

April 30, 2019

VIA ECFS

Federal Communications Commission
Washington, D.C. 20554

**Re: Draft Report and Order on FM Translator Interference
MB Docket No. 18-119**

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

Beasley Media Group, LLC, Educational Media Foundation and iHeart Communications, Inc.¹ (the “Parties”) hereby ask that the Commission reexamine one aspect of its proposed new criteria for the resolution of complaints about interference from FM translator stations. The Parties, each of which hold licenses for both full-service FM stations and FM translators, have each participated in this rulemaking proceeding, offering comments on the FCC’s proposed changes in the process for resolving interference complaints. While the draft FCC Report and Order circulated on April 18, 2019 (the “Draft Order”), does not adopt all of the Parties’ suggestions, this letter is being filed to highlight the one issue of particular concern in the Draft Order – the guideposts for the number of listener interference complaints required to sustain an objection to the operation of an FM translator.

The Draft Order most certainly is not in lock-step with each of the recommendations filed by the Parties in this proceeding – for example, the Parties placed in the record of this proceeding audience data that would have supported a desired-station contour limit on actionable interference complaints of no more than 39 dBμ² or 42 dBμ.³ Yet, as licensees on both flanks of the full-service/FM translator divide, the Parties recognize that the Commission has done an exemplary job overall in balancing the interests of listeners of full-service or pre-existing stations with those of FM translator operators. With the revisions suggested here to the calculation of the minimum number of regular listener complaints, the Commission will have set a workable path for the prompt and fair resolution of FM translator interference complaints.⁴

¹ iHeart Communications, Inc. is currently in debtor in possession status, and holds its FCC licenses via subsidiary entities.

² See Comments and Reply Comments of Educational Media Foundation (“EMF Comments and Reply Comments”).

³ See Comments and Reply Comments of 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 (“Beasley et al. Comments and Reply Comments”).

⁴ As set forth in the EMF Comments and Reply Comments and the Beasley et al. Comments and Reply Comments, as well as submissions other parties, the record in this docket establishes extensive listening by the public to full-service FM radio stations well beyond the 54 dBμ contour limit originally proposed by the Commission, as well as beyond alternative contours, such as the 48 dBμ contour recently advocated in the ex parte submission by Henson Media, Inc.

In the Draft Order, the FCC proposes a new minimum number of complaints needed before a complaint about interference from an FM translator can be sustained, which would *vary based on the population within the desired station's service area*. Under current rules, a single listener interference complaint that cannot be resolved is sufficient to force a translator operator to take remedial actions or, if such actions are not successful, to require that the translator cease operations. While the Notice of Proposed Rulemaking in this proceeding proposed increasing the number of required complaints to guard against claims from overly sensitive listeners or ones that are not *bona fide*, and suggested six as a sufficient number, the Draft Order goes too far, abandoning the goals stated in the NPRM to “focus on ‘reception by the public’ in Section 74.1203(a)(3) and prevention of interference to ‘populated areas’ in Section 74.1204(f).”⁵

By requiring as many as 65 complaints before an objection to translator interference will be deemed to require Commission resolution, the Commission would be allowing many instances of real interference to go unresolved, which contravenes the historical goal of protecting established listener patterns. While these numbers may be derived from suggestions of certain commenters,⁶ the Draft Order does not explain sufficiently why these numbers make sense or how they are logically tied to the Commission's objectives of protecting existing service. While the Commission may have experience in the past of interference proceedings with informal lists of complainants, it has always been a struggle for full-service stations to obtain executed statements from *bona fide* listeners who must be situated within the mutual overlap region of this multi-faceted “Venn diagram”: (a) a regular listener, *and* (b) a listener that doesn't just hit another button on the dial when encountering interference, *and* (c) a listener that is dedicated enough to complain to the station or react to a call for interference complaints, *and* (d) a listener willing to provide their name, address, phone number and/or e-mail to the station, *and* (e) a listener that does not mind that such information will be filed with a governmental agency. With the new proposed requirement that listener statements be signed and dated, along with the contour limit proposed in the Draft Order, among other reforms, the inordinately-high

See, e.g., Beasley et al. Comments (Nielsen audience study documents that the average number of measured listeners residing outside of each station's 48 dBμ contour is 11,053 listeners per station); EMF Comments at Exhibit 1 (documenting substantial listener contacts, by station, beyond various contours, including the station's 48 dBμ contour); Comments of Blue Ridge Broadcasting Corporation at 8 (over 2,000 contributors to WMIT(FM) from outside the station's 48 dBμ contour). Consequently, the record does not support, and it would be contrary to the public interest, to set a desired-station contour limit any greater than the 45 dBμ contour set out in the Draft Order. Moreover, the waiver process endorsed by Commission at paragraph 44 of the Draft Order, also questioned by Henson Media, Inc., is a necessary release valve, albeit with a very high standard, to protect the interests of a sizable cohort of “determined listeners” against secondary service interference.

⁵ *See Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Notice of Proposed Rulemaking, 33 FCC Rcd 4729, 4731, at para. 17 (2018) (“NPRM”).

⁶ *See* Draft Order at para. 13; but *see infra* as to the Draft Order proposal not reflecting the National Translator Association position on the relevant area for determining the number of minimum complaints.

minimum levels suggested in Table 1 of Section 74.1203(a)(3) of the Draft Order would not only prevent nuisance interference claims – the righteous goal – but also would block the resolution of established interference to regular listeners by a secondary service, contrary to the Commission’s objectives.

The tying of the number of required complaints to the population of the service area of the complaining station goes beyond protecting translators from being forced off the air because of the rare listener with a high-gain antenna far from a station’s expected service area (an issue already taken care of by the cut-off of complaints beyond a complaining station’s 45 dBμ contour). Instead, the Draft Order suggests that, for every station, a certain percentage of its listeners are expendable – and the bigger the station, the more expendable its listeners are. By imposing this minimum listener complaint requirement based on the complaining station’s service area, the Commission, despite its claim to be protecting the listener, is now protecting the translator.

Basing the number of required complaints on the population being served by the complaining station divorces the required number of complaints from the actual interference. It may, in some cases, make it impossible to support a legitimate claim of interference. If, for example, the translator interference occurs in a rural area within the coverage area of a station that also serves a major city, the table set out in the Draft Order could require 40, 50 or even 65 listener complaints to sustain an objection of interference to a full-service station. A station experiencing interference in a sparsely populated area may be unable to find enough listeners in that interference area who are willing to execute a complaint to meet the minimums set forth in the proposed table which is based, not on that interference area, but on the irrelevant total population served by the desired station. It may be just about impossible to obtain the required number of formal complaints because, as any of the Parties can attest, based on experience, only a fraction of those listeners who actually are receiving interference will be willing to provide the information necessary to support a formal complaint, especially when that document becomes part of the public record of a government agency.

The arbitrary nature of this proposed tool for resolving interference complaints is evident, as it does not tie the number of complaints to the interference actually being created, but instead bases the number of required complaints on the total population of the service area of the complaining station. An interference area that has the same size and population may require just 10 complaints to sustain an objection from one complaining station, but 50 or 65 if the complaint comes from another. If adopted by the Commission, this decision will effectively determine that these listeners are expendable for the station with more people in its service area. This aspect of the Draft Order does not focus on the reception by the public and the prevention of interference to populated areas, the Commission’s stated goals of its rules on translator interference. As detailed here, the Parties urge the Commission to adopt different criteria for the minimum listener complaint tiers, and regardless of the basis chosen (whether the focus is on the full-service station or the FM translator), the maximum number of minimum listener complaints required for action should be no more than 25 – each meeting the stricter standards set forth in the Draft Order.

To address these concerns with the Draft Order, it is respectfully requested that when adopted, the Commission's Report and Order in this docket includes a revised Table 1 to Section 74.1203(a)(3), so that the title on the left-hand column is labeled "Population Within Interference Zone (See Note to Table 1)", a Note is added, and the tiers are limited to the 25 listener complaint maximum, as shown here:

Table 1.

Population Within Interference Zone (See Note to Table 1)	Minimum Listener Complaints Required for Interference Claim
1-199,999	6
200,000-299,999	7
300,000-399,999	8
400,000-499,999	9
500,000-999,999	10
1,000,000-1,499,999	15
1,500,000-1,999,999	20
2,000,00 or more	25
LPFM stations with fewer than 5,000	3

Note to Table 1: The interference zone for the purposes of Table 1 is the area within the desired station's 45 dB μ contour where the undesired FM translator's to desired station's signal strength exceeds -20 dB for co-channel situations, -6 dB for first-adjacent channel situations or 40 dB for second- or third-adjacent channel situations, calculated using the Commission's interference methodology as set out in § 73.213(a)(1).

Tying the minimum number of listener complaints to the predicted area of interference, using methodology already established by the Commission in its rules, hews most closely to the Commission's purposes in this proceeding, and the Parties recommend the foregoing revisions to the Draft Order. While the Parties expect that full-service stations and FM translators alike will have the knowledge and resources to conduct these calculations, to the extent that the Commission has concerns with the administrative ease of this system, an alternative based on that proposed by the National Translator Association ("NTA") would still be far more appropriate than the focus on the full-service station's contour as suggested in the Draft Order.

Specifically, in its Comments, NTA did not suggest that the minimum number of interference complaints be based on the population served by the desired station, but instead

suggested a sliding scale based on the *population to be served by the translator*.⁷ NTA stated there:

NAB suggested six [bona fide] listener complaints as a reasonable starting point. NTA agrees with this number, however, NTA thinks this number should ultimately be based on the population that the translators covers within its protected contour.... For example, we would propose that if the translators protected contour contained up to a potential 100,000 listeners that the six Bona Fide Listener Threshold should initially be established. As the number of potential listeners increases within the translators protected contour, the Bona Fide Listener Threshold should also increase by one for every additional hundred thousand listeners increase. In this way, the population count under the protected contour would tend to fairly represent the listenership within that protected contour of the translator. This methodology would also keep the calculations relatively simple.⁸

Listeners to full-service stations should be protected from secondary services regardless of the number of listeners in the rest of the complaining station's service area. Tying the minimum listener complaint thresholds to the FM translator's service area population, as proposed by NTA, might serve as a proxy for the more precise guideline recommended above (that is, tying the minimum number of complaints to the area of interference), and certainly would be a better fit with the Commission's overarching goals than the proposed guidelines set forth in the Draft Order. In either event, the Table 1 right-hand column levels must be revised to limit the maximum "Minimum Listener Complaints Required for Interference Claim" from the extraordinary high minimums – reaching over three dozen – currently proposed in the Draft Order. With the other reforms set forth in the Draft Order, these new minimums are not only unnecessary to flush out nuisance complaints, but would only serve to embed interference into the FM band to the detriment of existing listeners.

Under this alternative focus on the translator's population, column one of Table 1 would be re-labeled and the Note omitted, as follows:

⁷ See NTA Comments at 3-4 (Aug. 6, 2018).

⁸ *Id.* (footnote omitted).

Table 1.

Population Within Protected Service Contour of FM Translator	Minimum Listener Complaints Required for Interference Claim
1-199,999	6
200,000-299,999	7
300,000-399,999	8
400,000-499,999	9
500,000-999,999	10
1,000,000-1,499,999	15
1,500,000-1,999,999	20
2,000,00 and above	25
LPFM stations with fewer than 5,000	3

With the implementation of the Draft Order's new strict requirements for actionable complainants as set forth in revised Section 74.1201(k), the Commission need not set the minimum number of listener complaints to the degree proposed, as the 25 maximum should guard against nuisance proceedings, and must not be set so high as to handicap full-service stations protecting their regular listeners from interference. Moreover, focusing on the service area of the desired full-service station does not advance the Commission's goals and would result in anomalous impacts, and thus the Parties urge the Commission to change this determination before adopting the proposals set out in the Draft Order.

Respectfully submitted,

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