Comments on NPRM pertaining to FCC Docket 18-199

Grant Co. Broadcasters Incorporated is the licensee of Class A FM station WNKR at Williamstown, Kentucky and Class B FM station WNKN at Middletown, Ohio. Both of these stations are located within the Nielsen- defined Cincinnati metro area.

We are inalterably opposed to the NPRM pertaining to MB Docket 18-119. WNKR has spent over $40,000.00 in legal fees to deal with translator interference to our signal since 2012. While we welcome the concept of refining the rules pertaining to these secondary services, we take serious issue with many of the contentions put forth in the NPRM and we oppose completely the concept of imposing contour limits on the ability of full-power, primary stations to protect themselves from interference from these secondary facilities.

The definition of a secondary service facility has always been a facility that cannot cause interference and must accept interference. Construction of such a facility has always been an at-risk proposition for the proposed licensee, as many of these facilities have been shoe-horned in as tightly as possible and the applicant has no way of actually knowing where the listening audience begins and ends for the primary facilities their proposal may encroach on. The NPRM would establish uniform limits for primary stations beyond which they could not protect their existing audiences. It is the awarding of protection to facilities proposed, authorized and constructed on an at-risk basis, explicitly with no such protection. It fundamentally changes the definition of a secondary facility and, in fact, through the protected service area they would enjoy under this NPRM, turns them into defacto primary facilities, since their service now has a protected, guaranteed coverage area. This has been the traditional definition of a primary facility, not a secondary one.

This new class of primary stations, already several thousand in number, will have been created and granted this protection in a highly questionable, back- room manner, bypassing all of the traditional regulatory procedures established for the creation of a new class of facilities. Contrast this with the proposed creation of a C4 FM class of facility. In that case, the normal process is being followed, with the actual proposed engineering and class limits being presented clearly and concisely. Yet this NPRM, after thousands of translator stations have been constructed under the pretense that they are secondary facilities that cannot interfere with primary stations’ regular listeners, proposes granting them primary (protected) status. Does the Commission seriously believe that, had this been presented to full power licensees initially in the form that this NPRM proposes, there would not have been serious opposition to the creation of these translators?

We believe that it is utterly unreasonable to grant such protection retroactively to an entire class of stations that were constructed on the pretense that they would not cause interference to regular use of primary stations. We further believe that, if adopted, this NPRM would be actionable and will likely result in the entire issue ending up in long and protracted litigation. That would, in turn, derail and delay the entire “AM Revitalization” process this Commission has championed.

The NPRM will also cast a shadow of uncertainty over the broadcasting industry at a time when the largest players in the industry have had massive financial difficulties. There is already an incredible level of difficulty broadcasters experience obtaining financing for radio upgrades and acquisitions. This proposed NPRM renders the existing full-power spacing tables useless as a predictor of coverage because significant areas of that coverage can be lost to translators at any time with no means of recovering it. Lenders, already inclined not to loan to our industry, will certainly not be encouraged by these developments.

Much is made in the NPRM of the contention by Aztec that a substantial number of interference complaints against new translators by full power FM stations are bogus. As the translator industry has evolved- largely due to the “AM Revitalization” initiative- into a large number of facilities, their lawyers and lobbyists have made it a point to allege this in many forums, including the filings which led in part to this NPRM as well as various industry trade publications.

One such article was carried in Radio Ink Magazine, written by attorney John F. Garziglia. That article, as well as our response to it and the responses of several others are attached to these comments as an exhibit and are incorporated herein by reference. In it, Mr. Garziglia makes the same allegations made by Aztec regarding the legitimacy of interference complaints at a distance. His lone, specific example of this concerns a translator rebroadcasting AM 1070 The Fan in Indianapolis, Indiana. That particular translator case enlisted a government official who sent a letter to the FCC Chairman alleging that “thousands of listeners were cut off from the programming of this popular station” due to the removal of the interfering translator. Completely ignored was the fact that this translator was indeed interfering with the full power station. Also ignored in the article was the fact that the AM station being rebroadcast is the most powerful, easily received AM signal in the Indianapolis market and that most, if not all, of the “cut off” translator listeners could easily receive The Fan simply by listening to it on AM. This is either a total lack of understanding by the author (and the government official enlisted to lobby for the translator) of that particular situation or it is spin. However, Radio Ink, a leading trade publication, did not hesitate to publish the article, complete with unfounded and undocumented allegations of wide spread fraud on the part of full power stations, describing complaining full power station listeners as shills for the complaining full power station and alleging defense of our signals to the “last gasp” of usefulness out to “the owners contour”. We responded to this article because we noticed an increasing drumbeat by the translator lobby to codify their secondary stations as primary, protected goods. And, that is exactly what this NPRM proposes to do. We mentioned the “slippery slope” in our comments. That slope is apparently alive and well. This NPRM is proof of it.

Lost in the incendiary language of Aztec and others involved in this process- for example, “trolling for listeners interfered with”, which actually means letting your audience know why they can no longer receive your programming- is the fact that most listeners are not technically oriented. For every listener that actually lets a station know they have a sudden reception problem there are far more who will not report the issue to anyone. They will just listen to something else. That, of course, means they will not be aware if the problem is fixed. They are, therefore, lost for an extended period of time or forever. Not mentioned anywhere in the NPRM is the damage to full power stations caused by this game of cat and mouse played with our audiences by the translator lobby.

The Commission, in this NPRM, makes repeated reference to increased interference complaints. This should surprise nobody, because translators are authorized on a “put it on and see of anybody complains about it” basis. Given the fact that these facilities have increased in recent years by thousands in number, it naturally follows that interference complaints are up. However, this alone does not invalidate the usefulness and fairness of the existing system of interference mitigation. Nor does it justify the elimination of the clear, legal obligations (as a secondary service) of translators to *not* interfere with reception by listeners of primary, full power stations. We respectfully contend that a Commission willing to authorize the construction of thousands of at-risk, secondary facilities should be willing to provide and use the manpower necessary to police the resulting environment that they alone have created. A solution that carves out protected coverage for translators at the expense of full power, properly spaced stations is inequitable in every conceivable way, despite that it might be easier to police and enforce. Certainly, it is not fair or reasonable to those of us who have invested millions of dollars in full power facilities and who now find ourselves faced with the prospect of losing hundreds or, in our case, thousands of listeners whose reception we can no longer defend at the hands of facilities that were originally constructed with the assurance that we would not lose coverage to them.

We wish to be clear. Bogus interference complaints under the current translator interference regulations should not be tolerated. They are fraud, and they are deliberate lies to the regulatory body charged with the oversight of broadcasting. There should be substantial penalties for the submission of fraudulent complaints. However, legitimate complaints, properly documented that demonstrate a real problem should have standing now and in the future. They should not be dismissed purely because a translator owner doesn’t want to accept the fact that a quality station, often with an unusual or unique format, has listeners at a significant distance from their transmitter. The Commission must not fall prey to the political pressure, the lack of specificity and the lack of validity involved in many of the contentions this NPRM is based on. These people are attempting to turn a secondary service into big business at our expense.

In the NPRM, the Commission proposes requiring that the complaining listener be required to sign their complaints. We suspect that the Commission will be surprised at the number of these passionate listeners to full power stations who would be willing to do so. However, adopting that proposal would place an even greater documentation burden on full power stations than the current system imposes. All of the interference claims our company has ever submitted have been as attachments to a narrative affidavit describing the situation. In the affidavit, of course, we are swearing that the complaints are true to the best of our knowledge and that there is no manipulation by us or inappropriate relationships between the listeners and our company. We feel this should be sufficient to establish the bona fides of the complaining listeners and to give the FCC grounds for sanctions against fraudulent claims.

It is an axiom that the more unusual or unique a station is, the more likely it is to have listeners at a significant distance from its primary contour. This could be an unusual or unique type of music programming or it could be superior non-music elements such as exemplary news coverage, unique sports programs or popular air personalities. Translators, by statute, rebroadcast programs available on other services- AM stations, FM stations or FM HD channels. The current NPRM, which would modify the rules in favor of translators, will therefore cut existing listeners off from unique, non-duplicated programs in favor of facilities that are simply rebroadcasting programming available elsewhere on AM or FM. We submit that this is not in the public interest and that the role of these duplicate facilities should be limited to the secondary status they currently have, using the current definition of “secondary” service rather than the radical change to this definition the NPRM proposes. We also submit that there is no inherent right on the part of listeners to translators of powerful AM stations (such as the example in the Radio Ink article cited herein) to have translator coverage equal to the coverage of the parent AM facility.

The NPRM proposes a minimum number of complaints in order to initiate an interference complaint, with no recognition whatsoever of the extreme hardship endured by many full power licensees by having to defend the same coverage area on a repeated basis.

In the case of our class A FM station, WNKR, we have had to deal with multiple encroachments on the area to the north of our location since 2012, each resulting in dozens of listener complaints. The legal and engineering bills average $10,000.00 per occurrence and currently stand in excess of $40,000.00. With every translator window, a repeat performance ensues because the engineering models which take into account only the primary contour of our station say a translator would fit.

What these engineering models do not recognize is that over half of WNKR’s audience is outside of the primary contour, with a significant amount well beyond the 54 DBu protection limit proposed in the NPRM. For example, according to Nielsen, WNKR has averaged 18,835 listeners per week in Boone, Kenton and Campbell counties in Northern Kentucky between June of 2017 and June of 2018. Under the proposed NPRM, our ability to protect listeners beyond our 54Dbu contour would be lost. 50% of Boone, 60% of Kenton and 65% of Campbell country fall outside of these limits according to our preliminary study of the effect the NPRM would have on us. This means that- at an absolute minimum- over 11,000 regular listeners per week to WNKR would be at constant risk of losing their ability to receive the station, with no remedy available to us to restore their service! Worse, the most heavily populated sections of these counties fall into the areas we could not protect under this NPRM, so the actual situation will likely be substantially worse.

These circumstances are due to the unique, high quality nature of our programming and the fact that there is no full power interference to the north of our signal. That protection is guaranteed by the primary station spacing tables but would be shredded by the contour limits proposed under the NPRM. It would result in thousands of regular users of our station being permanently cut off from our signal. It would deprive them of service from the only station licensed to Northern Kentucky with programming on it 24/7 that is intended to super-serve that market- all others having been moved into or oriented toward Cincinnati proper.

A similar situation exists with our class B facility- WNKN- located in the corridor area between Northern Cincinnati and Dayton, Ohio. This area used to have four FM stations serving it, all of which have been moved into Cincinnati proper over the years. Our facility was never moved, but functioned as a repeater for a Cincinnati oriented non-commercial facility. We purchased this station last October, re-establishing local, full power FM service in the area. The reaction to this has been overwhelmingly positive in terms of audience growth and support from the business community.

These two facilities represent a cash outlay in excess of $4,500,000.00 by the last remaining independent, local, commercial FM broadcaster in the entire Cincinnati metro. WNKR is unique in the market for another reason- it is the only commercial FM license that has never been sold, having remained under the same ownership since it was founded in 1992. This NPRM, as proposed, would put us in position of losing valuable coverage that is needed to maintain the viability of our Kentucky station and would irreparably harm our company by creating massive interference to our stations in areas vital to our audiences and our clients while eliminating our ability to defend against it.

For an example of the harm this NPRM would cause to facilities we do not own, consider the case of WSGS at Hazard, Kentucky, owned by Mountain Broadcasting, another one of the few remaining independent broadcasters. They also broadcast a unique, high quality product that is sought out by listeners over a wide area. When Cumulus Media put a co-channel translator on at Lexington Kentucky to rebroadcast WVLK-AM, Mountain produced 51 valid interference complaints only to have Cumulus resist removing the translator. Their legal and technical bills exceeded $40,000.00 for that incident alone and they are now facing a proposal from the licensee of WLAP-AM at Lexington to put what is essentially the same translator back on, effectively starting the entire process over again. This NPRM would put them in the same position our company would be in- they would lose substantial portions of this coverage and audience because it would be beyond the contour they could defend.

We propose that the any new rules adopted actually state that, once defended, territory cannot be encroached upon by subsequent translator applications as long as the interfered with primary station has not changed its overall format since the defense. It is reasonable to assume that widespread regular use of a station at a distance from its transmitter would continue without a substantial programming change. A licensee could simply submit an affidavit swearing to this during the application process, preventing the recurrence of massive bills to defend the same territory repeatedly. This would also have the benefit of protecting applicants from the construction costs of building a translator that is known to cause interference in advance. This is a far more equitable solution to this issue than the arbitrary establishment of a contour limit that materially changes the status of translators from secondary to primary. It also makes the Commission proposal in this NPRM of allowing displaced translators to move to any frequency possible without the repeated defense of the same territory by a primary licensee.

The Commission seems to be aware of the fact that they are proposing the redefinition of translator status. In paragraph 26, they state that “We are concerned that setting an outer limit for listener interference would be inconsistent with translators’ role as a secondary service.” This tacit admission of the massive problems this NPRM would cause is, inexplicably, ignored as the text of the NPRM progresses and the Commission proposes to establish an outer limit anyway. Even more inexplicably, after substantial text seemingly affirming the right of full power listener and signal protection beyond their primary contours, the Commission proposes 54DBu as the protection limit, even though that is the current, primary contour limit for class B stations. So this class would lose any and all ability to protect anyone listening beyond their primary contour.

While no contour limits are warranted by the present situation, it is obvious that 54DBu is utterly inadequate to avoid vast numbers of current listeners of full power stations being permanently cut off from stations they have depended on.

The current primary contour limits are 60DBu for class A and C stations, 57DBu for class B1 stations and 54DBu for class B stations. In terms of mileage, the class with the smallest (about 15 miles from the transmitter site at full power and HAAT) primary contour area is Class A stations. Very few of these stations (all established in good faith, under the rules and protections currently in place) can actually survive by limiting their business- in terms of both programming and advertising sales- to the population within this arbitrary contour. It is simply too small of a circle. As stated previously, over half of our audience for class A WNKR is outside of this contour, as is over 80% of our clientele. The disastrous effect a 54DBu protection limit would have on WNKR- an operation that has faithfully served our region for 26 years- should be obvious.

And what would our former listeners find on our frequency instead? As we have previously pointed out, programming they can already receive (and have chosen not to listen to) on AM, FM or FM/HD. Nothing *new. Just duplication, by statute, of existing services.* And not all AM stations are in trouble. In the Cincinnati metro our stations are a part of, the most listened to station is still an AM station.

Current FM receiver technology produces receivers consistently that can accurately resolve FM signals far weaker than 54DBu. It is not uncommon to find automobile sets that can resolve signals 40DBu or less and the majority of FM listening these days is in cars. This level of sensitivity is also present in new receivers with HD reception chipsets, and this class of receiver is being fitted to over 50% of the new cars manufactured this year.

Therefore, if the Commission insists on establishing an outer contour limit for interference complaints, it should be 38DBu or less. This figure would at least establish an outer limit beyond which listening is unlikely to be possible. We repeat, though, that even this establishes primary station protection for what is supposed to be a secondary service.

The Commission also proposes the continued use of the outdated F50,50 method for establishing the outer limit contours. While this methodology tends to create neat circles on maps, it ignores terrain completely and is therefore remarkably inaccurate. The Longley-Rice method is far superior in terms of accuracy and would theoretically allow a full power station to be able to prove higher signal strength at a distance for complaining listeners that can receive their signal due to favorable terrain conditions. These listeners are very likely to become indefensible using F50,50. Again, if the Commission insists on establishing an outer limit for listener protection, we urge the Commission to adopt Longley-Rice for this NPRM as the method for establishing signal strength at any given location. Accuracy demands it.

A substantial number of the newly authorized translators relating to this NPRM are for AM stations as part of the “AM Revitalization” initiative this Commission has undertaken. Based on our decades of experience, thirty years ago the handwriting was on the wall for AM radio. Invented in the 1940’s as a means to cure many of the ills that were apparent even then with AM broadcasting, FM had, by the 1980’s, overtaken AM. By 1985, it was obvious to most of us in the industry that it was going to become more and more difficult moving forward to use AM for anything other than spoken word programming. Although we are familiar with hundreds of stations, we are hard-pressed to come up with any AM facilities that are under the same ownership they had in 1985. Therefore, it is a fact that the vast majority of the current AM licensees bought their stations with full knowledge of the condition AM radio (as a medium) was in.

We are disheartened that this Republican Commission seems to have little use for these market forces and for free markets. Instead, we see this NPRM as the most recent example of a zero sum gain philosophy that seeks to prop up dying AM investments at the expense of existing (and still viable) FM investments. So far, the “revitalization” of “AM” radio has come mostly at the expense of FM operators who are now being told they must give up coverage and deal with an increasingly cluttered and interference prone band merely so that existing AM programming can be duplicated on FM. As for the non-AM translators, a number of them are being used by large groups to re-broadcast HD channels in an attempt to circumvent the ownership caps which do not apply to translators. If the Commission needs further proof of the real agenda of the translator lobby, it need look no further than the soaring prices being paid for translators as buyers envision them as permanent, protected parts of the radio landscape. Under this NPRM, this protection will come at the expense of companies like ours who have invested everything we have in FM radio and who now see that investment threatened.

Like most in our industry, we have championed legitimate possible solutions to make AM radio more viable despite the fact that we have made a business decision not to own AM facilities. Among these are the establishment of minimum receiver standards for bandwidth and distortion (so that the audio quality broadcast by AM transmitters stands a chance of actually being heard by the listener), elimination of the counter-productive so-called “ratchet clause”, the establishment of “digital-only” AM that would eliminate most of the headaches encountered with AM IBOC and the leasing of FM HD sub- channels (rapidly gaining acceptable in-car penetration levels) to AM operators.

Most important, we have advocated the wholesale migration of AM to FM through the expansion of the FM band by re-allocating VHF TV channels 5 & 6 (which have proved unsuitable for digital TV use) to FM radio, allowing AM to sunset as the technologically obsolete medium it truly is. This would open up sufficient spectrum to allow every AM station a primary replacement in an expanded FM band. Unfortunately, our comments have fallen on deaf ears as this obvious and elegant solution is not- as far as we know- even being discussed.

We respectfully urge the Commission not to establish a contour limit for listener complaints regarding translator interference. If this plea is ignored, we urge the adoption of 38DBu as an outer limit measured by Longley-Rice technology. In any case, we urge the Commission to preserve the secondary status of translators, resisting the lobbying efforts to accord them primary status.

We further urge the Commission to realize that the grant of thousands of additional facilities on the FM band without expanding that band is a recipe for long term disaster. Therefore, any translator authorizations connected with AM revitalization are- at best- a temporary solution and should be used only until the band can be expanded to allow migration of AM to FM in a more organized, permanent and beneficial manner.

Sources:

Nielsen Audio Ratings, Cincinnati, June ’17 through June ’18. Persons 6+, Mon-Sun 6a-6a. Individual county breakouts.

Radio Ink Magazine, “The FM Translator Interference Conundrum” by John Garziglia and comments pertaining thereto.

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