

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 REQUEST FOR STAY**

Pursuant to 47 C.F.R. § 1.45(d), the National Association of Broadcasters (NAB)<sup>1</sup> hereby opposes the LPFM Coalition's Request for Stay<sup>2</sup> of the Commission's recent order streamlining its rules regarding FM translator interference.<sup>3</sup> For the reasons stated below, the Request does not meet the applicable standards for a stay and should be denied.

**I. PETITIONERS ARE UNLIKELY TO PREVAIL ON THE MERITS**

The Commission has the discretion to grant a stay when doing so is equitable and serves the public interest,<sup>4</sup> and exercises that discretion based on a stringent four-prong test: (1) whether the applicant has made a "strong showing that he is likely to succeed on the merits;" (2) whether the applicant will suffer irreparable harm absent a stay; (3) whether grant of a stay will substantially harm others; and (4) where the public interest lies.<sup>5</sup>

---

<sup>1</sup> 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.

<sup>2</sup> Request for Stay, LPFM Coalition (Petitioners), MB Docket No. 18-119 (July 15, 2019) (Stay Request).

<sup>3</sup> *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).

<sup>4</sup> *Tennis Channel, Inc. v. Comcast Cable Commc'ns, LLC*, 27 FCC Rcd 5613, 5616 (2012).

<sup>5</sup> *Niken v. Holder*, 556 U.S. 418, 426 (2009), quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

Petitioners do not even set forth the four-prong test for whether a stay should be granted in their filing, let alone address each prong. Rather, they merely claim that a stay “would serve the public interest in administrative certainty and administrative convenience” by conserving the resources of parties on legal fees to fulfill “fluctuating compliance standards unless and until” the issues raised in their Recon Petition are resolved.<sup>6</sup> Essentially, Petitioners seek to stall compliance with the rules adopted in the Order because of the fact that if the rules change but then revert back to what they are now as a result of the Recon Petition,<sup>7</sup> adhering to those changes in the interim would cost them legal fees. Unfortunately for Petitioners, that rationale applies to nearly every reconsideration petition and does not even come close to meeting the stringent standard for granting a stay.

Rather than attempting to demonstrate a likelihood of success on the merits, Petitioners merely incorporate by reference their arguments from their Recon Petition to demonstrate that a stay is necessary. Thus, their “strong showing” of a likelihood of success on the merits is merely the arguments in the original petition itself. That is plainly not enough on its own to meet the first prong of the stay test.

Even if that were sufficient to even make out a claim for a likelihood of success, the Recon Petition simply rehashes previously rejected arguments that the Local Community Radio Act of 2010 (“LCRA”) requires equivalent regulation of LPFM and FM translator services.<sup>8</sup> Specifically, Petitioners point to portions of the Order’s background section where

---

<sup>6</sup> Stay Request at 1-2.

<sup>7</sup> Petition for Reconsideration, LPFM Coalition, MB Docket No. 18-119 (July 15, 2019) (Recon Petition).

<sup>8</sup> *Id.* at 5 citing *Local Community Radio Act of 2010*, Pub. L. No. 111-371, 124 Stat. 4072 (2011). LCRA §5(3) requires that when licensing new translator stations, boosters or LPFMs,

the Commission discusses its goal of “providing greater certainty for translator operators, and preserving existing protections for full-service stations,”<sup>9</sup> but does not mention providing benefits to LPFM stations.

This argument not only doesn’t have a likelihood of success on the merits; it necessarily will fail. First, in the Order’s background section, the preceding sentence highlights the need for the Commission also to consider the needs of LPFM licensees.<sup>10</sup> Second, LPFM parties raised the identical question in comments on the NPRM in this proceeding,<sup>11</sup> which the Commission answered: “[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.”<sup>12</sup> Indeed, the Order is at least the third occasion in which the Commission has explained this concept,<sup>13</sup> and Petitioners offer no evidence that the Commission’s understanding of the “equal in status” language is unreasonable or differs from Congressional intent. Third, 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 actually brings the respective rules into closer harmony,<sup>14</sup> a fact ignored in the

---

the Commission must ensure that translator, booster and LPFM stations “remain equal in status and secondary to existing and modified full-service FM stations.” *Id.*

<sup>9</sup> *Id.* citing Order at ¶ 4.

<sup>10</sup> Order at ¶ 4.

<sup>11</sup> *Amendment of Part 74 of the Commission’s Rules Regarding FM Translator Interference*, Notice of Proposed Rulemaking, 33 FCC Rcd 4729 (2018) (NPRM).

<sup>12</sup> Order at ¶ 47.

<sup>13</sup> *Id.* at note 183.

<sup>14</sup> *Id.* at ¶ 47. In fact, at least one party asserts that the Order unlawfully enhances the interference protection status of LPFM stations. Petition for Reconsideration, Charles M. Anderson, MB Docket No. 18-119 (July 11, 2019).

Stay Request.<sup>15</sup> Thus, Petitioners' view of the LCRA mandate that LPFMs and translators be treated "equal in status" is not remotely likely to succeed and should again be dismissed.

Petitioners also use this forum to dispute again the Commission's rejection of their proposal in comments in the underlying proceeding that translator licensees seeking to change channels to resolve interference should submit LPFM preclusion studies.<sup>16</sup> In their Recon Petition, Petitioners attack the FCC's rationale for rejecting their view and now claim, for the first time, that the LCRA requires translators to submit preclusion studies to facilitate the grant of future LPFM licensees, and that such future applications are the "new" licenses referenced in the LCRA.<sup>17</sup> However, Section 5(1) is clearly referring to the applications at hand when requiring that, when licensing new translators, boosters or LPFMs, licenses should remain available for the other two services, such as during the licensing of translators in Auction 83.<sup>18</sup> Petitioners' illogical view would require that translator, LPFM and booster licensees conduct preclusion studies to preserve frequencies for the other services every time they want to change channels or make another minor change to their facilities. Such an approach would completely upend the Commission's process for changes to

---

<sup>15</sup> The Commission plans to consider an NPRM at its next open meeting that will "provide more regulatory flexibility for licensees . . . [and] allow LPFM licensees to improve reception and increase flexibility in transmitter siting." *FCC Fact Sheet, Amendments to Parts 73 and 74 to Improve the LPFM Radio Service Technical Rules*, Draft Notice of Proposed Rulemaking, MB Docket Nos. 19-193, 17-105. We note that the public draft of this item contains no proposals that would similarly benefit translator licensees, who support the Commission's view of LCRA Section 5(3) and recognize that sometimes the Commission will address the interests of LPFM stations, and sometimes it will address theirs.

<sup>16</sup> Recon Petition at 18-19.

<sup>17</sup> *Id.* Petition at 19.

<sup>18</sup> *Creation of a Low Power Radio Service*, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364, 3382-88 (2012).

secondary services and needlessly waste the resources of both the Commission and broadcasters. This argument does not have a chance of success.

Finally, Petitioners dispute the Commission's decision that translator interference complaints must be based on multiple listener complaints using separate receivers at separate locations and that multiple listeners complaints from a single building or workplace will not count beyond the first complaint toward the required number of complaints.<sup>19</sup> Petitioners claim that such an approach does not take into account listeners within a large building that may be located far from each other, and disenfranchises listener complainants beyond the first one in a single building.<sup>20</sup>

Even had they tried, Petitioners again cannot demonstrate a likelihood of success on the merits. The overarching goal of the Order was to streamline the translator complaint resolution process,<sup>21</sup> while balancing the interests of FM broadcasters and secondary services. A key element of this goal was to ensure that translator complaints are based on a "real and consistent interference problem,"<sup>22</sup> rather than a fleeting instance that affects only one or two listeners, or a curable technical problem that impacts only one location. For the same reasons, the Order requires that listener complaints must be valid and submitted by enough regular listeners to demonstrate a genuine, pervasive problem.

To further ensure the integrity of the updated process, and after considering comments on the issue, the Commission found that counting multiple listener complaints from within a single building could undermine its goal of ensuring that a translator

---

<sup>19</sup> Recon Petition at 11-18; Order at ¶ 15.

<sup>20</sup> Recon Petition at 14.

<sup>21</sup> Order at ¶ 1.

<sup>22</sup> NPRM, 33 FCC Rcd at 4737.

interference complaint truly warrants Commission action.<sup>23</sup> Interference to multiple listeners in a single building would not illustrate a widespread problem. The Order creates a special rule – just for LPFM stations with fewer than 5,000 people within their protected contour – requiring only three listener complaints to support an interference complaint at the Commission.<sup>24</sup> Other radio stations in similar areas must collect six complaints.

In fact, although Petitioners complain bitterly because the Commission ultimately agreed with NAB's position, counting multiple complaints within a single building would actually benefit FM broadcasters because it would be easier to collect the required number of listener complaints about translator interference. However, as a matter of ensuring fairness and the integrity of the Commission's procedures, NAB supported a requirement to demonstrate interference at multiple listener locations. This was a consensus approach that reflected the broader interests of the radio industry.<sup>25</sup>

## **II. THE REQUEST ALSO FAILS TO MEET THE OTHER PRONGS OF THE APPLICABLE STANDARD FOR A STAY**

Petitioners do not discuss the other required prongs of the standard for granting a stay, likely because all support denial of the request. First, there is no evidence in the Recon Petition that LPFM parties will suffer irreparable harm absent a stay. Petitioners dispute the Commission's view of the LCRA and policies in the Order, but nowhere do they describe how LPFM licensees would be aggrieved by the new procedures. To the contrary, LPFM licensees

---

<sup>23</sup> Order at ¶ 15.

<sup>24</sup> *Id.* at 14.

<sup>25</sup> The Recon Petition also contains a long screed against the Commission's decision that translator interference complaints not yet acted upon as of the effective date of the Order will be decided based on the new rules. Recon Petition at 6-11. The Commission reasonably accommodates such situations by allowing parties to submit additional materials if needed to reflect the revised procedures. Order at ¶ 49.

will actually benefit under the Order. LPFM stations could receive greater interference protection from translators and certainty of service.<sup>26</sup> The Order also advantages LPFMs in small markets by requiring only three listener complaints to engage the Commission, half as much as other broadcasters. The Order also better aligns the flexibility of translators and LPFMs to avoid interference by finally allowing translators to move to non-adjacent channels to avoid interference as a minor change, a concept that has been commonplace for LPFM stations for many years. Indeed, it seems like Petitioners are not actually dismayed that LPFMs may be harmed under the Order, but that the substantial benefits and advantages to LPFMs provided by the Order are not substantial enough. Of course, this is not a justification for a stay of the rules.

On the other hand, granting a stay would clearly harm FM broadcasters and translator licensees who require regulatory certainty regarding the validity and adjudication of translator interference complaints. The Commission has already found that the current procedures for preventing and resolving translator interference conflicts sometimes lack expediency, consistency and clarity,<sup>27</sup> and a stay of the rules designed to improve those procedures would harm the relevant stakeholders by continuing the current broken regime. Doing so would be also cause unnecessary delay because all the arguments and proposals in the Recon Petition have already been fully considered in the record and the Order, sometimes for the second or third or fourth time, and Petitioners provide no new facts or arguments.<sup>28</sup>

---

<sup>26</sup> See *infra* note 12.

<sup>27</sup> Order at ¶ 4.

<sup>28</sup> 47 C.F.R. §1.429(b).

Finally, the discussion above clearly demonstrates that the public interest supports dismissal of the stay request. Petitioners' failure to show a likelihood of success on the merits or that LPFM parties will be harmed absent a stay, combined with the regulatory uncertainty and delay resulting from a stay, all argue in favor of denying the request.

### III. Conclusion

For the reasons discussed above, the Commission should deny Petitioner's Request for Stay.

Respectfully submitted,

**NATIONAL ASSOCIATION OF BROADCASTERS**  
1771 N Street, NW  
Washington, DC 20036  
(202) 429-5430



---

Rick Kaplan  
Larry Walke

July 22, 2019

CERTIFICATE OF SERVICE

I, Larry Walke, do hereby certify that a copy of the foregoing Opposition to Request for Stay was served, this 22nd day of July 2019, to the following:

VIA ELECTRONIC MAIL

Law Offices of Michael W. Richards  
PO Box 5842  
Takoma Park, MD 20913  
[michael@michaelrichards.us](mailto:michael@michaelrichards.us)

Handwritten signature of Larry Walke in black ink.

---

Larry Walke