

**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)	
)	

COMMENTS OF NEW YORK PUBLIC RADIO

New York Public Radio (“NYPR”) is pleased to submit these Comments in response to the above-referenced Notice of Proposed Rulemaking (the “NPRM”).¹ NYPR is the licensee of WNYC-FM, New York, NY, a news and talk public radio station dedicated to award-winning enterprise journalism, community engagement around critical issues, and courageous conversations convened via local and national programs. In addition, NYPR is the licensee of WNYC(AM), New York, NY and WQXR-FM, Newark, NJ. Like its FM sister station, WNYC(AM) is a news and talk public radio station, while WQXR-FM is New York City’s only all-classical music station. NYPR is also home to WNYC Studios, the premier producer of critically-acclaimed on-demand and broadcast audio content for national audiences, and The Jerome L. Greene Performance Space, the street-level broadcast studio and performance venue of WNYC-FM and WQXR-FM. In addition, NYPR owns and operates New Jersey Public Radio, an award-winning news service that provides journalism and public affairs coverage about the Garden State, and New Jersey Public Radio’s four affiliated FM stations: WNJT-FM, Trenton, NJ; WNJO(FM), Toms River, NJ; WNJP(FM), Sussex, NJ; and WNJY(FM), Netcong, NJ. NYPR reaches a passionate community of almost 26 million people monthly on-air, online, and in person.

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

NYPR applauds the Commission for its efforts to streamline its FM translator interference rules and to expedite the translator complaint resolution process. As the Commission correctly notes, the complaint resolution process can become bogged down and is often expensive and time consuming for the parties involved. However, limiting the geographic scope of cognizable interference complaints should not be considered part of the solution, and NYPR urges the Commission not to adopt such a measure.

Requiring listeners to be within any defined contour of the complaining full power station, let alone the 54 dBu contour, would wrongly preclude interference complaints from a substantial portion of full-power stations' listeners. The issue is particularly concerning for public stations, which rely on donations from the public in order to produce high-quality, locally focused programming. Subjecting listeners of full power stations outside a defined contour to interference from FM translators is also inconsistent with the *secondary* nature of translators and could be accomplished only by the Commission drawing an inherently arbitrary line.

I. DISCUSSION

The Commission acknowledges that a station's "60 dBu contour ... is by no means an outer limit of listenability. Rather, it has been principally used as an allocation tool...."² Likewise, a station's 54 dBu contour in no way delineates those listeners who can successfully receive a station's signal and those who cannot. To illustrate this point, NYPR conducted a study of WNYC-FM's reach to ascertain the magnitude of the listening audience within the station's 54-50 dBu contour band, its 49-40 dBu contour band, and its 39-30 dBu contour band. The results make clear that the 54 dBu contour encompasses far too limited an area to protect significant numbers of WNYC-FM's listeners from unwanted interference. Indeed, for Class B

² NPRM at ¶ 27.

stations like WNYC-FM, drawing the line at the 54 dBu contour would provide no additional interference protection beyond the station's protected contour.³

According to Nielsen Audio's Spring 2018 New York Metro data, WNYC-FM has 46,300 listeners who live within its 54-50 dBu contour band. Moreover, those listeners are exceptionally loyal: their Time Spent Listening to the station—five hours per week—is the most by far for any station in the geography and a full two hours more than the next highest station. Consequently, WNYC-FM has the highest Share of Listening in the geography—the standard industry measure for identifying the “highest-rated” station. Within its 49-40 and 39-30 dBu contour bands, WNYC-FM has 22,700 and 500 Cume Persons, respectively. *See Exhibit A.* These numbers demonstrate the enormity of potential listener loss should the Commission designate the 54 dBu contour as the outer limit for consideration of actual interference complaints.⁴ Specifically, *thousands*, if not *tens of thousands*, of bona fide WNYC-FM listeners would be disenfranchised, ineligible for FCC consideration of their complaints about translator interference affecting their reception of a top-rated station.

The disenfranchisement of listeners outside a station's 54 dBu contour is particularly concerning for public radio stations. WNYC-FM, NYPR's other stations, and public radio stations across the country rely heavily on donations from the listening public to fund their operations and provide high-quality, locally focused programming. Listeners who cannot hear a station due to interference from an FM translator are unlikely to contribute to the station. Decreased listenership and the resultant downturn in donations erode the ability of public stations to provide the quality news, informational, and cultural programming that are central to

³ The protected contour of Class B stations is the 54 dBu contour. The protected contour for Class B1 stations is 57 dBu while all other station classes have a protected contour of 60 dBu.

⁴ WQXR-FM also has a significant audience outside its 54 dBu contour – 18,100 listeners live within its 49-40 dBu band and 900 listeners live within its 39-30 dBu band. *See Exhibit A.*

their missions.

To better understand the funding support provided by listeners living outside WNYC-FM's 54 dBu contour, NYPR conducted a study of its membership database. Isolating the zip codes around WNYC-FM's 39-30 dBu contour band and cross-referencing those zip codes with member's home addresses as contained in the station's membership database, NYPR determined that a total of 193 members living within WNYC-FM's 39-30 dBu contour band have contributed to the station in the last 18 months. A similar study conducted for WNYC-FM's sister station, WQXR-FM, resulted in 213 members living within the station's 39-30 dBu contour band who have contributed to that station in the last 18 months.⁵ See Exhibit A. These numbers demonstrate that NYPR's stations have dedicated listeners – who, importantly, are financially contributing members – at contour levels as low as 30 dBu. Designating the 54 dBu contour as the cut-off for interference complaints could result in public stations like WNYC-FM facing diminished listenership and funding that would significantly impair their ability to continue providing top quality programming.⁶

Furthermore, designating the 54 dBu contour as the outer limit for cognizable interference complaints is imprudent because, as the NPRM recognizes, it chips away at the primary status of full power stations.⁷ Under the Commission's current rules, the interference complaint

⁵ In addition, NYPR's membership database reveals that WNYC-FM has 563 members within its 54-50 dBu contour band and 518 members within its 49-40 dBu contour band. WQXR-FM has 368 members within its 57-50 dBu contour band and 200 members within its 49-40 dBu contour band. See Exhibit A.

⁶ The loyalty of WNYC-FM's listeners living within its outer contour bands is also evident from past interference complaints filed by NYPR. For example, NYPR filed an informal objection against an application to modify the construction permit of an unbuilt FM translator station at Flanders, New York based upon the complaints of seven regulator listeners. Those listeners all lived within WNYC-FM's 39-30 dBu contour band. *In re Application of Juan Alberto Ayala for Modification of Construction Permit of FM Translator W233BX to Channel 231 at Mastic, NY*, Information Objection of New York Public Radio at Exhibit 1, Figure 1 (filed Dec. 4, 2015).

⁷ NPRM at ¶ 26.

process can be initiated with just one complaint from a listener experiencing interference anywhere.⁸ Changing the rules to define an outer limit for actionable complaints elevates the status of translators, which indisputably are “a *secondary* service intended to supplement the service of FM radio broadcast stations.”⁹ NYPR supports the Commission’s efforts to streamline the complaint process, but believes the other changes proposed in the NPRM could sufficiently accomplish that goal.

In addition to its effect on the secondary nature of translators, prescribing an outer contour boundary for cognizable interference complaints is problematic for two reasons: (1) it is an inherently arbitrary exercise, and (2) it often leads to anomalous results. As to the former, the NPRM fails to explain why a station’s 54 dBu contour would be a more appropriate demarcation line for achieving the Commission’s stated goal of “provid[ing] greater certainty to translator operators” than, say, a station’s 42 dBu contour.¹⁰ As previously stated, NYPR stations have dedicated listeners and donating members at contour levels below 40 dBu. Thus, any specified outer contour above a minimal level will arbitrarily disqualify listeners. As to the latter, designating the 54 dBu contour as the outer limit for interference complaints could produce the anomalous result of two closely proximate listeners, both able to hear a station equally well, having different rights to complain about interference depending upon which side of the contour line their address falls. Contrast that result to today, where both listeners would be able to complain and have their concerns addressed. To avoid these issues, the Commission should continue to adjudicate

⁸ 47 C.F.R. § 74.1203(a).

⁹ See *FM Translator and Booster Stations*, Report and Order, 20 RR.2d 1538 (1970); *Amendment of Part 74 of the Commission’s Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212 (1990) (emphasis added).

¹⁰ NPRM at ¶ 27.

complaints based on interference experienced by any bona fide listener, regardless of his or her location.

II. CONCLUSION

NYPR supports streamlining the translator complaint process, but urges the Commission not to limit the geographic scope of interference complaints. Establishing an outer limit for cognizable complaints is problematic because it removes too many listener complaints from consideration, has the potential to negatively impact public stations' funding, and undermines the primary status of full power stations. The Commission should focus on the NPRM's other proposals to simplify the complaint process and reject any call to establish an outer contour boundary for cognizable listener interference complaints.

Respectfully submitted,

NEW YORK PUBLIC RADIO

_____/s/
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EXHIBIT A

WNYC FM	Metro	54-50 dBu	49-40 dBu	39-30 dBu
Cume Persons	933,100	46,300	22,700	500
% of Metro Cume	100%	5%	2%	0%
AQH Persons	36,900	1,800	500	0
% of Metro AQH	100%	5%	1%	0%
Share	3.0	6.4	1.5	0
TSL	5:00	5:00	2:30	:45
Members		563	518	193

Bold number denotes #1 rank in the geography.

Source: Nielsen Audio, 6+ Mo-Su 6a-12m, Spring 2018

WQXR FM	Metro	57-50 dBu	49-40 dBu	39-30 dBu
Cume Persons	584,000	57,800	18,100	900
% of Metro Cume	100%	10%	3%	0%
AQH Persons	19,600	1,100	300	0
% of Metro AQH	100%	6%	1%	0%
Share	1.6	0.7	0.3	0
TSL	4:00	2:15	2:00	1:30
Members		368	200	213

Source: Nielsen Audio, 6+ Mo-Su 6a-12m, Spring 2018