

April 30, 2019

VIA ECFS

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: REC Networks Ex Parte Comments on Draft Report and Order
on FM Translator Interference
MB Docket No. 18-119**

To Chairman Pai and Commissioners O’Rielly, Carr, Rosenworcel and Starks:

Educational Media Foundation, Bonneville International Corporation, and iHeart Communications, Inc., as debtor in possession, hereby respond to the ex parte letter filed by REC Networks (“REC”) on April 24, 2019 asking that the Commission protect “super-powered, grandfathered Class B” FM stations to less than their 45 dBu contour against potential interference from translators or LPFM stations. As set forth below, REC’s request goes far beyond the issues proposed in the Notice of Proposed Rulemaking in this proceeding and would also result in upsetting established listener expectations. It cannot be adopted by the Commission as a revision to the Draft Order.¹

In the Draft Order, the Commission proposes that existing stations be protected from interference from translators and LPFM stations only to the desired station’s 45 dBu contour.² Interference complaints based on listening in areas beyond that contour would not be considered by the Commission. As noted in the Draft Order, the use of this contour was the result of the balancing of the reasonable expectations of the preservation of listeners to existing stations against some degree of certainty and predictability for the party operating the secondary station. In the Notice of Proposed Rulemaking in this proceeding, the Commission recognized that its purpose in adopting new rules was to streamline the complaint process while still maintaining its “focus on ‘reception by the public’ in Section 74.1203(a)(3) and prevention of interference to ‘populated areas’ in Section 74.1204(f).”³

Adopting REC’s proposal would abandon these core principles by protecting super-power Class B stations to a lesser contour than other stations. Such an action would be contrary to the mission of the Commission’s rules in protecting the reception of existing stations’ service to people in populated areas from potential interference caused by secondary stations. As has been demonstrated in this proceeding, there is significant listening to FM stations to and beyond their 45 dBu contours. That listening exists whether the station is a Class A FM or a super-

¹ *Amendment of Part 74 of the Commission’s Rules Regarding FM Translator Interference, Draft Report and Order*, released April 18, 2019 (“Draft Order”).

² Draft Order ¶ 36.

³ *See Amendment of Part 74 of the Commission’s Rules Regarding FM Translator Interference*, Notice of Proposed Rulemaking, 33 FCC Rcd 4729, 4731, at ¶ 17 (2018) (“NPRM”).

power Class B FM station. Protecting these super-power Class B stations to something less than their 45 dBu contour would result in loss of service to the listening public from these stations. These stations have been operating at “superpower” for over 50 years – and were grandfathered at these powers specifically to protect the established listening habits of the listeners to these stations.⁴ The REC proposal would upset the expectations of regular listeners who have been tuning in to these super-powered stations. These patterns cannot be disrupted based on a last-minute proposal in an ex parte letter filed well after the comment period in this proceeding.

The NPRM in this proceeding did not suggest any special treatment of super-power FM stations, nor did the Draft Order. The Commission cannot now allow this issue to be considered at this late stage of this proceeding.⁵ It would effectively be calling for a reexamination of the status of super-powered FM stations. In previous situations where the FCC was reexamining general FM technical rules, and the question of super-power FMs and possible restrictions on their protections were raised late in the proceeding, the Commission declined to reduce those protections, finding the issue beyond the scope of the consideration of changes in the general rules at issue.⁶ That same consideration should be applied here, and this proposal must be rejected as it was not one to which parties to this proceeding had notice. For over 50 years, no significant changes have been made in the protections of these Class B stations. Doing so now, on the basis of a last-minute ex parte letter, would not constitute the careful balancing of gains and losses promised when these protections were adopted.

It is clear that adopting different protection standards for super-power Class B stations would upset the settled listening habits of the audience of these stations. Such a change was not part of the NPRM in this proceeding, and its last-minute consideration now is not appropriate.

⁴ *Revision of FM Broadcast Rules*, Second Report, Memorandum Opinion and Order, 40 FCC 720 at ¶¶ 13-14 (1962). There, the Commission stated that, while it could consider changes to the protections afforded these stations, it would do so “based on careful consideration in a specific proceeding of all of the pertinent factors (balancing gains against losses).”

⁵ *National Lifeline Association v. FCC*, 915 F.3d 19 (D.C. Cir. 2019) (“To meet the rulemaking requirements of section 553 of the APA, an agency ‘must provide sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully.’ Put otherwise, ‘the affected party should have anticipated the agency’s final course in light of the initial notice.’”) (internal citations omitted).

⁶ See, e.g., *In the Matter of Digital Audio Broadcasting Systems*, 22 FCC Rcd 10344 at para. 97 (2007).

Thus, the suggestion of different treatment for these stations contained in the REC ex parte should be rejected.

Respectfully submitted,

Educational Media Foundation

/s/ Sam Wallington

Sam Wallington
Vice President of Operations and Engineering
5700 West Oaks Boulevard
Rocklin, CA 95765
916.251.1600
swallington@kloveair1.com

Bonneville International Corporation

/s/ Michael Dowdle

Michael L. Dowdle
Senior Vice President and General Counsel
Bonneville International Corporation
55 North 300 West, 2nd Floor
Salt Lake City, UT 84101
801.575.5874
mdowdle@bonneville.com

iHeart Communications, Inc.,
as debtor in possession

/s/ Jeff Littlejohn

Jeff Littlejohn
Executive Vice President - Engineering &
Systems Integration
8044 Montgomery Rd., Suite 650
Cincinnati, OH 45236
210.253.5330
JeffLittlejohn@iheartmedia.com

cc: Michelle Carey, Chief Media Bureau
Albert Shuldiner, Chief, Audio Division, Media Bureau