



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 74**

**[MB Docket No. 13-249; FCC 17-14]**

**Revitalization of the AM Radio Service**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Commission's rule setting forth the allowable location of an FM translator station rebroadcasting the signal of an AM broadcast station. It changes the rule so that an AM broadcaster has a greater area in which an FM translator rebroadcasting the AM signal may be located, giving AM broadcasters greater flexibility in reaching their listeners. The change is necessary to accommodate AM radio stations located far from their communities of license, or those with highly directional signal patterns.

**DATES:** This rule is effective [insert date 30 days after date of publication in the Federal Register]. The effective date is delayed indefinitely pending Office of Management and Budget (OMB) approval of a non-substantive change to the rule as originally proposed. The Commission will publish a document in the Federal Register announcing the effective date.

**FOR FURTHER INFORMATION CONTACT:** Peter Doyle, Chief, Media Bureau, Audio Division, (202) 418-2700 or [Peter.Doyle@fcc.gov](mailto:Peter.Doyle@fcc.gov); Thomas Nessinger, Senior Counsel, Media Bureau, Audio Division, (202) 418-2700 or [Thomas.Nessinger@fcc.gov](mailto:Thomas.Nessinger@fcc.gov).

For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at 202-418-2918, or via the Internet at [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Second Report and Order (Second R&O), FCC 17-14, adopted February 23, 2017, and released February 24, 2017. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW, Room CY-A257, Portals II, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

### **Paperwork Reduction Act of 1995 Analysis**

This Second R&O adopts new or revised information collection requirements, subject to the Paperwork Reduction Act of 1995 (PRA) (Pub. L. 104-13, 109 Stat 163 (1995) (codified in 44 U.S.C. 3501-3520)). The Office of Management and Budget (OMB) preapproved the information collection requirements, as set forth in the Further Notice of Proposed Rulemaking (FNPRM) in this proceeding, 81 FR 2818, January 19, 2016, as follows: FCC Form 345, under OMB control number 3060-0075, on March 17, 2016; and FCC Form 349, under OMB control number 3060-0405, on March 21, 2016. The Commission will receive OMB’s final approval for the information collection requirements by submitting a non-substantive change submission to OMB for review under section 3507(d) of the PRA (44 U.S.C. 3507(d)).

In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

### **Synopsis**

1. In the FNPRM, the Commission proposed to relax the current rule setting forth where an FM fill-in translator rebroadcasting an AM broadcast station may be sited (47 CFR 74.1201(g)). Having recently granted over 1,000 applications to acquire and relocate FM translators to rebroadcast AM stations, the Commission found it desirable to act on the translator siting proposal expeditiously, to provide the recent translator modification applicants maximum flexibility in providing service to their communities and nearby areas.

2. Section 74.1201(g) currently requires that an FM translator rebroadcasting an AM station must be located such that the 60 dB $\mu$  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. Many commenters, responding to the Notice of Proposed Rule Making in this proceeding (28 FCC Rcd 15221 (2013)), 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. After considering these comments, the Commission proposed in the FNPRM to amend 47 CFR 74.1201(g), changing 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.

3. Commenters overwhelmingly supported a relaxation of the current FM translator siting rule. Some favored increasing the 40-mile limit, with others proposing to eliminate the 40-mile limit altogether. Most commenters opposing the 40-mile limit pointed 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.

4. Having read and considered the comments addressing this proposal, most of which supported the proposal or slight variations from it, the Commission adopted the proposal set forth in the FNPRM, but eliminated the 40-mile limitation on translator siting from the rule change as adopted. The rule change as modified was deemed to be consistent with the Commission's objective, articulated in the 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. The Commission also reiterated a desire to provide applicants who participated in the Commission-ordered 2016 translator modification windows with maximum flexibility in providing service to their authorized communities and nearby areas, and accordingly announced that such applicants may apply to further move their cross-service FM translators already relocated pursuant to the 2016 modification windows, as a minor modification application, as long as the proposed further modification complies with both the amended 47 CFR 74.1201(g) adopted in the Second R&O and with the 250-mile limitation imposed in the FNPRM (30 FCC Rcd at 12152, para. 15). The Commission also reiterated the statement in the FNPRM, that a waiver of an Auction 83 FM translator construction deadline is presumptively in the public interest for applicants participating in one of the 2016 modification windows, provided that the AM station licensee proposing to use the FM translator for rebroadcasting its AM station commits to prompt FM translator station construction and initiation of broadcast operations (30 FCC Rcd at 12152 n.36). In the interest of prompt station construction and initiation of service, the Commission limited any extensions of construction deadlines to not more than six months after the effective date of this Second R&O.

5. The Commission therefore amended 47 CFR 74.1201(g) 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.

### **Final Regulatory Flexibility Analysis**

6. As required by the Regulatory Flexibility Act of 1980, as amended (RFA) (5 U.S.C. 603), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the FNPRM (30 FCC Rcd 12145, 12202-05 (2015)). 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 (see 5 U.S.C. 604).

### **Need for, and Objectives of, the First Report and Order**

7. This 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. 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.

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

8. There were no comments to the IRFA filed.

**Response to comments by the Chief Counsel for Advocacy of the Small Business Administration**

9. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. 5 U.S.C. 604(a)(3). The Chief Counsel did not file any comments in response to the proposed rule in this proceeding.

**Description and Estimate of the Number of Small Entities to Which the Rules Apply**

10. 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. 5 U.S.C. 603(b)(3). 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 U.S.C. 601(6). In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. 5 U.S.C. 601(3). A small business concern 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). 15 U.S.C. 632.

11. 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. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. The SBA has established a small business size standard for this category, which is: firms having \$38.5 million or less in annual receipts. 13 CFR 121.201, NAICS code 515112 (updated for inflation in 2008). 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 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.

12. 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. Currently, there are approximately 6,962 licensed FM translator and booster stations. 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.

### **Description of Projected Reporting, Record Keeping and other Compliance Requirements**

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

### **Steps Taken to Minimize Significant Impact of Small Entities, and Significant Alternatives Considered**

14. 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. 5 U.S.C. 603(c)(1)-(c)(4).

15. 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. Additionally, the Commission stated that it will treat applications to relocate FM translators, modified during the 2016 modification windows for cross-service translators, as minor modification applications as long as they comply with the Second R&O and the 250-mile limit set forth in the FNPRM in this proceeding. The Commission also reiterated its position, taken in the FNPRM, that a waiver of an Auction 83 FM translator construction deadline is presumptively in the public interest for applicants participating in one of the 2016 modification windows, provided that the AM station licensee proposing to use the FM translator for rebroadcasting its AM station commits to prompt FM translator station construction and initiation of broadcast operations. An FM translator acquired to rebroadcast an AM station signal may thus apply to extend its construction permit expiration date up to six months from the effective date of the Second R&O. These actions enable participants in the 2016 modification windows for cross-service translators, which as noted above are small entities, to avail themselves of the benefits of the relaxed translator siting rule.

16. Report to Congress. 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. 5 U.S.C. 801(a)(1)(a). 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. See 5 U.S.C. 604(b).

### **Ordering Clauses**

17. 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.

18. 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 to the Second Report and Order.

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

20. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Second 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).

21. 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.

List of Subjects in 47 CFR Part 74

Communications equipment, Radio.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene H. Dortch,  
Secretary.

## Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 74 as follows:

### **PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES**

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. Section 74.1201 is amended by revising the last two sentences of paragraph (g) 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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