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Legal Memorandum

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FCC Adopts AM Revitalization Order; FM Translator Windows for AM Stations Opening in 2016

I. Introduction

In late October, the FCC adopted a [First Report and Order](#) (the “Order”), Further Notice of Proposed Rule Making (“Further Notice”) and Notice of Inquiry (“NOI”) in its two-year-old AM Revitalization proceeding. The news is—by and large—favorable for AM radio operators, but the existence of the Further Notice and NOI mean that the FCC’s work is not finished, and all issues are not resolved. Of course, only time will tell whether and to what extent the new rules—some of which represent a roll-back of prior rules that had unintended, unfavorable consequences for AM service—will “revitalize” AM service.

Below is an overview of a number of the rule revisions adopted by the FCC, including new opportunities for AM stations to use FM translators, modifications to the daytime and nighttime community coverage standards for existing stations, elimination of the so-called “Ratchet Rule,” and facilitation of implementation of MDCL technology. Because the FCC almost immediately issued a follow-on Public Notice (which is attached to this memorandum and should be reviewed carefully by any AM operator interested in FM translator use) regarding the “nuts and bolts” of a

series of FM translator filing “windows” for AM stations, the material below focuses on the FM translator piece of the AM Revitalization proceeding. Indeed, as you will see below, AM stations interested in FM translators would be well-advised to begin exploring their options right away.

II. New FM Translator Opportunities for AM Stations

The “big ticket” item in the Order for AM operators is a series of opportunities for AM stations to supplement and enhance their AM band operations with FM translator operations. Any AM station that is interested in an FM translator opportunity should begin to discuss its options with a consulting engineer and an FCC lawyer as soon as possible. Things are going to move quickly, filing windows are going to open as soon as first quarter 2016, and AM stations need to be ready.

AM Stations May Apply to Move an FM Translator up to 250 Miles. In a nutshell, the FCC has adopted rules that will allow AM stations to acquire and move existing FM translators (licensed and operating *or* unbuilt construction permits) up to 250 miles and to specify a new channel for operations. The FCC will open two filing windows for this purpose in 2016: the first “window” will be for Class C and Class D AM stations, and the second window will be for all AM stations. In these windows, each eligible AM station will be limited to acquiring and relocating **one** (and only one) non-reserved band FM translator station up to 250 miles and specifying any rule-compliant non-reserved band FM channel, as a minor modification application. The windows will be first-come/first-serve, which means that early applications may impact later application opportunities.

Waiver Requests for FM Translator Permits Expiring in 2016. In its Order, the FCC observed that there are currently a significant number of existing FM translator construction permits scheduled to expire in 2016, which could affect the viability of such permits for purposes of these 250-mile move windows. Thus, the FCC has decided that AM stations that file minor modification applications in one of the 2016 filing windows are allowed to seek waiver of the construction deadlines set forth in the construction permits, but, in so doing, they must “commit[] to prompt FM translator station construction and initiation of broadcast operations.” Importantly, any such construction deadline waiver will require the AM operator to rebroadcast its signal on the applicable FM translator for a period of at least four years (exclusive of silent periods). Clearly, the FCC does not want stations to “game the system.”

Public Notice for 2016 Windows. Almost immediately after release of the AM Revitalization Order, the FCC released a Public Notice discussing the 250-mile move FM translator windows. For convenience, a copy of the Public Notice is attached to this memorandum. Any AM operator interested in exploring its options to participate in the 2016 windows should carefully review the attached Public Notice and begin taking action immediately.

FM Translator Auction Windows Opening in 2017. Subsequently, in 2017, the FCC will open two additional filing windows, for those AM licensees and permittees that do not file an application during the 2016 250-mile move windows. The 2017 windows will be FM translator application “auction” windows, with the first being made available only to Class C and Class D AM stations that did not participate in the 2016 windows. The second 2017 auction window will

be open to all AM station licensees and permittees that have not participated in any of the prior three windows.

The windows opening in 2017 will be for AM permittees and licensees to propose a brand-new FM translator, which must comply with the FCC's rules for FM fill-in translators rebroadcasting AM stations, and any FM translator acquired during the 2017 auction windows will be permanently linked to the associated AM station. Applicants that propose mutually exclusive facilities during these auction windows will have an opportunity to resolve the mutual exclusivity through settlements or technical resolutions before progressing to an auction for remaining mutually exclusive proposals.

III. Other AM Revitalization Measures Adopted By the FCC

Modification of the Daytime Community Coverage Standards for Existing AM Stations. The FCC has adopted its proposal to modify the daytime community coverage requirement to require that the station's predicted or measured daytime 5 mV/m contour encompass only either 50 percent of the population or 50 percent of the area of the community of license. This relaxation of the prior rule will apply to existing licensed AM facilities only. According to the FCC, applicants proposing new AM stations or proposing to move existing stations to a new community of license do not face the same types of community coverage difficulties as existing licensed AM facilities, because these types of applicants have the ability to choose a community based on whether the station can locate a site that would allow for the existing requisite community coverage. In contrast, existing licensed stations—especially those with multi-tower arrays—have experienced difficulties in relocating their facilities while maintaining coverage of their entire communities of license as a result of expanding city boundaries, reduced availability of land, and local zoning restrictions.

The FCC intends for this rule modification to be limited in application, and, as such, the FCC has ordered the Media Bureau to take a hard look at modifications sought during the first four years of an AM station's operations that would reduce the daytime community coverage of the station.

Modification of the Nighttime Community Coverage Standards for Existing AM Stations. Many AM radio stations are required to reduce their power or cease operating at night in order to avoid interference to other AM radio stations, due to nighttime skywave propagation that can result in an AM signal traveling, in some cases, hundreds of miles. Rules nevertheless currently require that non-Class D AM broadcasters maintain a signal at night sufficient to cause 80 percent of the area or population of the broadcaster's principal community to be "encompassed by the nighttime 5 mV/m contour or the nighttime interference-free contour, whichever value is higher." Thus, most AM broadcasters must continue serving the bulk of their communities of license at night even though the Commission's Rules, in many cases, mandate reduced maximum broadcast power levels. The Commission therefore proposed in the *NPRM* that the nighttime community coverage requirement be eliminated for existing licensed AM stations, and be modified to require that applicants for new AM stations and those AM stations seeking a change to their communities of license cover either 50 percent of the population or 50 percent of the area of the communities of license with a nighttime 5 mV/m signal or a nighttime interference-free contour, whichever value is higher. (we instruct the Media Bureau to examine closely any request by a station to reduce

nighttime community coverage during its first four years of licensed on-air operation, and grant it discretion to dismiss any such application absent a compelling reason warranting reduced nighttime service.)

Elimination of the “Ratchet Rule.” The FCC has adopted its proposal to delete the so-called “Ratchet Rule.” The Ratchet Rule effectively requires that a Class A or B AM broadcaster, seeking to make facility changes that modify its AM signal, demonstrate that the improvements will result in an overall reduction in the amount of skywave interference that it causes to certain other AM stations (primarily by “ratcheting back” radiation in the direction of certain other AM stations). Several rationales were cited for the elimination of the rule, including: cost reduction to AM broadcasters making station improvements; economic benefits to local AM stations and their communities accomplished by an increase in nighttime broadcasting and an expansion of local advertising; and the ability of communities to receive information (such as local events and emergencies) at night. According to the Order, elimination of the Ratchet Rule should enable some AM stations to design simpler antenna systems and maintain the same number of towers when changing sites.

Facilitation of the Use of MDCL Technology. Since 2011, AM stations have been allowed to seek rule waiver or experimental authorization to use Modulation Dependent Carrier Level (“MDCL”) control technologies or algorithms. (In a nutshell, MDCL control technologies allow the licensee to reduce transmitter power consumption while maintaining audio quality and signal coverage.) Because MDCL control technologies reduce the station’s antenna input power to levels not permitted by applicable FCC rules, which is why rule waivers or experimental authorizations were required for MDCL operations.

To facilitate the use of MDCL technology and make the process less cumbersome, the FCC has amended its rules to:

- (1) provide that an AM station may commence MDCL control operation without prior FCC authority, so long as the AM station notifies the FCC of the station’s MDCL control operation within 10 days after commencement of such operation (such notification must be done electronically via the FCC’s CDBS online filing system on FCC Form 338 – AM Station MDCL Notification);
- (2) require, regardless of the MDCL control technology employed, that the AM station’s transmitter must achieve full licensed power at some audio input level, or when the MDCL control technology is disabled; and
- (3) require an AM station using MDCL control technology to disable it before field strength measurements on the station are taken by the licensee or others.

Reduction of Antenna Efficiency Standards. In the Order, the FCC has modified its antenna efficiency standard rules by reducing the existing AM antenna efficiency standards by 25 percent. While a number of commenters in the AM Revitalization proceeding requested more significant changes to the antenna efficiency standards—some proposed outright elimination of the standards—the FCC was more cautious and made the observation that “given the oft-expressed

concerns about interference to AM stations from various sources, the need to limit such interference dictates caution in our approach.” In addition, however, the FCC indicated in the Order that the Media Bureau will entertain requests by existing AM broadcasters for experimental authorizations to operate with antenna systems that do not meet these modified antenna efficiency standards, provided that they can “establish that such operation will not increase interference to other domestic or international AM stations and can demonstrate the stability of such systems.” Through such experimental authorizations, which will include monitoring and reporting requirements, the FCC expects to gather data and learn more about the real-world effects of further reductions to antenna efficiency, which may, ultimately—at some point in the future—lead to further flexibility.

IV. Issues Teed Up in the Further Notice and NOI

The FCC’s efforts to “revitalize” AM service may not yet be finished—in addition to the new rules adopted in the proceeding, the FCC also issued a Further Notice of Proposed Rule Making and a Notice of Inquiry. Here are a few of the issues teed up by the FCC in the Further Notice and NOI:

- Should the FCC eliminate or reduce critical hours protection afforded to Class A AM stations? The FCC is proposing to eliminate critical hours protection entirely, and seeks comment on, among other things, the populations that would consequently lose service from Class A stations and the number of stations that would be able to increase power (daytime and nighttime) and the populations that would consequently gain service.
- Should the FCC roll-back its rules regarding the calculation of nighttime RSS (root-sum-square) values of interfering field strengths and nighttime interference-free service?
- Should the daytime primary service contour for Class B, C, and D AM stations be changed to the 2 mV/m contour?
- Should the rules governing the use of FM translators by AM stations be liberalized slightly to allow for more flexibility in the siting of such FM translators? Current rules require an FM translator to be located such that its 60 dBu contour be contained within the *lesser* of (a) the 2 mV/m daytime contour of the AM station or (b) a 25-mile radius centered at the AM transmitter site. Should the siting rule be expanded so that an AM station’s FM translator could be located within the *greater* of (a) the 2 mV/m daytime contour of the AM station or (b) a 25-mile radius centered at the AM transmitter site but that in no event would the translator’s 1 mV/m coverage contour extend beyond a 40-mile radius from the AM transmitter site?
- The FCC seeks comment on a number of proposed changes to the rules governing Method of Moment (“MoM”) proofs, including, among other things, the use of MoM modeling for skirt-fed towers, elimination of the requirement for field

strength measurements, and changes to MoM rules with regard to re-proofing when antennas are added to towers.

- The FCC seeks comment on whether and how to modify the main studio rule for AM stations in light of the FCC’s “goal in this proceeding to revitalize the AM service.” The FCC indicated that it is “reluctant to eliminate main studio requirements entirely” for AM stations but might be willing to consider, among other things, a relaxation of the staffing requirement of full-time management and staff presence for AM stations that do not have co-owned stations with which to co-locate facilities.

For further information about the scope of the Further Notice and NOI, stations may access the FCC’s [document here](#).

Ancillary and Supplementary Services Reports for Television Stations Due December 1, 2015

Every year, all digital television broadcast licensees and permittees are required to report to the FCC whether they have offered any “ancillary” or “supplementary” services during the past year. These reports must be electronically filed annually on [FCC Form 317](#) even if a station did not provide any ancillary or supplementary services.

Licensees of full power television stations, digital Class A television stations, digital low power television stations, and digital television translators are required to file a report on FCC Form 317 by **December 1, 2015**, covering the one-year period from October 1, 2014, to September 30, 2015.

“Ancillary” and “supplementary” services are services provided on that portion of the station’s digital spectrum capacity or bit stream that is not needed to provide the required one free, over-the-air video broadcast signal, *and for which the station receives compensation in return for the broadcast*. Such services include, but are not limited to, computer software distribution, data transmission, teletext, interactive materials, aural messages, paging services, audio signals, subscription video, and other similar services. Ancillary and supplementary services do not include “any video broadcast signal provided at no direct charge to viewers”—in other words, a free, over-the-air multicast stream is not an ancillary and supplementary service.

If a station has received compensation in exchange for ancillary or supplementary services, then it must also file (either electronically or by mailing) [Form 159](#) and remit to the Commission 5% of the gross revenue received for the ancillary or supplementary services. This is so whether the revenue is generated by these services directly or indirectly.

If you have any questions regarding FCC Form 317 filings for your station(s), please contact your communications counsel.

All Commercial Broadcast Stations Must File Biennial Ownership Reports By December 2, 2015

The December 2 deadline for filing the 2015 biennial ownership reports is quickly approaching. All commercial AM, FM, TV, Class A television, and LPTV stations (including all entities with attributable interests in such stations) are required to file Form 323 on or before **December 2, 2015**.

The ownership interest information to be included in Form 323 must be current as of October 1, 2015. The FCC will not accept paper submissions. Filings must be made using the FCC's CDBS online filing system. The FCC has created an informational webpage specifically geared toward providing guidance in completing Form 323, and it can be accessed at www.fcc.gov/guides/ownership-report-commercial-broadcast-station-form-323. In addition, the FCC recently offered a Form 323 "tutorial," and it can be accessed [here](#). The FCC has strongly encouraged entities who are required to file ownership reports to review the "[Most Common Errors](#)" list prior to drafting the reports to aid in avoiding these common errors.

Best practices suggest that it is prudent to submit ownership reports in advance of the filing deadline, especially because this year the filing deadline is only a few days after the Thanksgiving holiday. Licensees and other entities with questions about their biennial ownership reports should consult with their communications counsel as soon as possible.

If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

Stephen Hartzell, Editor

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MEDIA BUREAU INITIATES AM REVITALIZATION OUTREACH EFFORTS; MODIFICATION WINDOW PROCEDURES AND REQUIREMENTS ANNOUNCED

On Friday, October 23, 2015, the Commission is releasing its initial order in the AM Revitalization rule making proceeding.¹ The *AMR Order* adopts a number of rule and policy changes to strengthen the AM service, thereby advancing the Commission's fundamental goals of localism, competition and diversity in broadcast media. A key component of the *AMR Order* is a series of filing windows to promote the greater use of FM translators by AM licensees and permittees.² This Public Notice is the first of a number of Media Bureau ("Bureau") outreach efforts to facilitate Class C and D AM licensee participation in this window process.³

Window Schedule. In order to provide immediate relief to AM broadcasters, the Commission has directed the Bureau to promptly open two FM translator modification application windows under modified procedures that will vastly increase opportunities for AM stations to relocate FM translator stations.⁴ In accordance with the *AMR Order*, the initial six-month window will open during the first quarter of 2016 ("First Modification Window"). The second three-month window will open immediately after the close of the first window ("Second Modification Window").

Eligibility. The First Modification Window will be open to only Class C and D AM licensees seeking to modify and/or relocate FM translator stations. The Second Modification Window will be open to AM licensees of any class.⁵ The following eligibility restrictions will apply to Modification Window filings:

¹ *Revitalization of the AM Service*, First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, FCC 15-142, ¶ 13 (rel. October 23, 2015) ("*AMR Order*").

² Unless otherwise specified in this Notice, "licensee" includes both licensees and permittees, "license" includes both license and construction permit authorizations, and "station" includes both licensed and permitted facilities.

³ Class C AM stations are limited to 1 kilowatt of power, day and night, and Class D AM stations have no protected nighttime service. These service-limited stations are most likely to benefit from an FM translator.

⁴ *AMR Order* at ¶ 13.

⁵ The Commission has also directed the Media Bureau, in conjunction with the Wireless Telecommunications Bureau, to open two new FM translator application auction windows, beginning in 2017, for those AM licensees that do not file an application in one of the modification windows. *Id.* at ¶ 19.

1. Only one application may be filed by/on behalf of each AM station, i.e., A First and Second Modification Window application may not specify the same primary Class C or Class D station.
2. An AM licensee may file in its own name if it is the licensee of the FM translator station or is the proposed assignee or transferee of the subject FM translator station.⁶
3. A modification application also may be filed by an FM translator licensee that has entered into a rebroadcasting agreement with an AM licensee. Each such application must specify an eligible primary AM station.

Application Processing Standards. Applicants must satisfy each of the following requirements. Failure to do so will result in application dismissal.

1. Applications must be electronically filed on FCC Form 349. There is no filing fee for this application.
2. FM translator station relocations of up to 250 miles will be permitted.
3. The FM translator station must be authorized to operate on a non-reserved band FM channel, i.e., 92.1 – 107.9 MHz.
4. The modification application may specify any rule-compliant non-reserved band FM channel.⁷
5. The proposed facilities must satisfy AM/FM translator “fill-in” service restrictions.⁸ That is, the FM translator station’s proposed 60 dBu contour must be contained within the AM station’s 2 mV/m daytime contour *and* may not extend more than 25 miles from the AM transmitter site.

Construction Requirements. Build-out requirements will depend on whether the modification application proposes to modify a licensed and operating FM translator station or a new, unbuilt Auction 83 construction permit.

1. Construction permits modifying a licensed and operating FM translator station will specify a three-year construction period.
2. The approximately 1300 outstanding Auction 83 construction permits (“CPs”) may be relocated under these window procedures. Many of these CPs have 2016 construction deadlines. A filer may seek a waiver of a CP deadline, provided that the waiver request includes a commitment to promptly construct the modified FM translator station. Waiver requests must include supporting information regarding construction commitments.

Operational Requirements. An FM translator station modified under these procedures must rebroadcast the specified primary AM station for a minimum of four years, exclusive of silent periods, commencing with the initiation of service at the new location.

Application Processing. Applications will be processed on a **first-come, first-served** basis. That is, earlier filed window applications will have cut-off protection *vis a vis* any subsequently filed window application. Accordingly, a First Modification Window application will have cut-off protection with regard to all Second Modification Window filings.

⁶ See 47 C.F.R. § 73.3517(a).

⁷ See 47 C.F.R. §§ 74.1201 – 74.1290.

⁸ See 47 C.F.R. § 74.1201(g).

Outreach. As directed by the Commission, the Bureau is initiating a three-month outreach effort to ensure Class C and Class D licensees are well informed on the modification window filing process. The Bureau will send information during the outreach period to each Class C and Class D licensee with a valid email address on file in the Consolidated Database System (“CDBS”). We recommend that licensees confirm and update their contact information, using the following link to access CDBS: <http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/forms/prod/cdbsmenu.hts>. Licensees with CDBS account IDs and passwords should log in and click the “Account Maintenance” button. Both “Licensee Applicant” and “Contact Rep” information should be reviewed and, as necessary, updated. If updates are necessary, licensees should return to the CDBS Electronic Filing System page. Click on “Additional non-form Filings” at the bottom of the list of FCC Forms and then click on “Change in Official Mailing Address for Broadcast Station.” Licensees should follow those instructions for electronically updating information. This form can be submitted for multiple stations with the same address. Consult the CDBS user guide if you have any questions about filing: http://licensing.fcc.gov/prod/cdbs/forms/prod/cdbs_ug.htm.

Additionally, the Bureau also has established a dedicated e-mail address for inquiries from prospective applicants about the window process, AMmodification@fcc.gov. Finally, the Bureau will introduce in the near future an AM Revitalization webpage that will include information and tools for prospective applicants. The Bureau is currently developing tools to assist each prospective applicant in locating eligible translator stations and, potentially, identifying rule-compliant FM translator channels.⁹ Prospective applicants are encouraged to monitor the AM Revitalization webpage for developments.

For additional information, contact:

- Legal inquiries: Parul Desai, (202) 418-2700
- Engineering inquiries: James Bradshaw or Robert Gates, (202) 418-2700
- CDBS Helpdesk: (202) 418-2662
- Press inquiries: Janice Wise, (202) 418-8165

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⁹ The Bureau is exploring whether it would be feasible to develop a FM translator “channel finder tool” similar to the utility provided to prospective LPFM applicants prior to the 2013 LPFM filing window. Developing such a tool poses greater technical challenges than did the LPFM tool and must take into account, among other factors, relevant contours of the proposed FM translator station, all authorized facilities and all pending applications. However, as was the case with the LPFM channel finder tool, each applicant is strongly encouraged to make its own assessment regarding potential channel options and, as necessary, to rely on a consulting engineer to confirm the technical acceptability of its proposal.