

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

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

SECOND REPORT AND ORDER\*

Adopted: []

Released: []

By the Commission:

I. INTRODUCTION

1. In the *Further Notice of Proposed Rule Making* in this proceeding,<sup>1</sup> the Commission proposed to relax the current rule setting forth where an FM fill-in translator rebroadcasting an AM broadcast station may be sited.<sup>2</sup> Having now opened and closed two filing windows in which over 1,000 applications were granted to acquire and relocate FM translators to rebroadcast AM stations,<sup>3</sup> we believe it is desirable to act on the translator siting proposal expeditiously, so as to provide these window applicants maximum flexibility in providing service to their communities and nearby areas.<sup>4</sup> We will act on the other proposals set forth in the *AMR FNPRM* in a later *Report and Order*.

II. DISCUSSION

2. Our current rule requires that an FM translator rebroadcasting an AM station must be located such that the 60 dBμ contour of the FM translator station is contained within the lesser of (a) the 2 millivolts per meter (mV/m) daytime contour of the AM station, or (b) a 25-mile radius centered at the AM transmitter site.<sup>5</sup> Many commenters, responding to the *Notice of Proposed Rule Making* in this

\*This document has been circulated for tentative consideration by the Commission at its February open meeting. The issues referenced in this document and the Commission’s ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration by the Commission, the public interest would be served by making this document publicly available.

<sup>1</sup> *Revitalization of the AM Radio Service*, First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, 30 FCC Rcd 12145, 12173-74, paras. 66-68 (2015) (*AMR FNPRM*) (discussing comments filed in response to Commission’s Notice of Proposed Rule Making in this proceeding, 28 FCC Rcd 15221 (2013)).

<sup>2</sup> 47 CFR § 74.1201(g).

<sup>3</sup> The Commission opened two windows for the filing of applications to acquire and relocate FM translator stations to rebroadcast AM stations, reserved only for AM licensees and permittees. *AMR FNPRM*, 30 FCC Rcd at 12148-54, paras. 7-17.

<sup>4</sup> See also iHeart Media Reply at 6; BAS Broadcasting Comments at 2 (both supporting immediate action on this proposal).

<sup>5</sup> *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Report and Order, 24 FCC Rcd 9642, 9642 (2009) (*2009 Translator Order*). See 47 CFR § 74.1201(g).

proceeding,<sup>6</sup> suggested that this standard is too restrictive and should be changed to provide that the coverage contour of an FM translator rebroadcasting an AM station as its primary station must be contained within the *greater* of the 2 mV/m daytime contour or a 25-mile radius. Some argued that the current standard disadvantages AM stations employing directional signals with deep signal nulls, resulting in a 2 mV/m contour extending only a short distance from the transmitter site that would disadvantage a translator co-located with the AM transmitter.<sup>7</sup> Others contended that the current limitations made it difficult for AM stations having transmitters located at some distance from their communities of license, due to land costs, to locate translators nearer to those communities to facilitate service to their listening audiences.<sup>8</sup> After considering these comments, the Commission proposed in the *AMR FNPRM* to change the standard to the greater of the 2 mV/m daytime contour or a 25-mile radius centered at the AM transmitter site, but with the limitation that the translator's 1 mV/m coverage contour may not extend beyond a 40-mile (64 km) radius centered at the AM transmitter site.<sup>9</sup> The Commission reasoned that this rule would provide "sufficient flexibility to provide useful signal coverage, while not allowing a cross-service fill-in translator to extend the station's coverage beyond its core service area."<sup>10</sup>

3. Commenters overwhelmingly supported a relaxation of the current FM translator siting rule.<sup>11</sup> Some would increase the 40-mile limit,<sup>12</sup> or would not implement such a limit at all.<sup>13</sup> Most commenters opposing the 40-mile limit point to instances in which substantial covered populations lie within an AM station's 2 mV/m daytime contour but more than 40 miles from the station's transmitter. NAB states that limiting translator placement to an AM station's 2 mV/m daytime contour effectively constrains translator operations to an AM station's core service area, and suggests that greater flexibility is needed for AM stations to provide interference-free service to expanding core market areas.<sup>14</sup>

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<sup>6</sup> *Revitalization of the AM Radio Service*, Notice of Proposed Rule Making, 28 FCC Rcd 15221 (2013).

<sup>7</sup> *AMR FNPRM*, 30 FCC Rcd at 12173, para. 67.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 12174, para. 68.

<sup>10</sup> *Id.*

<sup>11</sup> *See, e.g.*, Blount Masscom, Inc., et al., Comments at 4-5; Las Vegas Broadcasters Comments at 2; Cohen Dippell & Everist Comments at 9; Family Life Broadcasting System Comments at 1-2; Scott Fybush Comments at 6; MBC Grand Broadcasting Comments at 5; Martha Whitman Comments at 5; Charles Anderson Comments at 3; Hatfield & Dawson Comments at 4; K-Zone Media LLC Comments at 1; Multicultural Radio Broadcasting Licensee, LLC Comments at 7-8; Mark D. Humphrey Comments at 2; Genessee Media Corp. Comments at 1; The Cromwell Group Comments at 2; WMOV Comments at 1. *But see* Edward Paul De La Hunt / Bemidji Radio, Inc. (De La Hunt) Comments at 4 (arguing that the FM translator's 1 mV/m contour should not exceed the AM station's 2 mV/m daytime contour on any azimuth, or alternatively that in addition to this the translator's transmitter site must be located within the AM station's 5 mV/m contour, to guarantee service to the core market); McCarthy Radio Enterprises, Inc. (McCarthy), Comments at 15-16 (stating that at least 51 percent of a translator's 70 dB $\mu$  coverage area should cover areas within the community of license's municipal boundaries, unless the translator site is located on the AM station's tower, except that for smaller communities the 70 dB $\mu$  signal should cover 80 percent of the community of license's population).

<sup>12</sup> *See, e.g.*, Metro Radio, Inc., Comments at 4-5; Communications Technologies, Inc., Comments at 4-5; Mountainplex Media, LLC, Comments at 1-4; Radio Vision Cristiana Management Comments at 4-5 (all supporting increase of cap to 60 miles); Monterey County Broadcasters Comments at 1; Butte Broadcasting Co., Inc., Comments at 2 (both suggesting increase to 50 miles).

<sup>13</sup> *See, e.g.*, Crawford Broadcasting Co. (Crawford) Comments at 4-5; NAB Comments at 1-4; Univision Local Media, Inc., (Univision) Comments at 10-11; du Treil, Lundin & Rackley, Inc., (DLR) Comments at 7.

<sup>14</sup> NAB Comments at 3-4. *See also* Crawford Comments at 4-5 (citing "significant population clusters" more than 40 miles from some of its stations but within the 2 mV/m daytime contour, that "are, in some cases, key to a station's economic viability.").

Univision submits a study of a sample of three of its AM stations, one of which has a population of over 300,000 in its 2 mV/m daytime contour more than 40 miles from the transmitter, and the other two of which have populations over 1 million in the same area.<sup>15</sup> DLR states that the imposition of a 40-mile limit could restrict translator service to some areas, owing to directional antenna patterns and/or uneven ground conductivity.<sup>16</sup>

4. Having read and considered the comments addressing this proposal, and given the overwhelming support expressed for the proposal or slight variations from it,<sup>17</sup> we adopt the proposal set forth in the *AMR FNPRM* with one change. Specifically, we agree with Crawford, DLR, NAB, and Univision that the 40-mile limitation on translator siting may, in some cases, be unduly restrictive, and accordingly remove that limitation from the rule change as adopted. Such a change will be consistent with our objective, articulated in the *AMR FNPRM*, to provide flexibility to an AM station using a cross-service translator to serve its core market while not extending its signal beyond the station's core service area.<sup>18</sup> To the extent that some commenters argue that eliminating the 40-mile limitation enables the extension of service beyond an AM station's core service area or community of license,<sup>19</sup> we note that the Commission has already held that the 2 mV/m contour in all cases constitutes an AM station's primary service area.<sup>20</sup> In light of the inclusion of that contour as one of the limits to translator coverage in the modified rule, we do not believe it is necessary to impose the 40-mile limitation to ensure that the use of FM translators will not result in such extensions of service. We therefore amend section 74.1201(g) of the rules to provide that an FM translator rebroadcasting an AM broadcast station must be located such that the 60 dB $\mu$  contour of the FM translator station must be contained within the greater of either (a) the 2 mV/m daytime contour of the AM station, or (b) a 25-mile radius centered at the AM station's transmitter site.

### III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in Sections 1, 2, 4(i), 303, and 307 of the Communications Act of 1934, 47 U.S.C. §§ 151, 152, 154(i), 303, and 307, this *Second Report and Order* **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that, pursuant to the authority found in Sections 1, 2, 4(i), 303, and 307 of the Communications Act of 1934, 47 U.S.C. §§ 151, 152, 154(i), 303, and 307, the Commission's rules **ARE HEREBY AMENDED** as set forth in Appendix A.

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<sup>15</sup> Univision Comments at 10-11 and Appendix 3.

<sup>16</sup> DLR Comments at 7.

<sup>17</sup> See, e.g., Mt. Wilson FM Broadcasters, Inc., Comments at 4-5 (proposing to contain the translator's coverage contour within the greater of the AM station's daytime 2 mV/m contour or a 40 mile radius from the AM transmitter site, with the translator's 1 mV/m contour not extending beyond a 60-mile radius); Edward Schober Comments at 10 (substituting AM station's daytime primary contour for 2 mV/m daytime contour); Butte Broadcasting Co., Inc., Comments at 2 (increasing 40-mile cap to 50 miles, and allowing translator coverage contours to extend slightly beyond limit to avoid need for directional antennas); REC Networks Comments at 4-8 (suggesting that a translator's signal should not extend beyond a 25-mile radius from the AM transmitter site, except where the community of license is over 25 miles from the AM transmitter, the translator would serve a population unserved by an FM station, or the stations are in Alaska).

<sup>18</sup> *AMR FNPRM*, 30 FCC Rcd at 12174, para. 68.

<sup>19</sup> See note 11 *supra*, referencing De La Hunt and McCarthy Comments.

<sup>20</sup> See *AM FNPRM*, 30 FCC Rcd at 12173, para. 64 (citing *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Order on Reconsideration, 27 FCC Rcd 12829, 12838, para. 16 (2012)). See also *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Report and Order, 24 FCC Rcd 9642, 9658, para. 38 (2009) (*2009 Translator Order*) (recognizing that the 2 mV/m contour accurately depicts the core market area for the majority of AM stations, which operate at a nominal power of 2.5 kW or less).

7. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Report and Order*, including the Final Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

8. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

9. **IT IS FURTHER ORDERED** that the rule change adopted herein, which contains new or modified information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), **WILL BECOME EFFECTIVE** after the Commission publishes a notice in the *Federal Register* announcing such approval and the relevant effective date.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A**  
**Final Rule Change**

**Part 74 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:**

1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 336 and 554.

2. Revise paragraph (g) of Section 74.1201 to read as follows:

**§ 74.1201 Definitions.**

\* \* \* \* \*

(g) \* \* \* The coverage contour of an FM translator rebroadcasting an AM radio broadcast station as its primary station must be contained within the greater of either the 2 mV/m daytime contour of the AM station or 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.

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## APPENDIX B

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice of Proposed Rule Making (FNPRM)* to this proceeding.<sup>2</sup> The Commission sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. The Commission received no comments on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

**A. Need For, and Objectives of, the Second Report and Order**

2. This *Second Report and Order (Second R&O)* adopts a change to the rule setting forth where an FM translator station rebroadcasting an AM broadcast station may be located. Specifically, in the *Second R&O* the Commission changes the current rule, which requires that an FM translator rebroadcasting an AM station be located such that the 60 dB $\mu$  contour of the FM translator station must be contained within the lesser of (a) the 2 millivolts per meter (mV/m) daytime contour of the AM station, or (b) a 25-mile radius centered at the AM transmitter site.<sup>4</sup> The rule change specifies that an FM translator rebroadcasting an AM station may be located such that the 60 dB $\mu$  contour of the translator must be contained within the *greater* of the AM station's 2 mV/m daytime contour or a 25-mile radius of the AM transmitter site. This rule change was proposed, in a slightly different form, in the *FNPRM*, based on comments submitted during the initial round of commenting in this proceeding. The Commission determined that, because it had completed two filing windows allowing the relocation of FM translator stations to rebroadcast AM stations, immediate adoption of this rule change would benefit those station licensees and permittees when determining where to site the relocated FM translators.

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

3. There were no comments to the IRFA filed.

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

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 rules adopted herein.<sup>5</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small government jurisdiction."<sup>6</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>7</sup> A small business concern

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, 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).

<sup>2</sup> 30 FCC Rcd 12145, 12202-05 (2015).

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Report and Order, 24 FCC Rcd 9642, 9642 (2009) (2009 *Translator Order*). See 47 CFR § 74.1201(g).

<sup>5</sup> 5 U.S.C. § 603(b)(3).

<sup>6</sup> *Id.* § 601(6).

<sup>7</sup> *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

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 Small Business Administration (SBA).<sup>8</sup>

5. The subject rules and policies potentially will apply to all AM radio broadcasting licensees and potential licensees, as well as licensees and potential licensees of FM translator stations that rebroadcast an AM radio broadcasting station as its primary station. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.<sup>9</sup> Included in this industry are commercial, religious, educational, and other radio stations.<sup>10</sup> Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.<sup>11</sup> However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number.<sup>12</sup> The SBA has established a small business size standard for this category, which is: firms having \$38.5 million or less in annual receipts.<sup>13</sup> According to the BIA/Kelsey, MEDIA Access Pro Database on December 21, 2016, 4,661 (99.94%) of 4,664 AM radio stations have revenue of \$38.5 million or less. Therefore, the majority of such entities are small entities. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>14</sup> 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.

6. The proposed policies could affect licensees of FM translator stations, as well as potential licensees in this radio service. 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 \$38.5 million in annual receipts.<sup>15</sup> Currently, there are approximately 6,962 licensed FM translator and booster stations.<sup>16</sup> In addition, there are approximately 225 applicants with pending applications filed in the 2003 translator filing window. Given the nature of these services, we will presume that all of these licensees and applicants qualify as small entities under the SBA definition.

#### **D. Description of Projected Reporting, Record Keeping and Other Compliance Requirements**

7. As described, the rule change will not result in substantial increases in burdens on applicants, and in fact may decrease burdens on many applicants by providing additional flexibility in FM translator siting. The rule change adopted in the *Second R&O* is substantive and does not involve

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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).

<sup>8</sup> 15 U.S.C. § 632.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> 13 CFR § 121.201, NAICS code 515112 (updated for inflation in 2008).

<sup>14</sup> “[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 the power to control both.” 13 CFR § 121.103(a)(1).

<sup>15</sup> *Id.*

<sup>16</sup> See *Broadcast Station Totals as of September 30, 2016*, News Release (rel. Oct. 19, 2016) ([https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-341807A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-341807A1.pdf)).

application changes, reporting requirements, or record keeping requirements beyond what is already required.

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

8. 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.<sup>17</sup>

9. The vast majority of commenters on the *FNPRM* proposal adopted in the *Second R&O* supported the proposal. Some suggested variations on the rule change as proposed; many in particular suggested the Commission relax or eliminate the proposed absolute limitation on placing an FM translator rebroadcasting an AM station so that its 1 mV/m contour would not extend farther than 40 miles from the AM station's transmitter site. Based on these comments, the Commission declined to adopt the absolute 40-mile limitation, thus providing applicants with greater flexibility in locating FM translators rebroadcasting AM stations, and further minimizing the impact on small entities.

**F. Report to Congress**

10. The Commission will send a copy of the *Second R&O*, including this FRFA, in a report to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>18</sup> In addition, the Commission will send a copy of the *Second R&O*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second R&O* and FRFA (or summaries thereof) will also be published in the *Federal Register*.<sup>19</sup>

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<sup>17</sup> 5 U.S.C. § 603(c)(1)-(c)(4)

<sup>18</sup> *See id.* § 801(a)(1)(A).

<sup>19</sup> *See id.* § 604(b).