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FCC OK's AM on FM Translators

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In an effort to provide a lifeline to an AM radio industry in continued, and dramatic, competitive decline, the Commission has changed its rules to permit AM stations to rebroadcast their signals on FM translators under certain conditions. The long-awaited Report and Order – whose release was anticipated last Fall – opens the door for considerable, but not universal, “cross-service translation”.

Under the new rules, AM stations may rebroadcast on “currently authorized” translators in the non-reserved (*i.e.*, commercial) portion of the FM band, ***provided that*** no portion of the 60 dBu contour of the translator extends beyond the ***smaller*** of either (a) the AM’s 2 mV/m daytime contour or (b) a 25-mile radius from the AM’s transmitter site. To be a “currently authorized” translator for these purposes, a translator must have been licensed or authorized in a construction permit in effect as of May 1, 2009. (In other words, translators whose initial permits are granted after May 1, 2009, will ***not*** be eligible; nor will any translators whose authorizations, even if granted on or before that date, have since expired.)

And for all you Class D AM stations, a special break: you will be allowed to originate programming on the translator during time periods when your AM station is not operating. While that does some violence to the technical concept of “translator” service (since origination, after all, does not involve “translation” in any sense), the Commission viewed it as in keeping with the agency’s desire to bolster the competitive position of AM licensees.

These changes have been a couple of years in the making. Back in 2006, the NAB filed a petition for rulemaking proposing the idea of cross-service translation. And in 2007, the Commission had started issuing STA’s to let some AM folks translate on a case-by-case basis. (We reported on that phenomenon on our blog two years ago. Through March 18, 2009, a total of 215 such STA’s had been issued.) The Commission released a Notice of Proposed Rulemaking moving the ball a bit farther down the field in August, 2007, and it looked like the final rules were set to be adopted last Fall. But suddenly the item was removed from the Commission’s agenda without explanation. (Some suspected that the

LPFM lobby, which has no love for translators and would prefer to rein in their spread, had made a successful, last-ditch effort to derail the proposal.) While that disappearance from the regulatory radar screen may have been cause for alarm, the Commission continued to grant STA's, suggesting strongly that the rules would ultimately be adopted.

And sure enough, here they are. The new rules should do the trick for many, if not most, interested AM stations. That is, AM stations subject to multiple interference sources (due to the nature of AM technology) should be able to reach their core service area with FM signals in addition to their AM signals.

But there *are* limitations. For example, while the AM licensee does not necessarily have to own the translator on which its signal is being rebroadcast, the limiting "financial support" rules that apply to FM licensees will equally apply to AMers. If the translator used for AM fill-in service is not owned by the AM licensee, a rebroadcast consent agreement between the two licensees must be in place. And as to ownership of multiple translators, while a single AM station may own more than one FM translator, the Commission will not permit ownership of more than one translator serving the "same area". This parallels existing rules for FM stations. By requiring full service stations, AM or FM, to demonstrate the "technical need" for more than one translator serving substantially the same area as another, previously authorized translator, the Commission hopes to prevent "monopoliz-[ation]" of local spectrum.

In this vein, the Commission warns ominously that it will "consider it an abuse of our rules for a licensee to use two or more cross-service translators to effectively create a *de facto* FM station." Ditto for a licensee who tries to "use two or more FM translators in a manner which circumvents the local radio ownership limits." However, the Commission provides no clear indication of how it will identify such situations.

One other limitation: cross-service translation will not be permitted on translators operating on reserved (educational) channels.

While the cross-service translator proponents appear to have achieved a major success, the LPFM lobby did not go home empty-handed. The "currently authorized" limitation – *i.e.*, the rule preventing cross-service translation on a translator authorized since May 1, 2009 – is intended to cap the universe of eligible translators and prevent any new efforts to squeeze more FM translators out of the FCC's processing line. Providing further assurance along those lines to the LPFM folks, the Commission makes clear in the Report and Order that the next LPFM application window will be opening *before* the next FM translator opportunity. (No dates for either window have been set – and the smart money figures that we probably won't be seeing the LPFM window for at least a year, but you never know.)

Additionally, the Commission expressly agreed that the LPFM service is generally at “cross-purposes” with the notion of allowing LPFM stations to rebroadcast AM signals. Still, the Commission elected to permit such rebroadcasts as long as they are done “in a manner that complies with the LPFM rules.”

Perhaps the real winners here are those lucky, or prescient, souls who managed to get themselves translator licenses or permits on unreserved channels prior to May 1, 2009. The new rules likely increase the demand for such stations, the supply of those stations is inelastic (having been set in stone as of May 1, 2009), and Econ 101 principles tell us that, in such circumstances, the price to acquire such stations is almost certain to go up, up, up.

The new rules will not become effective until they get published in the Federal Register and get blessed by OMB. As of the effective date, all outstanding cross-service translator STA's will be cancelled, and any still-pending requests for such STA's will be dismissed. (Any FM translator licensee currently rebroadcasting AM signals must file written notification specifying the AM primary station pursuant to Section 74.1251(c) sometime between now and then.) Check back at www.CommLawBlog.com for updates.