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## **NAB Weighs In With Proposal To Open FM Translator Service To AM Licensees**

*Sima N. Chowdhury*  
703-812-0484  
[chowdhury@fhhlaw.com](mailto:chowdhury@fhhlaw.com)

FM Translators have become the latest fad for petitioners, offering (in the eyes of many) a low-power solution to a wide range of woes. In July, the National Association of Broadcasters (NAB) filed a petition with the Commission seeking a rulemaking looking to amend the Commission's rules to allow AM stations to use FM translators. As the NAB observed (and as just about any AM licensee can corroborate), potential nighttime interference unique to the AM band forces many AM stations to reduce power or cease operations between sunrise and sunset. That problem, together with the increasing number of external factors contributing to the existence of coverage gaps for AM stations, imposes burdens on the AM industry that arguably warrant FCC intervention.

In the NAB's view, FM translators could provide the answer to these AM coverage problems. The NAB is asking that the Commission allow the use of FM translators to provide fill-in service for AM stations, with the translator signal limited to the lesser of the 2 mV/m daytime contour of the AM station it rebroadcasts or a circle with a 25 mile radius surrounding the AM station. The petition submits that retransmission of AM stations by FM translators presents a "technically feasible, pro-competitive, and pro-public interest" solution to the interference and signal loss problems. It would allow daytime-only stations to operate on the FM band at night, avoiding the creation of harmful interference resulting from skywave propagation. It would also improve daytime service, as FM translators would help overcome intervening terrain barriers and distance issues that diminish the primary AM station's signal.

The NAB's petition – and the FCC's reaction to it – may legitimately raise a few eyebrows. Recall that the NAB *opposed* a similar proposal made by the American Community AM Broadcasters Association in 1997, a proposal which was similarly based on the need for FM translators to overcome nighttime disruption of AM service. What a difference nine years make! NAB now asserts that "continued pressures on AM radio" and the need for "another boost to enhance AM stations' ability to serve audiences and compete in the ever-changing media marketplace" have ripened the issue for reexamination. A footnote in the petition fleshes out this general rationale, stating that

“AM stations are encountering ever more interference problems as a result of an increase in ambient noise.”

NAB does not specify the source(s) of that perceived increase in ambient noise, but one possible source that comes to mind is In-Band On-Channel (“IBOC”) digital radio operation. Hybrid analog/digital AM operation requires a great deal more bandwidth than analog alone, which in turn increases the potential for adjacent channel interference. Indeed, hybrid AM operations are currently permitted only during the day, due to concerns about adjacent channel interference at night. But in June, 2004, the NAB itself recommended that the FCC authorize hybrid AM operation at night, a recommendation which would seem to invite an increase in potential AM interference problems, and a consequent decrease in overall reliability of AM nighttime operation.

Significantly, the June, 2004 proposal seemed finally to have made it onto the FCC’s radar screen in July, 2006 – some two years after the NAB’s June, 2004, proposal was filed, it appeared to be among the items that the Commission was scheduled to consider in its July, 2006, open meeting. But lo and behold, the Commission dropped that item (which included a range of digital radio issues) from its agenda, just a day before the NAB filed its petition. This sequence of events suggests that the proposal for FM translator use by AMers may have been conceived as a means to guard against more interference if the Commission were in fact to permit hybrid AM operation at night. That might account for the somewhat urgent tone of the NAB’s translator petition.

Thus, the NAB’s seeming about-face on the issue of FM translators for AM stations may be understandable as an element in an overall push to secure nighttime digital AM operation.

What is far less clear is why the FCC has put the latest NAB proposal on an apparently fast track. The mere fact that a party chooses to file a petition for rule making does *not* normally guarantee that the FCC will pay any attention to it. Some petitioners struggle hard to get the FCC to give their petitions a formal rule making file number and put them out for public comment; at least one petition we know of never even got that far, despite repeated efforts by the petitioner to get the Commission’s attention.

And yet the NAB’s translator proposal was placed on a public notice (meaning initial public comments on it were invited) in a matter of a couple of weeks. Of course, the NAB has a very effective legal team which interacts well with the Commission. But why would the Commission be interested in encouraging additional translator use, when just last year the Commission imposed a freeze on new and modified FM translator applications out of concern for the impact of such applications on the nascent LPFM industry? (Check out the March, 2005 *Memo to Clients* for an article about that freeze.)

The freeze, originally set to expire in six months (*i.e.*, in September, 2005) is still effectively in place almost a year after that initial expiration point.

So if the FCC really is concerned about the potential impact of FM translators on LPFM service, why would the Commission be attracted to the NAB proposal which would substantially increase the number of FM translators? In fact, to the extent that the NAB's proposal seems to contemplate allowing mere daytime-only AM stations to use FM translators full-time, the NAB seems to be advocating that translators be used for at least some program origination, a step which the Commission has long resisted. The FCC's speedy advancement of the NAB's proposal through the bureaucratic maze suggests a form of regulatory schizophrenia when viewed against the historical backdrop of the 18-month (and counting) translator freeze and the Commission's even longer standing resistance to program origination on translators.

Of course, there may be a method to the Commission's seeming madness. The Commission may, for example, already have a long-range plan for FM translators under consideration, a plan which somehow will accommodate increased translator use (for both AM and FM stations) *and* protection of LPFM service. Thus, the NAB proposal may be just a step in that direction. Alternatively, the agency's invitation for comments on the NAB proposal may turn out to be a head-fake. Just because the Commission asks for comments does not necessarily mean that the Commission intends to act on the proposal any time soon. In that scenario, the invitation for comments could be just a cosmetic effort to create the impression that action is imminent, when in fact the proposal is destined for the back regulatory burner once the comments have been filed.

We confess that we don't know what the Commission has up its sleeve on this – we'll just have to wait and see.