

ALERT

FCC Creates New Opportunities for AM Stations to Obtain FM Translators; Seeks Comment on Additional Revitalization Proposals



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On October 23, 2015, the Federal Communications Commission (FCC or Commission) adopted its long-awaited First Report and Order, Further Notice of Proposed Rule Making (FNPRM), and Notice of Inquiry (NOI) in the AM revitalization proceeding. Most notably, the Report and Order provides two opportunities for AM broadcasters to obtain FM translators—first through a modification window in early 2016 followed by a new application window in 2017. The FNPRM and NOI portions of the item, meanwhile, seek comment on several additional proposals to strengthen existing AM stations and options for utilizing the expanded band. Comments in response to the FNPRM and NOI will be due 60 days after publication in the Federal Register, with reply comments 30 days later.

While the Report and Order provides some opportunities for AM stations, it also presents several challenges, discussed below, that broadcasters should consider and immediately incorporate into their short-term and mid-range planning. Moreover, the Commission rejected calls to migrate AM radio to VHF channels 5 and 6, reasoning that: (1) such migration could interfere with the upcoming television incentive auction; and (2) AM radio has certain technical advantages over other media, including wide area coverage by some stations that should be preserved.

FM Translator Windows for AM Licensees and Permittees

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Practice Areas



Media
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For many broadcasters, the most significant item in the Report and Order is the opening of two FM translator windows exclusively for AM licensees and permittees. Rather than immediately open a window for new FM translators as had been proposed in the Notice of Proposed Rule Making, however, the FCC instead adopted a two-stage process.

Stage One – Minor Modification Windows

In early 2016, the Commission will permit AM licensees or permittees to: (i) acquire (or agree to rebroadcast) and relocate “one and only one” non-reserved band FM translator station up to 250 miles; and (ii) specify a rule-compliant non-reserved band FM channel, as a minor modification application. The FCC will actually open two windows: first, a six month window available for applications to modify the channel and/or relocate FM translator stations rebroadcasting only Class C and D AM stations; and, second, a three month window for applications to modify and/or relocate AM stations of any class.

Broadcasters seeking to take advantage of these minor modification windows will need to account both for the acquisition of the FM translator and for the relocation process, if applicable. The Commission will process applications on a “first-come/first-served basis,” and as noted in the Report and Order, “spectrum congestion in the largest markets will significantly limit opportunities for translator station relocations.” Accordingly, stations must be prepared to file their minor modification applications as soon as the applicable window opens. We encourage stations to take additional precautions to avoid purchasing outright an FM translator station in the event they do not succeed in the auction.

Translators relocated and/or modified under this procedure will be required to rebroadcast the applicant’s specified AM primary station for at least four years, exclusive of silent periods.

If a translator owner decides not to file in one of these windows, it can still submit a request for a Mattoon waiver to relocate an FM translator where: (1) the applicant does not have a history of filing serial minor modification applications; (2) the proposed site is mutually exclusive with the licensed translator facility; and (3) the translator will rebroadcast the proposed AM primary stations for at least four years.

Stage Two – New FM Translator Auction Windows

In 2017, the FCC will open two new FM translator auction windows. The new FM translator auction windows will follow a similar sequence to the modification windows, with an initial window for Class C and D AM permittees and licensees followed by a window for all licensees.

The new FM translator windows also will be subject to the “one and only” rule. Therefore, only stations that did not file an application in one of the modification windows will be eligible to apply for a new FM translator. Moreover, an FM translator acquired through the FM translator auction windows will be permanently linked to the AM primary station acquiring it (rather than the four year period for the modification windows).

Mutually exclusive applicants in the new FM translator auction windows will have the opportunity to resolve their mutual exclusivity through settlements or technical resolutions.

We advise AM broadcasters interested in participating in these windows to hire consulting engineers as soon as possible to first determine if a frequency is available within their AM station's contour or 25 mile radius for a translator. Even if the AM station already owns or rebroadcasts a translator currently, it still can participate in either of these window opportunities. Then the engineer needs to identify translators within the 250 mile radius of the AM station that could be acquired to be modified to the frequency that can be used by the translator within the AM contour or 25 mile radius. The FCC has stated it will be offering outreach to AM licensees (Class C and D) to assist them and possibly help identify available frequencies. It is difficult to know whether available translators will be in such great demand that AM licensees can wait for this assistance. Clearly though, AM broadcasters who have secured translators for a modification window should not wait to file. Since the windows are first-come/first-served, they should be prepared to file on the first day of the window period.

Additional Changes Adopted

In addition to adopting the FM translator windows, the FCC also approved the following changes, which may provide relief to AM broadcasters planning to modify their facilities:

Modified Daytime Community Coverage Standards for Existing AM Stations – Instead of the existing requirement of 80 percent 5 mV/m coverage of the community, the FCC will permit existing licensed AM stations applying to relocate or forced to reduce their facilities to provide a daytime 5 mV/m contour over either 50 percent of the area or 50 percent of the population of the principal community to be served. However, the Media Bureau may dismiss a modification application if, upon inquiry, it determines that there is no compelling reason for reducing the community coverage during the first four year period.

Modified Nighttime Community Coverage Standards for Existing AM Stations – The FCC has eliminated the nighttime community coverage requirement entirely for existing licensed AM stations. Applicants for new AM stations and AM stations seeking to change their communities of license will only be required to provide a nighttime 5 mV/m signal or nighttime interference-free contour, whichever is greater, over either 50 percent of the area or 50 percent of the population of the communities of license.

Eliminating the AM Ratchet Rule – The FCC has eliminated the AM ratchet rule, which required Class A or B AM broadcasters applying to make a change to their facilities to demonstrate that the improvements will result in an overall reduction in the amount of skywave interference. Stations that had already modified their facilities consistent with the ratchet rule will not be permitted to recover the nighttime coverage that they lost from such compliance.

Expansion of Modulation Dependent Carrier Level Control Technologies – The FCC will permit wider implementation of modulation dependent carrier level (MDCL) control technologies, which allow stations to reduce transmitter power while maintaining audio quality and signal coverage by varying the carrier and

sideband power levels. Specifically, stations may commence MDCL control operation without prior FCC approval as long as they notify the Commission within 10 days after commencement of MDCL operation. Nevertheless, stations employing MDCL must: (1) achieve full licensed power at some audio input level or when the MDCL control technology is disabled; and (2) disable the MDCL control technology before field strength measurements are taken on the station.

Modify AM Antenna Efficiency Standards – The FCC will allow existing AM antenna owners to reduce efficiency standards by 25 percent. Additionally, the Media Bureau will consider requests for experimental authorizations to operate with antenna systems that do not meet the modified standards as long as the applicant establishes that such operation will not increase interference to other stations (domestic or international) and are stable.

Further Notice of Proposed Rule Making

The FCC is seeking comments on the following proposals:

Change Nighttime and Critical Hours Protection to Class A Stations – The FCC is proposing: (1) to protect all Class A stations from co-channel stations, both day and night, to their 0.1 mV/m groundwave contours; (2) to protect all Class A stations from first adjacent channel stations, both day and night, to their 0.5 mV/m contours; and (3) to eliminate the critical hours protection for Class A stations. With this proposal, the Commission tentatively concluded that it should favor improved service by local stations over service by Class A stations over a wide geographic area. The FNPRM asks what populations will lose service under this proposal and whether they “currently avail themselves of the services that would be lost” (i.e., do they listen to the distant station), whether there are areas that only receive service from Class A stations, and the number of stations that would be able to increase power and what populations would gain service under the proposal. The Commission also seeks comment from those stations that would benefit from this proposal on the effect on rural areas and EAS Primary Entry Point stations.

Change Nighttime RSS Calculation Methodology – The FCC is proposing to rescind its 1991 rules changes so nighttime root-sum-square (RSS) values of interfering field strengths and nighttime interference free-coverage will again use only interfering signals from co-channel stations using the 50 percent exclusion method. The Commission reasoned that the rules have impeded facility improvements to overcome the increasing noise floor.

Change Daytime Protection to Class B, C, and D Stations – The FCC is proposing to modify the daytime protected contours for Class B, C, and D AM stations as follows: the 0 dB daytime protection ratio for first adjacent channels will be restored to 1:1; the second adjacent channel groundwave protection criteria will be modified to reflect the current criteria for third adjacent channel protection; and the third adjacent channel groundwave protection will be eliminated.

Siting of FM Cross-Service Fill-In Translators – The FCC is proposing to provide for more flexible siting of FM cross-service fill-in translators by permitting the use of an FM translator to rebroadcast an AM radio station as its primary station where the FM translator’s coverage contour is contained within the greater of the 2 mV/m daytime contour of the AM station or a 25-mile radius centered at the AM transmitter site. In no event may a translator’s 1 mV/m coverage contour extend beyond a 40-mile radius centered at the AM transmitter site.

Modification of Partial Proof of Performance Rules – The FCC is proposing to require partial proof of performance field strength measurements only on radials containing a monitoring point.

Modification of Rules for Method of Moments Proofs – The FCC is proposing a number of changes its rules to facilitate the use of Method of Movement computer modeling to verify the performance of AM station directional antenna systems.

Require Surrender of Licenses by Dual Expanded Band/Standard Band Licensees - The FCC is proposing to end the transition period for AM stations that migrated to the Expanded Band by requiring the 25 remaining stations with both expanded band and standard band licenses to surrender one of the two licenses within a year. If a station failed to make a written election, the FCC would cancel its standard band authorization by default.

Notice of Inquiry

In addition to the foregoing, the FCC is also seeking comment in the NOI regarding two issues:

Utilization of AM Expanded Band – The FCC asks whether opening the Expanded Band to further development would be beneficial to revitalization of the AM service. In particular, the Commission seeks comment on who should be allowed to receive Expanded Band authorizations (new stations, migrators, all digital stations, etc.), whether stations migrating from the standard band should be required to “flash cut,” whether to continue to utilize minimum distance separation or to institute contour protection standards, whether to allow other classes and powers of stations for Expanded Band stations, and whether to allow complex directional patterns.

Relaxation of Main Studio Requirements – The FCC seeks comment on whether and how to modify the main studio rule to revitalize AM service. While noting that the main studio contributes to the Commission’s goal of ensuring compliance with local service obligations, the NOI asks whether to continue to address main studio waiver requests on a case-by-case basis, whether to be more open to waiver requests by co-owned commercial stations, whether to relax main studio staffing requirements, and whether to link any relaxation of the main studio rules to the posting of a station’s public file to the Commission’s online database.

If you have any questions about the foregoing or require assistance applying for an FM translator or submitting comments, please contact the Wiley Rein attorney who regularly handles your FCC matters or the authors of this client alert.