in the proceeding demonstrates significant daytime and nighttime service problems in the AM band.

C. Legal Basis

3. The authority for the action proposed in this rulemaking is contained in Sections 1, 4(i) and (j), 301, 302, 303, 307, 308, 309, 319, and 324 of the Communications Act of 1934, 47 U.S.C §§ 151, 154(i) and (j), 301, 302, 303, 307, 308, 309, 319, and 324.

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

1. Entities Directly Affected By Proposed Rules

4. 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 proposed rules, if adopted.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," small organization," and "small government jurisdiction."[5] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[6] A small business concern

---

[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, 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). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 ("CWAAA").

[2] *See* 5 U.S.C. § 603(a).

[3] *See id.* § 603(a).

[4] *Id.* § 603(b)(3).

[5] 5 U.S.C. § 601(6).

[6] *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 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." 5 U.S.C. § 601(3).

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.[7]

5. The proposed rules contained in this *Notice* will permit AM station licensees to use FM translator stations as a fill-in service within the service area of their daytime operating contour, to overcome nighttime coverage losses and daytime interference-related losses. We believe radio broadcast licensees will be directly affected by the proposed rules, if adopted. We do not believe any other types of entities will be directly affected by the proposed rules, but request comment on this tentative conclusion. Therefore, in this IRFA, we invite comment on the impact of the proposed rules on small radio broadcast stations. A description of such small entities, as well as an estimate of the number of such small entities, is provided below.

6. *Radio Broadcasting.* The proposed rules and policies could apply to radio broadcast licensees, and potential licensees of radio service. The SBA defines a radio broadcast station as a small business if such station has no more than $6.5 million in annual receipts.[8] Business concerns included in this industry are those primarily engaged in broadcasting aural programs by radio to the public.[9] According to Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database on November 2, 2006, about 10,449 of 10,979 commercial radio stations (or about 95 percent) have revenues of $6.5 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) affiliations[10] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

7. 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.

8. *FM translator stations and low power FM stations.* The proposed rules and policies could affect licensees of FM translator and booster stations and low power FM (LPFM) stations, as well as to potential licensees in these radio services. The same SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than $6.5 million in annual receipts.[11]

9. Currently, there are approximately 4131 licensed FM translator and booster stations and 771 licensed LPFM stations.[12] Given the nature of these services, we will presume that all of these licensees

---

[7] 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.

[8] *See* 13 C.F.R. § 121.201, NAICS Code 515112.

[9] *Id.*

[10] "[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).

[11] *See* 13 C.F.R. § 121.201, NAICS Code 515112.

[12] *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).

qualify as small entities under the SBA definition. Representatives of LPFM broadcasters have commented that the proposed expansion of eligibility for, and service by, FM translators may have a detrimental effect on the development of the LPFM service by limiting the availability of frequencies remaining for LPFM service. We seek comments on the impact the proposed rule changes would have on LPFM and other stations, as well as on parties seeking to obtain authorizations to operate such stations.

2. Entities Believed To Be Not Directly Affected By Proposed Rules

10. Because the rules proposed in the *Notice* only expand the eligibility and purpose of service of FM translator stations as fill-in stations for AM stations already in operation, we do not believe the rules will directly affect program supply or demand and, therefore, we do not believe that our proposed rules will directly affect program suppliers or companies that provide services to radio stations. Nevertheless, we seek comment on this tentative conclusion and, although such comment is not required by the RFA, we invite comment from any small program suppliers or service suppliers who believe they might be directly affected by our proposed rules contained in the Notice.

E. Description of Projected Reporting, Recordkeeping and other Compliance Requirements

11. The *Notice* proposes rules that will permit AM station licensees to use FM translator stations as a fill-in service within the service area of their daytime operating contour, to overcome nighttime coverage losses and daytime interference-related losses. Use of an FM translator is at the option of the broadcast licensee. The *Notice* would not impose any mandatory reporting, recordkeeping and other compliance requirements, unless the licensee chooses to use an FM translator as a fill-in service. The proposed rule changes that we believe will directly affect reporting, recordkeeping and other compliance requirements are described below.[13]

12. The *Notice* proposes to expand the purpose and eligibility rules by which FM translator stations are authorized. The *Notice* 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 *Notice* provides for no changes in the reporting, recordkeeping and other compliance requirements for FM translator stations.

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

13. 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]

14. The use of FM translator stations by AM radio stations is not mandatory. Therefore, with respect to the issue of the impact of the proposed rules on smaller entities, we believe small business broadcasters will benefit from the opportunities offered by the proposed rule changes. The record in the proceeding suggests many potential benefits in service improvements for AM radio stations operated by smaller as well as larger entities. Nevertheless, in the *Notice*, comment is sought concerning on the impact of the proposed rule changes on small business broadcasters, including FM and LPFM stations.[15]

---

[13] *See* proposed rules contained in Appendix A to this *Notice*.

[14] 5 U.S.C. § 603(c)(1)-(c)(4)

[15] *See Notice* at ¶ 18.

G. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals

15. None.

H. Report to Congress

16. The Commission will send a copy of the *Notice*, including this IRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[16] In addition, the Commission will send a copy of the *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Notice* and IRFA (or summaries thereof) will also be published in the Federal Register.[17]

[16] *See* 5 U.S.C. § 801(a)(1)(A).

[17] *See id.* § 604(b).