

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Proposals for a New FM Radio Broadcast) MB Docket No. 18-184
Class C4 and to Modify the Requirements)
for Designating Short-Spaced Assignments)

**Reply Comments of the
National Association of Broadcasters**

I. Introduction and Summary

The National Association of Broadcasters (NAB)¹ hereby files reply comments on the above-captioned Notice of Inquiry seeking comment on the creation of a new FM “Class C4” radio service, and a new procedure whereby an FM station could be involuntarily designated as a Section 73.215 facility,² forever locking the station into interference protection standards based on its current operations.³ Both proposals should be dismissed because they will reduce the technical integrity of the FM band at a time when broadcasters already face interference that hinders service and their ability to compete in an increasingly crowded audio marketplace. Specifically, introducing a Class C4 service will increase the risk of interference to other FM services while the latter proposal will facilitate more congestion of the FM band and limit broadcasters’ ability to improve their facilities and respond to

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² *Proposals for a New FM Radio Broadcast Class C4 and to Modify the Requirements for Designating Short-Spaced Assignments*, Notice of Inquiry, MB Docket No. 18-184 (rel. June 5, 2018) (Notice); 47 C.F.R. § 73.215.

³ The Notice was initiated by a petition filed by SSR Communications, Inc. in 2013. Petition for Rulemaking, SSR Communications, Inc. (SSR or Petitioner), RM-11727 (Jan. 22, 2013) (SSR Petition).

technical, economic and other changes beyond their control. NAB respectfully requests that the Commission close this proceeding once the comment period expires.

II. The Record Confirms that Introducing a New FM Class C4 Radio Service Will Increase the Risk of Interference to Other FM Services

SSR proposes to establish a new FM station Class C4 in Zone II with a maximum ERP of 12 kilowatts, in between the Class C3 and Class A services.⁴ Although several Class A broadcasters express support, eager to upgrade to Class C4 and extend service a few kilometers,⁵ these commenters barely acknowledge the inevitable harm that this scheme will cause to other FM services. Petitioner claims that, of more than 700 Class A stations that could potentially upgrade, only 22 will result in interference conflicts with secondary services, all of which can be remedied through reducing power or some other change to the secondary station.⁶ Petitioner thus characterizes the proposal's impact on other FM services as "negligible."⁷

The record belies these claims, as engineering firms, FM broadcasters and LPFM advocates all express serious concern about the negative effect of SSR's proposal on other FM services. The FM band is already congested, with nearly 11,000 full-power stations, more than 2,000 low power FM (LPFM) stations, and the recent approval of thousands of

⁴ Notice at ¶¶ 12-18.

⁵ See, e.g., Comments of Eric Funk, MB Docket No. 18-183 (July 25, 2018) ("Though coverage in our Community of Service is excellent, increased coverage would enable us to serve our neighboring rural communities.").

⁶ Comments of Petitioner, MB Docket No. 18-184 (Aug. 13, 2018) (SSR Comments), at 5. REC estimates that 931 Class A stations could potentially upgrade to Class C4. Comments of REC Networks, MB Docket No. 18-184 (Aug. 13, 2018) (REC Comments), at 5.

⁷ SSR Comments at 5.

new and modified translators.⁸ Shoehorning an entirely new group of FM stations into the band will increase the risk of interference to other services, directly violating the Commission’s duty to ensure that listeners receive a good quality, interference-free, FM radio signal.⁹

Adopting a new Class C4 could be particularly harmful to translators, especially those licensed to small broadcasters.¹⁰ As secondary services, translators are required to cure any interference received from or caused to a primary station, including interference resulting from the upgrade of a Class A station to Class C4. As Wheeler Broadcasting Consulting notes, “any such impact will, necessarily, be negative since it will by design increase the distance of interfering contours that the secondary service simply have to accept . . . If an existing translator was constructed based on protecting a Class A station and that station subsequently upgrades to Class C4 then the translator could find itself non-compliant with” the Commission’s interference protection rules.¹¹

EMF echoes this risk with data, estimating that new Class C4 stations may cause interference conflicts with about 10% of its approximate 300 translators. While not all these translators would be forced off the air, EMF states that “all would suffer losses of some of their current coverage areas.”¹² Similarly, REC Networks estimates that new Class C4

⁸ [Record Number of Translators & LPFMs Fill the Airwaves](#), InsideRadio (Jan. 8, 2018).

⁹ *1998 Biennial Regulatory Review – Streamlining of Technical Rules in Parts 73 and 74 of the Commission’s Rules*, Second Report and Order, MM Docket No. 98-93, 15 FCC Rcd 21649, 21658 (2000).

¹⁰ Letter from Jackson Radio Works, Inc., et al., to Marlene H. Dortch, Secretary, FCC, RM-11727 (Apr. 5, 2018) (Jackson Letter), at 1-2.

¹¹ Comments of Wheeler Broadcasting Consulting, MB Docket No. 18-184 (July 9, 2018) (Wheeler Comments), at 3.

¹² Comments of Educational Media Foundation (EMF), MB Docket No. 18-184 (Aug. 13, 2018) (EMF Comments), at 3.

stations would cause interference to about 165 LPFM stations,¹³ adding that “there will be a significant negative impact to FM translators.”¹⁴ Clearly, given this data from just one translator licensee and a leading LPFM engineer, the potential impact of introducing a Class C4 service could be widespread and, at a minimum, very far from “negligible.” The damage to secondary services will be even worse if the proposal is extended to Zone I, as multiple commenters request.¹⁵ Adopting Petitioner’s request to approve a new Class C4 service in Zone II could be a slippery slope.

NAB has previously described the critical importance of translators, especially to small broadcasters. Translators enable FM stations to provide a good quality fill-in signal in areas where terrain and other obstacles impede service, and offer popular, niche content on HD Radio multicast channels. Translators are also a critical component of AM radio, particularly small, minority- and women-owned stations that are now able to use translators to provide both first-time nighttime service and enhanced daytime service.¹⁶ Recently, an AM station in Frederick, MD switched from analog to all-digital AM service in a groundbreaking experiment that may well have significant ramifications for the future of AM service.¹⁷ This experiment is only possible because of the station’s FM translator, which allows it to continue to serve listeners with analog radios as it builds listenership on HD

¹³ REC Comments at 9; see also Comments of Jeff Sibert, MB Docket No. 18-184 (Sibert Comments) (Aug. 13, 2018), at 2; Comments of Low Power FM Advocacy Group (LPFM-AG), MB Docket No. 18-184 (LPFM-AG Comments), at 7.

¹⁴ REC Comments at 9.

¹⁵ Comments of Butte Broadcasting Co., Inc., MB Docket No. 18-184 (July 11, 2018), at 1; Comments of Robert F. “Doc” Fuller, MB Docket No. 18-184 (June 27, 2018), at 1.

¹⁶ Comments of the National Association of Broadcasters, MB Docket No. 18-184 (Aug. 13, 2018) (NAB Comments) at 3.

¹⁷ *Hubbard Testing All-Digital AM on WWFD*, [Radio Magazine](#) (July 16, 2018).

Radio receivers. Permitting new Class C4 stations to derail these efforts could substantially harm AM broadcasters and their listeners who rely on translators and undermine the Commission's work to revitalize AM radio.¹⁸

Translators already face interference problems severe enough to warrant Commission consideration of ways to reduce such conflicts.¹⁹ Creating a new Class C4 service will only add uncertainty to this effort.²⁰ In the Notice, the Commission states that it "would be reluctant to adopt any proposal in this area that would have a significantly negative impact on FM translators and LPFM stations."²¹ As this will clearly be the result of adopting a new Class C4 service, the Commission should reject this proposal. At a minimum, the timing is particularly poor for the Commission to further crowd the already congested FM band and exacerbate the interference challenges that already face translators.

Finally, the overall benefits of a new Class C4 service are speculative at best as upgrading to Class C4 is likely out of reach or not worth the expense for most Class A stations. First, as REC Networks explains, approximately 30% of Class A stations already operate at sub-maximum facilities due to international issues, terrain obstacles, transmitter site availability, or financial constraints,²² and are unlikely to upgrade under any circumstances. The latter is even more true for the large majority of Class A stations that would need to invoke the Section 73.215 process discussed below to upgrade, which would

¹⁸ LPFM-AG Comments at 7 ("A new class C4 could destroy much of the LPFM service and even minimize some of the work done in" the AM Radio Revitalization proceeding.).

¹⁹ *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Notice of Proposed Rulemaking, MB Docket 18-119 (May 10, 2018) (Translators Notice), at ¶¶ 3-4.

²⁰ Wheeler Comments at 3.

²¹ Notice at ¶ 14.

²² REC Comments at 7.

require significant expenditures on attorneys, engineering services, directional antennas, surveyors for proof of performance, and other studies.²³ Second, for many Class A stations in non-urban areas, the slight increase in power to Class C4 will be indiscernible because their signal already extends beyond their normally protected contour due to the lack of interfering contours from other stations, and any additional areas they reach will not cover a meaningful number of potential listeners.²⁴ Third, although Class A stations on the edge of large markets may benefit from an upgrade to C4, listeners in these areas are already likely well-served by other FM services, and given the harm to other services, the number of listeners who lose access to interference-free radio service may well offset the number who gain access to a Class C4 station.

Accordingly, NAB questions the need for this entire proposal, especially given the inevitable and unnecessary harm it will cause to secondary services, and respectfully requests that the Commission terminate consideration of this ill-advised proposal and close this proceeding once the comment period concludes.

III. Commenters Agree that Adopting the Proposed Section 73.215 Process Would Harm the Public Interest

SSR claims that the rules providing radio stations interference protection based on the maximum operational parameters for their class of service, even if they actually operate at “sub-maximum” parameters, hampers other stations from upgrading.²⁵ SSR proposes

²³ *Id.* REC notes an additional risk of the Class C4 proposal could be the further wealth stratification of radio service because only well-funded, more established broadcasters will be able to afford to upgrade. REC Comments at 7. This is certainly relevant to the Commission’s question whether SSR’s proposal would impact the diversity of the radio industry. Notice at ¶ 13.

²⁴ Wheeler Comments at 2.

²⁵ SSR Petition at 11-12.

that an FM station seeking to upgrade could invoke a show cause order requiring another station operating at sub-maximum facilities to promptly maximize facilities or be involuntarily redesignated as a Section 73.215 facility, forever locking it to interference protection based on its current service contour.²⁶ SSR states that this approach would facilitate many upgrades without harming other stations because no contour overlap would be allowed between competing stations.²⁷

Nearly all parties that provided substantive comments on this proposal oppose it.²⁸ SSR's contour-based proposal would chip away at the successful current process for assigning FM frequencies, which is based on minimum distance separation values, thereby reducing the technical integrity of the FM band.²⁹ Beasley et al. note that the Commission established distance separations as the "bedrock foundation" of FM channel allocations in 1962 because they were "the best means for achieving an orderly, efficient, and effective development of the commercial FM broadcast service."³⁰ The Commission has repeatedly affirmed its commitment to distance separations even as it amended related policies for channel, class or community changes, and streamlined the FM Table of Allotments.³¹ Minimum distance separations prevent overcrowding of the FM band and foster an even

²⁶ Notice at ¶¶ 9-10.

²⁷ SSR Comments at 13.

²⁸ Comments of iHeart Communications, Inc., MB Docket No. 18-184 (Aug. 13, 2018) (iHeart Comments), at 2-8; EMF Comments at 6; Wheeler Comments at 4-5; Sibert Comments at 3-5; REC Comments at 13-16; Comments of Beasley Broadcast Group, Inc., et al., MB Docket No. 18-184 (Aug. 13, 2018) (Beasley et al. Comments), at 2-13.

²⁹ 47 C.F.R. § 73.2017.

³⁰ Beasley et al. Comments at 3-4 citing *Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, Notice of Proposed Rulemaking and Order, 13 FCC Rcd 14849, 14860 (1998).

³¹ Beasley et al. Comments at 4-6.

distribution of stations.³² In fact, the Commission initially turned to distance separations after a failed experiment with contour protections that led to an over-concentration of FM stations in metropolitan areas.³³ A contour-based system is also inefficient because it allows much greater areas between stations where interference can occur, or in the Commission's words, "islands of service in the midst of seas of interference."³⁴

Adopting SSR's contour-based proposal will allow more stations to squeeze into populous areas, reducing interference-free areas and resulting in "many small and interference-ridden signals rather than high quality service."³⁵ And the damage could be far-reaching, given REC's estimate that more than 3,200 FM stations nationwide could be eligible to trigger SSR's proposed Section 73.215 procedure.³⁶

Moreover, as upgrading stations squeeze service into areas between FM stations now protected under distance separations, secondary services could be squeezed out. Sibert states that the proposed changes to Section 73.215 will be "disastrous" for LPFM and other secondary services that operate in the "holes that occur in the full power table of allotments."³⁷ Numerous translators and LPFMs may find themselves short-spaced to newly upgraded FM stations,³⁸ and for stations unable to resolve the conflict by moving to an

³² *Id.* at 4 citing *Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Application*, Report and Order, 8 FCC Rcd 4735, 4737 (1993); Wheeler Comments at 5 (Minimum spacing requirements have "provided for a reliable and robust service which provides nearly every citizen of the country an aural service that is usable.").

³³ iHeart Comments at 4 citing *Revision of FM Broadcast Rules*, First Report and Order, 40 F.C.C. 662 (1962); see also iHeart Comments at 3.

³⁴ First Report and Order, 40 FCC Rcd at 673.

³⁵ Beasley et al. Comments at 6.

³⁶ REC Comments at 13.

³⁷ Sibert Comments at 3.

³⁸ iHeart Comments at 7.

available channel or modifying their antenna, the proposed Section 73.215 approach could be fatal.³⁹ REC estimates that more than 1,200 LPFM stations, or 56 percent of all LPFM stations could be impacted by adoption of SSR's proposal,⁴⁰ and NAB fears that numerous translators could be similarly affected.

The potential impact on listeners is concerning. Wheeler states that, although SSR's proposal may benefit some listeners in urban areas with additional radio service, even more listener could lose access to interference-free service.⁴¹ Wheeler takes this position even though some of his clients support the proposal.⁴² In addition to listeners in the heart of a station's service area, the proposal could degrade service to many listeners located near the edge of a station's predicted contour. As demonstrated by broadcasters in an ongoing proceeding regarding translator interference,⁴³ many FM stations have substantial listenership close to and beyond their predicted contours.⁴⁴ The Commission should not disrupt the listening habits and expectations of such consumers.⁴⁵

Finally, allowing stations to impose Section 73.215 classification on another station, forever locking the station into interference protection based on its current operational parameters, would violate the Commission's long-successful policy of permitting stations to modify their operations as legal, economic, demographic and other circumstances change over time. Proponents argue that, in a mature service like FM radio, any station that has not

³⁹ *Id.*; see also REC Comments at 13-16.

⁴⁰ REC Comments at 14-15.

⁴¹ Wheeler Comments at 5.

⁴² *Id.*

⁴³ See *infra* note 19.

⁴⁴ iHeart Comments at 6.

⁴⁵ EMF Comments at 6; Beasley et al. Comments at 8.

maximized operations for a significant period of time is likely not interested in ever doing so, and is essentially warehousing spectrum.⁴⁶ However, this narrow view ignores the many legitimate reasons that radio stations operate at certain parameters but seek to modify or expand their facilities, even after a period of static service. The most common situation involves a tower change that is forced by a site landlord's decision to repurpose the property or raise the rent. Especially now, with the ongoing TV band repack, numerous FM broadcasters are facing tower-related issues and many will likely have to relocate as a result. iHeart further notes that even in a so-called mature service like FM, the term of a tower lease rarely extends for the lifetime of a broadcast station, eventually requiring stations to consider relocating.⁴⁷ Broadcasters should not be punished for such changes in circumstances beyond their control.

Many stations also operate at sub-maximum parameters due to Federal Aviation Administration (FAA) limits or local zoning rules, which are subject to change. For example, Wheeler describes new GPS-based technology that could eventually negate the need for compliance with certain FAA restrictions on the height of radio antennas. When this comes to fruition, numerous Class C radio stations are likely to maximize facilities, assuming they are not blocked under the Section 73.215 proposal at hand.⁴⁸

Financial constraints may also require a station to operate at less than maximum parameters and gradually increase operations as their audiences and advertising revenues grow. Beasley et al. also note that some broadcasters have obtained stations during one of

⁴⁶ SSR Comments at 13, 15 and 24; Comments of Carl Haynes, Commander Communications Corp., MB Docket No. 18-184 (July 2, 2018), at 1.

⁴⁷ iHeart Comments at 4.

⁴⁸ Wheeler Comments at 5.


the Commission's recent auctions, and that after paying substantial amounts to the U.S. Treasury for their licenses, deferred the expense of maximizing their facilities.⁴⁹ Finally, the Section 73.215 proposal should be rejected because it would block some stations from modifying their antennas as core populations of listeners shift over time, or relocating to a superior site or building that becomes available.⁵⁰ Clearly, a radio station's good faith business plans to improve service as economic and other circumstances change should not be constrained, and certainly should turn on the desire of a direct competitor to reach a few more listeners in area that may already be well-served by existing services.

IV. Conclusion

For the reasons discussed above, NAB opposes the proposals discussed in the Notice and respectfully requests that the Commission close this proceeding after the comment period has concluded.

Respectfully submitted,

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⁴⁹ Beasley et al. Comments at 9.

⁵⁰ NAB Comments at 8.