

**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)
)

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

I. Introduction

The National Association of Broadcasters (NAB)¹ hereby files reply comments in the above-captioned Notice of Proposed Rulemaking regarding interference conflicts between FM radio stations and FM translators.² As discussed below, the record demonstrates support for certain proposals in the Notice intended to reduce translator interference and streamline the resolution of such conflicts.³

II. Translators Should be Allowed to Change to Any Channel as a Minor Change to Resolve Interference

The record overwhelmingly supports NAB's proposal to allow a translator to move to any available FM channel as a minor change to resolve interference with another broadcast station.⁴ Henson Media explains that such an approach would provide translator licensees with an efficient, faster option for eliminating interference caused to or received from

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 *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Notice of Proposed Rulemaking, MB Docket No. 18-119 (May 10, 2018) (Notice).

³ Petition for Rulemaking, National Association of Broadcasters, RM-11787 (Apr. 20, 2017) (NAB Petition).

⁴ Notice at ¶ 11.

another station, and mirror the flexibility that full power stations receive.⁵ REC Networks notes that implementing this approach would provide translators with similar flexibility that low power FM (LPFM) stations enjoy.⁶ NAB submits that adopting this proposal would allow translator licensees more opportunity to stay on the air if interference should arise, benefiting listeners with continuous service.⁷ We further agree with Cumulus that, if a translator is forced to change channels to avoid causing interference to a full-power FM station, effectively displaced, the translator move should not be subjected to competing applications.⁸

The record also supports NAB's proposal that such moves should be allowed based on a simple technical showing of interference to or from another FM station.⁹ As NTA explains, such a showing must only demonstrate that adjacent channels are not adequately available or beneficial to the translator applicant,¹⁰ and illustrate reduced interference at

⁵ Comments of Henson Media, Inc., MB Docket No. 18-119 (Aug. 6, 2018) (Henson Comments), at 2; see also Comments of Charles M. Anderson, MB Docket No. 18-119 (Aug. 6, 2018) (Anderson Comments), at 1; Comments of The Cromwell Group, MB Docket No. 18-119 (Aug. 6, 2018) (Cromwell Comments), at 2; Comments of National Translator Association (NTA), MB Docket No. 18-119 (Aug. 6, 2018) (NTA Comments), at 2.

⁶ Comments of REC Networks, MB Docket No. 18-119 (Aug. 6, 2018) (REC Comments), at 4.

⁷ One commenter supports a notification process so that broadcasters need not "continuously" monitor for relevant translator modification applications. Comments of Linda C. Corso, MB Docket No. 18-119 (Aug. 6, 2018), at 2. We believe that such an approach would be burdensome and unnecessary. Rather, the Commission should consider periodically releasing a Public Notice listing translator modification applications that have been accepted for filing, a process that already serves the Commission and broadcasters well. 47 C.F.R. § 73.3573(f)(1).

⁸ Comments of Cumulus Media, Inc., MB Docket No. 18-119 (Aug. 6, 2018) (Cumulus Comments), at 3.

⁹ NTA Comments at 3; Anderson Comments at 1; Comments of Educational Media Foundation (EMF), MB Docket No. 18-119 (Aug. 6, 2018) (EMF Comments), at 15.

¹⁰ NTA Comments at 3.

the proposed frequency location. Implementing this policy change would provide translators with additional certainty and benefit listeners with uninterrupted service in the event a translator causes interference to or receives interference from a full-power FM station.

The only parties with concerns about this proposal are LPFM advocates who complain that providing translators more flexibility to change channels will reduce opportunities for new LPFM stations.¹¹ These commenters state that the Local Community Radio Act (LCRA) requires the Commission to treat LPFM and translators as equal in status and, when licensing translators, ensure that opportunities remain for LPFM stations.¹² LPFM advocates thus support a prohibition against any translator channel changes that reduce spectrum opportunities for LPFM operators, and propose a requirement that translator modification applications include a preclusion showing to ensure that only applications that do not block future LPFM licensing in the market are considered.¹³

These LPFM commenters misinterpret the LCRA. First, Section 5 of the LCRA clearly states that the Commission, “when licensing *new* FM translator stations . . . shall ensure that (1) license are available to . . . low-power FM stations.”¹⁴ The proposal at hand has nothing to do with “new” translators, but rather existing FM translators that need to change channels to resolve interference conflicts with a full-power FM station and ensure continuous service to listeners. Therefore, the LCRA does not apply.

¹¹ Sibert Comments at 2-4; Comments of LPFM Coalition, MB Docket No. 18-119 (Aug. 6, 2018) (LPFM Comments), at 4-6.

¹² Pub. L. 111-371, 124 Stat. 4072 (2011); Sibert Comments at 3; LPFM Comments at 4.

¹³ LPFM Comments at 4-5.

¹⁴ LCRA, § 5 (emphasis added).

Second, the Media Bureau effectively dismissed the very same argument in a recent decision rejecting LPFM objections to all pending translator applications.¹⁵ The Bureau dismissed claims that equality of status among translators and LPFM necessarily requires the Commission to apportion remaining spectrum in a market equally between the services. To the contrary, the Bureau noted fundamental differences between the two services that make “equal spectrum allocations neither a desirable nor an achievable goal.”¹⁶ This finding also compelled the Bureau to reject the objectors’ claims that translator applications should include a showing of spectrum availability for future LPFM stations. The Bureau also clarified that, under the LCRA, it is the Commission’s responsibility to ensure that licensing opportunities remain for LPFM stations, not individual parties.¹⁷ Accordingly, NAB submits that the Commission should deny the LPFM advocates’ requests for special consideration and preclusion studies because there is no mandate that all remaining spectrum in a market must be preserved for LPFM.

In fact, given the broad support for the benefits of this proposal, NAB requests that the Commission move promptly to amend its rules. Allowing translators to move to any available channel to resolve interference, as a minor change, will provide translator licensees with an efficient and effective way to avoid interference without disrupting service to listeners or harming any other services. Given the broad support for this proposal and the immediate relief it can provide, NAB respectfully requests that the Commission consider separating this proposal from the other, more complex issues in the Notice, and fast-track its implementation if the other issues under consideration are not resolved in short order.

¹⁵ Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, to Center for International Media Action et al., DA 18-597 (June 8, 2018).

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 5.

III. The Record Supports Requiring a Minimum of Six *Bona Fide* Listener Complaints to Justify an Actionable Translator Interference Complaint

Most commenters support the Commission’s tentative conclusion that requiring six *bona fide* listener complaints to substantiate a translator interference complaint to the Commission is a reasonable approach.¹⁸ The record generally agrees with EMF that establishing a threshold will help avoid the preclusion of a translator by one “single truly unique” distant listener, such as an individual with an ultra-high gain antenna.¹⁹ At the same time, requiring a certain number of listener complaints should help FM stations to facilitate the resolution of translator interference complaints by creating incentives for the parties to cooperate instead of prolonging disputes about listener complaints.

The record also makes clear that such listener complaints must be lodged by objective, *bona fide* listeners. Most agree with NAB that the Commission’s proposed list of information and requirements is reasonable, such as the location where interference is witnessed, and confirmation that the complainant listens to the relevant FM station regularly (e.g., at least twice a month), and has no affiliation with the FM station.²⁰ We also support the Commission’s suggestion that a listener attest to this information at the outset to reduce

¹⁸ Notice at ¶ 16. See, e.g., Comments of Beasley Media Group, LLC et al., MB Docket No. 18-119 (Aug. 6, 2018), at 1-2; Comments of ADS Communications of Pensacola, MB Docket No. 18-119 (Aug. 6, 2018) (ADX Comments), at 3-4; Cromwell Comments at 2.

¹⁹ EMF Comments at 16. The Commission should dismiss LPFM requests for a lower threshold because LPFM stations have relatively smaller service areas and audiences, and fewer resources. REC Comments at 4-6; Sibert Comments at 4-5. Numerous full-power FM stations have similar constraints that may raise obstacles to generating six listener complainants. NAB sees no reason to afford LPFM stations any special treatment in this area. In fact, given LPFM advocates’ claims that LPFM listeners are rabidly loyal because of the supposedly more valuable content they provide, it may be even easier for LPFM stations to produce six listener complaints about interference than some small FM stations. REC Comments at 17; LPFM Comments at 11, 13-14.

²⁰ Notice at ¶ 19; NAB Comments at 7; Henson Comments at 3-4; EMF Comments at 16.

conflicts over listener complaints and streamline the Commission's process.²¹ However, we disagree with NTA that solicited listener complaints should not count.²² Whether or not a full-power station takes proactive steps to identify listeners with reception problems has no bearing on the actual existence of the interference. Also, regardless of how a listener complainant comes to the attention of an FM station, the station and translator licensee will still be required to demonstrate the existence and elimination of the interference through a technical showing.

Regarding the Commission's goal to reduce the role of listeners in the complaint resolution process, NAB agrees with commenters that oppose the Commission's proposal to eliminate the requirement that listeners cooperate with interference remediation efforts.²³ Allowing a translator licensee to try to correct interference problems is often a cost-effective way to eliminate complaints quickly and efficiently.²⁴ As Cumulus notes, there may be several reasons why a translator licensee may need to communicate with the listener complainant, such as to confirm the listener's current address, or to solve the interference by replacing the radio in the listener's car with a superior model.²⁵ Otherwise, translator licensees may be harmed by listeners with substandard equipment that experience interference a better radio would reject.²⁶ Allowing a translator licensee to work with a complainant is particularly important when only a few listeners have complained about

²¹ Notice at ¶¶ 19-20.

²² NTA Comments at 6.

²³ Notice at ¶ 22; Cumulus Comments at 9; EMF Comments at 17; ADX Comments at 4; NTA Comments at 7; Comments of Scott Fybush, MB Docket No. 18-119 (Aug. 6, 2018) (Fybush Comments), at 5-6.

²⁴ NTA Comments at 7.

²⁵ Cumulus Comments at 8-10.

²⁶ Fybush Comments at 6.

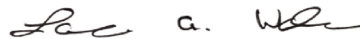
interference, and a translator licensee can correct the problem through a few simple actions. NAB thus requests that the Commission reconsider this proposal, and retain the existing requirement that listeners cooperate with translator licensees to correct interference problems.

IV. Conclusion

For the reasons discussed above, NAB respectfully requests that the Commission modify its rules and procedures for translator interference complaints as we suggest. We appreciate the Commission's efforts to provide translator licensees more certainty while protecting the existing service provided by FM broadcasters.

Respectfully submitted,

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