



NEW JERSEY BROADCASTERS ASSOCIATION

7 Centre Drive, Suite 12
Monroe Township, New Jersey 08831
Office of the President and CEO
Paul S. Rotella, Esq.

"Representing the Radio and Television Industry in the Garden State"

April 25, 2018

Marlene Dortch, Secretary
Federal Communications Commission
455 12th Street SW
Washington DC 20554

RE: MB Docket No:18-119

Media Bureau Announces Notice of Proposed Rulemaking (NPRM) *In the Matter of Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference* Published in the Federal Register

Dear Ms. Dortch:

On May 10, 2018, the Commission adopted and released a Notice of Proposed Rulemaking In the Matter of Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference¹ - MB Docket No. 18-119 - (hereinafter the "NPRM"). The Commission sought comments on a number of proposals designed to streamline the rules relating to interference issues caused by FM Translators and to expedite the Translator complaint resolution process. The NJBA hereby renews its concerns.

The FM Translator Interference NPRM set deadlines for filing comments and reply comments at 30 and 60 days, respectively, after publication of the FM Translator Interference NPRM in the Federal Register. That deadline was Aug 6, 2018 and respondents filed many comments both in favor and in opposition to many of the provisions surrounding MB 18-119. The purpose of this filing is to focus on the issues purported by many of the Translator operators and broadcasters who both expressed support and opposition to many of the issues discussed in the NPRM. The respondents also added many additional thoughts relative to the proposed Translator interference rules which we will discuss below.

Before going into our response relative to the Translator interference issues, we once again respectfully wish to set the stage correctly with the Commission about the origin of this process which merits strong consideration. While we fully appreciate the dilemma the Commission now faces with ever mounting interference complaints and trying to create expeditious ways to dispense of these interference complaints, we feel it important to never forget that FM Translator facilities are by definition a

¹ *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Notice of Proposed Rule Making, MB Docket No. 18-119, FCC 18-60 (rel. May 10, 2018) (*FM Translator Interference NPRM*).

“secondary service”. As such, the Commission has always interpreted this to mean that an FM Translator is not allowed to create any interference to a full-service Station, and we feel that this is exactly the way that things should remain. Full-service FM Stations have unique and extraordinary localism and EAS requirements. In contrast, FM Translators are not subject to the Commission’s Emergency Alert Systems Rules. Further, the landscape in commercial broadcasting has become increasingly competitive with the advent of digital media and a host of other broadcasting and non-broadcasting competitive factors. With the plethora of other programming sources available to the listening public today, when and if interference occurs, it is very likely that listeners will simply tune to a different outlet (which may not be terrestrial radio) rather than to invest the time and effort to lodge an interference complaint, especially if, as is being proposed by Translator Operators, that such complaints become subject to greater scrutiny and complainant willingness to participate in the resolution process. Moreover, the average valued audience member may often not even know about the arduous process attendant to such interference complaint registration. To now seemingly allow FM Translators to create new interference to full-service FM Broadcast Stations is inconsistent with the secondary service nature of FM Translators as they were originally designated by the Commission and can jeopardize public safety.

Likewise, if further concessions are going to be awarded to Translators, then one would think they should abide by the same engineering rules that full-service broadcasters have to contend with when it comes to proving their contour patterns. Just saying that they comply, without the proven engineering data underlying such Translator applications, is counter intuitive, and is disparate in its treatment with the compliance mandates of full-service broadcasters.

Nonetheless, with that said, we feel that every permittee and licensee of an FM Translator is, or should be, aware that its facility is of a secondary service status, and thus they should have been aware of that secondary service status before applying for the facility in the first place. When it comes to balancing equities, the balance falls on the side of the full-service licensees and permittees, whose licenses and construction permits were granted under a licensing regime in which they were promised and therefore should be accorded full protection from Translator interference. We feel that any weakening of the protections that full-service licensees have and were originally granted, would substantially create an impairment on the licenses and permits in derogation of §316 of the Communications Act. It would also cause confusion in the marketplace and again, *interfere* with life saving AMBER Alerts and our EAS.

All of that being said, in an effort to try to comply with the Commission’s request for some compromise by all broadcasting constituents to the instant Translator interference issues (which were created by the massive introduction and approval of such licenses), we submit the following reply comments for the FCC’s consideration.

It seems that reading a majority of the Translator operator responses to the NPRM, the major issues of concern are summarized as follows:

- Item #1 - Resolution of Interference by allowing Translators to Change Channels (Minor Mod);
- Item #2 - Requirement of a Minimum Number of Complaints;
- Item #3 - Standardize the Information in Listener Complaints;
- Items #4 - Establishment of a Contour Limit of Protection for Full-Service Broadcasters, beyond which limits, such complaints would be rendered moot. Further, Translator operators seem to also suggest some added level of U/D testing;
- Items #5 - Require complainants to be a much more active participant in the resolution process or thereby be eliminated from the list of complainants.

In examining items #1 through #5 above and reading through the *Commission's Rules Regarding FM Translator Interference*, MB Docket No. 18-119 and more specifically items #1 through #3, the NJBA hereby generally supports the first three reforms as explained more fully below. Namely, (1) allowing FM translators to resolve interference issues by changing channels to any available frequency using a minor modification application; (2) requiring a minimum number of listener complaints to be submitted with any FM translator interference claim; (3) standardizing the information that must be included within such a listener complaint.

That said, we do not agree with item #4 and the Commissions Proposed Contour Limit of the 54 dBu nor do we support item #5 requiring complainants to become a greater part of the interference resolution process. Each of these issues and some comments on items #1 through #3 are discussed below:

Item #1:

Allowing translators forced to move by interference complaints to any available interference free channel makes enormous sense. The NJBA is not opposed to translators per se, only those that cause or create interference to full-service broadcasting facilities. Therefore, we believe item #1, allowing translators to move to any channel within an assigned band as a minor modification should be adopted. On the other hand, “band hopping” from reserved to non-reserved outside of a window would continue to be considered a major change application.

Item #2:

We have noted in the comments to the NPRM the request to increase in the required number of complaints to validate a claim by a full power station of Translator caused interference. The NJBA concurs with the recommendation of the NAB increasing the number of complaints from as few as one (1) to a minimum of six (6). But that said, the NJBA believes the 15- day window for gathering complaints should be amended to be at least thirty (30), if not one sixty (60) days prior to grant of a translator application and twelve (12) months following grant of license and commencement of operation, so as to not ignore New Jersey's seasonal audience levels. In our view, adopting a varying scale as to the required number of complaints as noted in the NPRM and by some parties, would add undue complexity to an already time consuming and somewhat cumbersome process.

Item #3:

We question the newly suggested methodology of how and where complaints come from as being overly burdensome. The current system of gathering signatures and statements from any listener living within the interference prone area, or commuters passing through said area should suffice. Likewise, groups of listeners in an apartment complex, business location or a given neighborhood should be allowed to render a complaint and broadcasters should not be required to adhere to the specious proposed 1,000 feet distance separation on complainants as suggested by Translator operators. This approach flies in the face of localism and the fundamental “one to everyone” genius of broadcast radio. A complaint is a complaint and the proposed distance separations are silly.

Further, as suggested in the NPRM, when the current rules were adopted in 1990, the means of communications such as email, texting and social media did not even exist. We therefore support the FCC's proposed clarification that just because a listener is affiliated with the complaining station by virtue of Facebook, Twitter, Instagram or other social media platforms, they should not be disqualified or deemed unqualified in registering their objections. Likewise, broadcasters should be permitted the ability to seek interference objections vis-à-vis these sources of listener communication.

This is especially necessary if broadcasters are voluntarily agreeing to increase the number of complainants as noted in item #2 above, and accordingly, it is only reasonable that the methods used to gather such complaints likewise be increased.

Lastly, as to the topic of standardizing listener complaints, we feel that requiring hand-written signatures is also unduly burdensome and since the Commission already allows “electronic signatures” as a valid methodology in responding to various FCC mandated filings, we feel broadcasters should be allowed to gather signatures via-a-vis website or on-line “filled-in” forms with electronic signature affidavits whereby listeners can log on and submit their respective complaints electronically, which in turn, can be submitted to the Commission. In this regard, broadcasters would be required to post a form that discusses the interference and then requiring on-line submissions to include a minimum amount of the information, as noted below, along with a map of the area in which listeners can post the interference they have observed.

Email Address	Full Name	Phone Number	Street Address	Zip Code	City	Inteference Observed (See Map)	Frequency of Interference	Date(s) Observed	Listener IP Address
---------------	-----------	--------------	----------------	----------	------	--------------------------------	---------------------------	------------------	---------------------

Item #4:

Insofar as the proposed limitation to the 54 dBu contour is concerned, clearly this is the most significant issue that all broadcasters have equally weighed in on. The NJBA strongly opposes the Commission’s position in establishing an outer contour limit beyond which such listener complaints of interference caused by FM translator stations would not be actionable. In particular, we feel that applying the 54 dBu contour limit, as proposed in the NPRM, would fundamentally change the existing balance of equities between translators and other full-service broadcast stations. Translators are a secondary service and essentially are supposed to be used as a repeater service to remedy challenging geographical limitations or to supplement AM stations as part of the *AM Revitalization Program*². To now afford Translator operators “greater” protections and in turn “limit” the protections that full-service broadcasters can expect, flies in direct contrast to how each party understood the underlying protections they could expect when the respective licenses were granted to each party. Further, the proposed 54 dBu contour would alter that stature and affect the listening options for listeners outside the broadcast station’s protected contour to the detriment of the public and full-service FM stations.

We noted in the NPRM responses, made by many of the full-service broadcasters, that the 54 dBu contour issue is the “core” issue and central theme most broadcasters share concern with. Each group has submitted a plethora of empirical data and engineering reports, as did we in our initial response, demonstrating, without any conjecture, that a great amount of listening occurs well outside the 54 dBu contour. To now pretend that this listening is unimportant or inconsequential as the Translator operators seem to portray is simply disingenuous. Listening to radio is and has been developed over decades. If enacted as proposed (the 54dBu), listening patterns will be irrefutably changed to the detriment of broadcasters. Full-service broadcasters have spent millions of dollars attracting and now serving these constituents. Entire markets are reasonably relying upon, and are being served with, an underlying cost structure commensurate with catering to these markets. If full-service broadcasters can no longer count on these listeners, ratings, and revenues, then services will all decline. It is naive to think that in many cases 60% or more of listeners can be disenfranchised and potentially interfered with and somehow

² *Revitalization of the AM Radio Service*, First Report and Order, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 30 FCC Rcd 12145, 12149 (2015).

broadcasters will still provide 100% of the previous level of services. If the changes as proposed to the 54 dBu occur, broadcasters will not have the financial resiliency to then continue to generate the valuable services they provide to serve those population segments. Worse, Translators not having the same requirements to serve the public good nor produce valued services such as EAS and DIRS warnings, could irreversibly alter the public good which is not what Congress intended, nor do we believe the FCC intended or sought when these licenses were granted.

As noted in **Exhibit A**, and as previously supplied with our August 6 filing³, the degree to which listening occurs outside the 54 dBu is significant! That was why our initial response primarily focused on the contour protection limits. In now following up that initial Comment Letter, we also noticed that many other broadcasters have equally submitted a host of substantial and unrefuted engineering reports validating the information we supplied.

One such filing was jointly submitted by Beasley Media Group, LLC, Cox Media Group, LLC, Gradick Communications, LLC, iHeart Communications, Inc., Neuhoff Corp., Radio One Licenses, LLC, Urban One, Inc., and Withers Broadcasting Companies (the “Joint Commenters”). In that Comment Letter, the Joint Commenters submitted empirical data on 43 Metros which revealed that the in the Metros they surveyed, “...each FM radio station has an average of 25,872 Nielsen-measured listeners residing outside the station’s 54 dBu contour. By percentage of total listeners to each station, on average, 13.4% of the listeners to each FM radio station reside outside the station’s 54 dBu contour. When at-home Nielsen data is analyzed, on average, 29.8% of the at-home listeners to each FM radio station reside outside the station’s 54 dBu contour”. The Joint Commenters went on to state that “...is not until the 39 dBu contour is studied that the All Metros percentage of listeners outside the 54 dBu contour dips below two percent (the interference level adopted by the Commission for the development of DTV). Even then, the average number of Nielsen-measured listeners residing outside the station’s 39 dBu contour is 2,432 listeners per station”. An excerpt from the Joint Commenters report is provided in **Exhibit B**³ which clearly demonstrates the significant impact limiting complainants to the 54 dBu would have in the 43 Metros they surveyed.

Similar to the findings noted above by the Joint Commenters, the report and charts we furnished in our August 6, 2018 response were Nielsen supplied reports and data of listenership which are irrefutable evidence. Of note, even the Commission relies upon such information when identifying and assessing market designations and relevant information related thereto. Insofar as the contour protection is concerned, while our initial response indicated that we would be willing to accept the 45 dBu contour as the outer limit for complainant objections, after reviewing the significant amount of data submitted to the Commission in response to the NPRM, we think that the more properly purported contour should be the 39-40 dBu.

While we see in our readings that many broadcasters want no such limitations, and while we agree with the underlying premise that Translators as secondary services should not receive added protections, that position would not address what the Commission is asking in terms of “compromise”. So, with that said, in the spirit of compromise and trying to reach mutual accommodation, the NJBA would support the following contour protections:

³ <https://ecfsapi.fcc.gov/file/108071105823573/Translator%20-%20NPRM%20-%20Final%208%206%202018.pdf>

- Co-Channel and First Adjacent Translator Applications – would have to protect full-service broadcasters to the 40 dBu contour.
- Second Adjacent Translator Applications – would have to protect full-service broadcasters to the 45 dBu contour.
- Third Adjacent Translator Applications – would have to protect full-service broadcasters to the 54 dBu contour.

We feel this provides the minimum required level of protection that full-service broadcasters should expect.

Item #5:

Finally, as to the fifth item enumerated above relative to the proposed involvement of listeners in the complaint process, we are strongly opposed to the proposition by the Translator respondents which are warranting things like greater involvement, physically signed affidavits, a willingness of complainants to become more involved in the resolution process, etc. While the suggestions made by the Translator operators are certainly “sound” from a purely self-serving pragmatic standpoint, we feel that position is naïve for many reasons. First and foremost, most people want their favorite radio stations to be protected when disturbances arise. However, when you ask complainants to then stay home, be available for follow up assistance, make remedies or do something on their “private time”, it is simply unreasonable, and understandably, they fold their cards and drop out of the process. But, just because people don’t want to join an exacerbated “fight” doesn’t mean they shouldn’t be protected. We live in an age where more and more people are faced with time depravity and thus an expectation that people are going to want to immerse themselves into the “spectrum space” disagreement between a radio station and Translator are simply naïve. So, we do not support added involvement of complainants as proposed by the Translator operators.

Finally, the NJBA fervently suggests that the Commission take regulatory notice of New Jersey’s unique place in the *demesne* of broadcast and our vital need for full, free and uninterrupted, interference-free radio broadcast signals from our full power commercial radio stations. As the most underserved television market/state in the union, New Jersians rely upon local radio for news, information, entertainment, and EAS warnings more than any other state. Accordingly, the integrity of those broadcast signals need heightened protection to provide such local coverage and is a precious resource to our citizens.

Once again, we sincerely appreciate the Commission providing the time for broadcasters to provide added details on this burdensome issue. We cannot stress enough the importance of protecting the full-service broadcasters for the reasons stated herein.

Please do not hesitate to contact me directly at 201-914-0495 should you have any questions or require any additional information.

Most respectfully,

NEW JERSEY BROADCASTERS ASSOCIATION



Paul S. Rotella, Esq.,
President and CEO

EXHIBIT A

Listener Counts by dBu Contour								
Contour	WAWZ	WBBO	WBHX	WCHR	WDHA	WFPG	WJLK	WJRZ
	Listeners							
60 dBu	130,048	15,396	1,637	39,041	16,999	37,825	65,685	12,472
57 dBu	142,219	15,396	1,637	39,424	31,863	38,901	76,756	16,631
54 dBu	160,960	23,276	1,637	49,943	38,752	41,194	92,156	17,705
50 dBu	184,799	27,773	1,637	55,686	51,540	41,620	94,940	22,327
48 dBu	208,688	27,773	1,637	58,260	68,680	41,620	94,940	22,327
45 dBu	244,918	34,123	3,211	58,260	76,542	42,539	103,907	22,327
40 dBu	274,414	38,752	4,300	58,652	119,179	44,933	108,087	22,540

Percentage of Listening Outside the 54 dBu Contour (Using the 54 dBu as Base Layer)								
Contour	WAWZ	WBBO	WBHX	WCHR	WDHA	WFPG	WJLK	WJRZ
	Listeners	Listeners	Listeners	Listeners	Listeners	Listeners	Listeners	Listeners
60 dBu								
57 dBu								
54 dBu	FCC PROPOSED "BASE LAYER" PROTECTED CONTOUR							
50 dBu	15%	19%	0%	11%	33%	1%	3%	26%
48 dBu	30%	19%	0%	17%	77%	1%	3%	26%
45 dBu	52%	47%	96%	17%	98%	3%	13%	26%
40 dBu	70%	66%	163%	17%	208%	9%	17%	27%

Listening Counts by dBu Contour							
Contour	WKMK ¹	WKXW	WMGQ	WOBM	WRAT	WTHJ	WWZY ²
	Listeners	Listeners	Listeners	Listeners	Listeners	Listeners	Listeners
60 dBu	12,686	245,437	119,969	20,046	25,585	6,273	51,345
57 dBu	17,890	277,603	141,442	21,003	27,496	6,273	51,358
54 dBu	27,385	327,961	166,774	22,339	28,758	7,520	73,370
50 dBu	31,056	400,891	188,500	24,831	37,025	8,721	89,768
48 dBu	31,056	403,771	194,179	28,049	42,931	10,873	91,685
45 dBu	40,727	451,122	211,287	28,247	45,634	11,486	101,498
40 dBu	60,908	540,883	237,306	30,173	55,658	18,474	122,179

Percentage of Listening Outside the 54 dBu (Using the 54 dBu as the Base Layer)							
Contour	WKMK	WKXW	WMGQ	WOBM	WRAT	WTHJ	WWZY
	Listeners	Listeners	Listeners	Listeners	Listeners	Listeners	Listeners
60 dBu							
57 dBu							
54 dBu	FCC PROPOSED "BASE LAYER" PROTECTED CONTOUR						
50 dBu	13%	22%	13%	11%	29%	16%	22%
48 dBu	13%	23%	16%	26%	49%	45%	25%
45 dBu	49%	38%	27%	26%	59%	53%	38%
40 dBu	122%	65%	42%	35%	94%	146%	67%

¹ Simulcasted with WTHJ

² Simulcasted with WBHX

Note: the above data is 18+ information that was extracted from Nielsen’s Scarborough Reporting and does NOT reflect the Diary Reported listening of the listeners from 12+ to 18. Accordingly, the observations noted below are understated in terms of the actual number of listeners who would be adversely affected by the NPRM and the 54 dBu contour restrictive clause of that NPRM – namely, the above table does not include a valuable listening audience segment from 12 -18 years old.

As noted in the Tables above, we used the FCC’s proposed 54 dBu as a “Base Layer” and then showed the Nielsen listener counts for each successive dBu contour outside of the 54dBu. As an example, for radio station WKMK, 1.2 times (or 122%) of the number of listeners occurs outside the 54 dBu contour as contrasted with the listening inside the 54 dBu. In terms of the total number of listeners, WKMK has 27,385 listeners inside the 54 dBu and 33,523 outside the 54 dBu (i.e. 60,908 listeners @ the 40 dBu – 27,385 listeners @ the 54 dBu) or 55% (33,523 outside 54 dBu / 60,908 total listeners at the 40 dBu) of the listening occurs outside the 54 dBu!

Simply said, in using the NPRM’s proposed 54 dBu contour protection area, WKMK would have 33,523 listeners or 55% of its listening audience who would be essentially “unprotected” and could be adversely affected by Translator applications if the NPRM is enacted as presently written. That clearly “protects” an “unprotected service” (Translators) to the detriment of a “protected service” (Broadcasters). As proposed, this would be a major setback to full-service broadcasters who have spent millions of dollars attracting listeners and providing valuable content to those listeners. If the NPRM is enacted as is, that will potentially place over 61% of all the NJBA surveyed full-service stations listening audiences as possibly being eroded by Translator applications. En masse, if you examine the New Jersey marketplace for the major broadcasting groups of Townsquare Media, Beasley Media Group and Press Communications, LLC (as noted in the table above), if the NPRM were to be enacted as proposed by the FCC using the 54 dBu, these broadcasters would have over 61% of their listening audiences unprotected from interference by Translators.

With that in mind, the NJBA proposes that the NPRM be amended as follows:

- Co-Channel and First Adjacent Translator Applications – would have to protect full-service broadcasters to the 40 dBu contour.
- Second Adjacent Translator Applications – would have to protect full-service broadcasters to the 45 dBu contour.
- Third Adjacent Translator Applications – would have to protect full-service broadcasters to the 54 dBu contour.

EXHIBIT B

