

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

In the Matter of)
)
Amendment of Part 74 of the Commission's) MB Docket No. 18-119
Rules Regarding FM Translator Interference)

OPPOSITION TO PETITIONS FOR RECONSIDERATION

Pursuant to 47 C.F.R. §§ 1.4(b)(1) and 1.429(e), the National Association of Broadcasters (NAB)¹ hereby opposes the Petitions for Reconsideration filed by certain low power FM (LPFM) radio advocates² of the Commission's recent order streamlining its rules regarding FM translator interference.³ As discussed below, instead of raising any new evidence or arguments, the Petitioners unfairly suggest that the Commission is somehow biased against LPFM service.⁴ Rather, the Commission has worked hard to "balance the needs of translator, low power FM and full-service licensees."⁵ It has crafted reasonable rules and policies for streamlining the resolution of translator interference conflicts that take into account the interests of all stakeholders, including LPFM licensees. Indeed, none of the Petitioners even acknowledges that the Order will benefit LPFM stations and in some ways advantages LPFM stations over translator licensees.⁶ The Petitions should be dismissed.

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

² Petition for Reconsideration, LPFM Coalition (LPFM-C), MB Docket No. 18-119 (July 15, 2019) (LPFM-C Petition); Petition for Reconsideration, KGIG-LP Salida, California/Fellowship of the Earth, MB Docket No. 18-119 (July 15, 2019) (KGIG-LP Petition) (collectively, Petitions or Petitioners).

³ *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Report and Order, FCC 19-40, MB Docket No. 18-119 (rel. May 9, 2019) (Order).

⁴ KGIG-LP Petition at 4.

⁵ Order at ¶ 4.

⁶ Petition for Reconsideration, Charles M. Anderson, MB Docket No. 18-119 (July 11, 2019).

I. PETITIONERS DO NOT RAISE ANY NEW EVIDENCE OR ARGUMENTS THAT JUSTIFY RECONSIDERATION OF THE TRANSLATOR INTERFERENCE ORDER

The Petitioners' complaints about the Order reveal an incorrect perception of Commission bias against LPFM service. For example, LPFM-C highlights a single sentence in the preamble of the Order where the Commission describes the adopted measures as striking a balance between "providing greater certainty for translator operators, and preserving existing protections for full-service stations."⁷ LPFM-C cites this as evidence of the Commission's failure to similarly benefit LPFM stations in violation of LCRA §5(3), which mandates that the Commission, "when licensing new FM translator stations, FM booster stations, and low-power FM stations," shall ensure that they "remain equal in status."⁸ LPFM-C complains that "LPFM's equal need for certainty is ignored." However, LPFM-C itself ignores the immediately preceding sentence, where the Commission specifically explains that, because "of the maturity of the FM service, we must . . . balance the needs of translator, *low power FM* and full-service licensees."⁹

Similarly, KGIG-LP leaves no doubt about its viewpoint stating that the "chief concern, in the big picture, is there is a perceived bias amounting to unequal treatment of LPFM service compared to translator service."¹⁰ In support, KGIG-LP lists a few Commission actions regarding translator service during the pendency of certain requests by LPFM advocates that are either outside the scope of this proceeding or previously resolved.¹¹

⁷ LPFM-C Petition at 5 citing Order at ¶ 4.

⁸ Local Community Radio Act of 2010, Pub. L. No. 111-371, 124 Stat. 4072 (2011) (LCRA), Sec. 5(3).

⁹ Order at ¶ 4 (emphasis added).

¹⁰ KGIG-LP Petition at 4.

¹¹ KGIG-LP references a petition to permit LP-250 service, which also proposes an entirely new interference protection regime for certain LPFM stations that the Commission found outside the scope of this proceeding. Order at ¶ 3 note 7. They also cite an LPFM advocate's general objection to all pending translator applications that the Commission has already

NAB submits that the Petitioners have allowed their views on the Commission's priorities to cloud their judgment of the rational, evenhanded approach in the Order. Like many proceedings, the Order did not fully satisfy all the stakeholders. However, the Commission struck a reasonable balance overall that addressed the interests of translator, LPFM and FM licensees. Below, we discuss the major concerns in the Petitions.

First, the Petitioners repeat arguments that were previously raised in comments on the NPRM in this proceeding,¹² as well as in several other proceedings, which the Commission thoroughly considered in the Order. LPFM-C again claims that LCRA §5(3) mandates equal regulation of translators and LPFMs, meaning that the creation of an outer interference contour limit for translators requires the Commission to provide LPFM stations with equivalent certainty.¹³ The Commission fully addressed this issue in the Order: “[W]e clarify that establishment of an outer contour limit does not conflict with LCRA Section 5(3)” because it is “well-established that the LCRA does not require identical regulation of each secondary service.”¹⁴ The Commission has considered this same question repeatedly,¹⁵ including in a recent NPRM that intends to “increase flexibility in siting while maintaining interference protection and the core LPFM goals of diversity and localism.”¹⁶ There, the

resolved, and the opening of multiple consecutive modification or auction windows for translators versus only one for LPFM. *Id.* at 4-5.

¹² Comments of REC Networks, MB Docket 18-119 (July 24, 2018), at 12-14; Comments of LPFM Advocacy Group, MB Docket No. 18-119 (Aug. 5, 2018), at 2; *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Notice of Proposed Rulemaking, 33 FCC Rcd 4729 (2018) (NPRM).

¹³ LPFM-C Petition at 6; LPFM-C Comments, MB Docket No. 18-119 (Aug. 6, 2018), at 15-16; LPFM-C Reply to Comments, MB Docket No. 18-119 (Sep. 5, 2018), at 2-5.

¹⁴ Order at ¶ 47.

¹⁵ *Id.* at note 183.

¹⁶ *Amendments to Parts 73 and 74 to Improve the LPFM Radio Service Technical Rules, Modernization of Media Regulation Initiative*, Notice of Proposed Rulemaking, MB Dockets Nos. 19-193, 17-105 (rel. July 30, 2019) (2019 LPFM NPRM), at ¶ 3 n. 15.

Commission repeated its understanding that the text of LCRA §5(3) is “limited in scope, simply requiring priority neither to new LPFM stations nor to new FM translators when making spectrum available for initial licensing. In this way, applications in one service will not foreclose or unduly preclude opportunities to file applications in the other.”¹⁷ The Commission stated that nothing in the LCRA’s “equal in status” language requires licensed LPFM and FM translator stations to operate under identical rules,¹⁸ such as identical interference protection and remediation requirements. And it has previously noted that the “LCRA itself establishes different remediation standards between FM translators and LPFM and even between classes of LPFM stations,” and where “Congress intended to impose identical requirements upon FM translators and LPFM stations, it specifically did so in the text of the LCRA.”¹⁹

Nevertheless, the Petitioners claim that the statutory language supports further “equality” between LPFM and FM translators, but again fail to provide any evidence that the Commission’s view of the provision differs from Congressional intent or is unreasonable. Moreover, the Commission notes that the LPFM rules already contain a similar contour-based limit on interference complaints, so the creation of a contour limit on translator interference complaints brings the respective rules into closer harmony.²⁰ Accordingly, the

¹⁷ *Id.*

¹⁸ *Creation of a Low Power Radio Service*, Fifth Order on Recon. and Sixth Report and Order, MM Docket No. 99-25, 27 FCC Rcd 15402, 15422 and 15426 n. 139.

¹⁹ *Center for International Media Action et al.*, DA 18-597 (June 8, 2018), at 3-4.

²⁰ Order at ¶ 47; 47 C.F.R. § 73.809 (FM stations are protected against interference from LPFM stations operating on the same or first-adjacent channel within the 70 dBu contour of the FM station, the same community of license (COL), or the COL of an FM station that is predicted to receive at least a 60 dBu signal).

Petitioners' claims that LCRA § 5(3) mandate equally increased certainty for LPFM stations again should be dismissed.²¹

Second, Petitioners re-argue that translator licensees planning to change channels to resolve interference must file LPFM preclusion studies.²² In the Order, the Commission specifically rejected LPFM-C's claim that the "facilities specified in a translator channel change modification application must not preclude future LPFM licensing opportunities."²³ The Commission explained that such an approach is not required by the LCRA, which pertains only to the licensing of new stations, not the modification of existing stations, as in the present case.²⁴ LCRA § 5(1) states the Commission, "when licensing *new* FM translator stations, FM booster stations, and low-power FM stations, shall ensure that licenses are available to FM translator stations, FM booster stations, and low-power FM stations."²⁵ Of note, the Commission's conclusion is consistent with the views of REC Networks, a leading LPFM advocacy group, which added that a preclusion study is likely unnecessary because,

²¹ Claims that allowing translators to change channels outside a major window unlawfully prevents potentially mutually exclusive LPFM licensees from applying for the same channel are misplaced. KGIG-LP Petition at 1-2 citing *Ashbacker Radio Corp v. FCC*, 326 U.S. 327 (1945). The Order fully addressed the public interest benefits of increasing translator flexibility to change channels, including avoiding time- and resource-consuming conflicts, increasing the certainty of translators, and reducing the involvement of listeners in disputes. NPRM, 33 FCC Rcd at 4735. Petitioner fails to acknowledge that this change actually "levels the playing field" because LPFM stations have enjoyed similar flexibility for many years. Reply Comments of REC Networks, MB Docket No. 18-119 (Sep. 5, 2018), at 1 citing 47 C.F.R. § 73.870(a). The Commission has also clarified that the "consistent application of our codified FM translator and LPFM licensing rules does not constitute 'bias' against LPFM applications [or invoke *Ashbacker*]. It merely reflects the fact that the applications in these two services are not similarly situated." *Center for Int'l Media* at 6.

²² LPFM-C Petition at 18-19; KGIG-LP Petition at 3-4; LPFM-C Comments at 3-5; Comments of Jeff Sibert, MB Docket No. 18-119 (Aug. 6, 2018), at 3; Comments of Linda C. Corso, MB Docket No. 18-119 (Aug. 6, 2019), at 1-2.

²³ Order at ¶ 9.

²⁴ *Id.*

²⁵ LCRA § 5(1) (emphasis added).

similar to LPFM stations, most translators seeking to change channels to avoid interference will remain at their current location, meaning that the translator's service area and impact on neighboring stations will be unchanged.²⁶

The Petitioners object, asserting that the LCRA's reference to "new" licenses refers to new LPFM licensees to be considered in the future. This is absurd. The plain language of Section 5(1) clearly refers to any "new" applications for translators, boosters or LPFMs on hand, when mandating that future licenses should remain available for the other services: "[W]e conclude that the mandate of Section 5(1) to ensure that "licenses are available" is reasonably interpreted to require consideration of both existing and future licenses in the translator and LPFM services when licensing new stations in those services."²⁷

KGIG-LP notes that the Commission took steps to ensure that the licensing of translators in Auction 83 did not preclude future LPFM services, and should do the same here.²⁸ However, the Commission has previously clarified that extraordinary procedures were required to address the unique circumstances of that auction, including the unprecedented 13,777 translator applications, with no limit on the number per applicant or location.²⁹ Aggressive remedial measures were imposed to preserve spectrum for LPFM stations, such as limiting the number of applications that applicants could prosecute and requiring preclusion studies.³⁰ But the special procedures used in Auction 83 to prevent new translator applications from absorbing all available secondary service spectrum bear no

²⁶ REC Networks Reply Comments at 2.

²⁷ *Creation of a Low Power Radio Service*, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364, 3382-88 (2012).

²⁸ KGIG-LP Petition at 4.

²⁹ *Capstar TX, LLC*, DA 19-670, File No. BNPFT-20181102AAJ (July 18, 2019), at 6-7.

³⁰ *Id.*

relation to the individual application of a translator licensee to change frequencies as a minor change.

Furthermore, the Petitioners' position is meritless because the LCRA requires that the *Commission*, when licensing new translator, booster or LPFM stations, ensure that licenses remain available to all such services.³¹ The Commission has previously explained that it is the Commission's responsibility to ensure that the LCRA's mandates are met, not individual applicants: "[T]he language of Section 5 of the LCRA cannot reasonably be read to place the responsibility on each individual applicant to provide evidence that its application leaves sufficient spectrum in its area for any future LPFM stations."³² Thus, individual preclusion studies for every minor change application by a translator to change channels or make some other modification need not be required.³³

Finally, the Commission determined that an actionable translator interference complaint must be supported by multiple listener complaints using separate receivers at separate locations.³⁴ LPFM-C challenges the conclusion that the required number of listener complaints may not be met by multiple listeners from within a single building or workplace, because this would disenfranchise listeners after the first complainant.³⁵ The Commission's

³¹ LCRA § 5(1) (emphasis added).

³² *Center for Int'l Media* at 3.

³³ NAB agrees with Skywaves that the Order's requirement of a contour-based U/D study for every interference complaint could unintentionally impede consideration of *bona fide* translator complaints based on listener complaints from within a desired station's protected contour. Petition for Reconsideration, Skywaves Communications LLC, MB Docket No. 18-119 (July 15, 2019), at 1-2 citing Order at ¶ 23. NAB supports Skywaves' suggestion that the Commission consider clarifying Sections 74.1203(a)(3) and 75.1204(f) of the rules to exempt listening locations from within a desired station's protected contour from the required U/D showing.

³⁴ Order at ¶ 15.

³⁵ LPFM-C Petition at 11-18.

approach is an effective limit for ensuring that translator interference complaints are based on a genuine, pervasive problem, rather than an isolated instance.

A primary goal of this proceeding was to expedite the translator complaint resolution process, in part by limiting or avoiding protracted interference disputes.³⁶ Industry experience demonstrated that the existing resolution procedures sometimes allowed for contentious disputes over the validity of claimed translator interference.³⁷ To streamline this process and ensure that translator complaints are truly warranted, the Commission sought to ensure that such complaints are based on a “real and consistent interference problem,”³⁸ rather than a one-off case that disrupts radio service in only one or two locations.

Accordingly, the Commission found that counting multiple listener complaints from within a single building would undercut its effort to ensure that translator interference complaints are worthy of Commission involvement.³⁹ Simply put, translator interference that only affects listeners within a single building does not demonstrate a widespread problem, even though such interference is inconvenient to listeners and should be addressed quickly by the translator licensee. Commenters support this approach, including the National Translator Association, which proposes that the required number of complaining listeners should be separated by at least 1000 feet and not located within a common property complex such as an apartment building.⁴⁰

NAB also supported the Commission’s approach, even though counting multiple listener complaints from within a single building would facilitate the filing of interference

³⁶ NPRM, 33 FCC Rcd at 4729.

³⁷ *Id.* at 4730.

³⁸ *Id.* at 4737.

³⁹ Order at ¶ 15.

⁴⁰ Comments of the National Translator Ass’n, MB Docket No. 18-119 (Aug. 6, 2018), at 4.

complaints against translators. However, as a matter of industry-wide fairness and to help ensure the integrity of the Commission's processes, NAB agreed that demonstrating interference at multiple, distinct locations was the best course.⁴¹

II. CONCLUSION

For the reasons discussed above, the Commission should deny the above-referenced Petitions for Reconsideration.

Respectfully submitted,

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⁴¹ NAB Comments, MB Docket No. 18-119 (Aug. 7, 2018), at 6.