

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Amendment of Part 74 of the Commission's Rules) MB Docket No. 18-119
Regarding FM Translator Interference)

To: The Commission

COMMENTS OF
NATIONAL PUBLIC RADIO, INC.

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Introduction

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, National Public Radio, Inc. ("NPR") hereby submits its Comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.¹

NPR is a non-profit membership corporation that produces and distributes noncommercial educational ("NCE") programming through more than a thousand public radio stations nationwide, many of which make significant use of FM translators. In addition to broadcasting award winning NPR programming, including All Things Considered® and Morning Edition®, NPR Member stations are themselves significant program producers and community institutions. NPR also operates the Public Radio Satellite System ("PRSS"), which enables a broad and diverse array of public radio program producers and radio stations to distribute programming for broadcast, and provides representation and other services to its Members and other public radio stations and producers.

¹ *In re Matter of Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference, Notice of Proposed Rulemaking*, MB Docket No. 18-119, rel. May 10, 2018 [hereinafter "*NPRM*"].

Summary

The Communications Act has long defined the system of over-the-air broadcasting as a national system of local broadcast services. 47 U.S.C. § 307(b). Consistent with that overarching federal communications policy, the Commission authorized FM translator service in 1970 as a broadcast service secondary to full power FM broadcast stations, reaffirmed that prioritization in 1990,² and has maintained it ever since. Allowed to operate only on a non-interfering basis as a retransmission service,³ FM translator stations were intended to fill in or extend service to “facilitate the reception of radio signals to areas deprived of such service due to distance and intervening terrain obstructions.”⁴ In reaffirming the important distinction between full power stations offering origination services on a primary basis and FM translator stations offering retransmission services on a secondary basis, the Commission “continues to believe that this is the proper role of FM translators and that our scheme of classifying FM and standard broadcast stations should not be subverted by the creation of a new transmission service.”⁵ The *NPRM* does not purport to revisit this basic ordering of the two categories of stations.⁶

Understanding the proper role of FM translators is essential to assessing the specific changes proposed by the Commission. In seeking to streamline the resolution of interference

² *In the Matter of Part 74 of the Commission’s Rules Concerning FM Translator Stations*, 5 FCC Rcd. 7212 (1990) [hereinafter “1990 FM Translator Report and Order”].

³ *In the Matter of Amendment of Part 74 of the Commission’s Rules and Regulations to Permit the Operation of Low Power FM Broadcast Translator and Booster Stations*, 20 R.R.2d 1538, at ¶ 3 (1970).

⁴ *1990 FM Translator Report and Order*, 5 FCC Rcd. at 7219.

⁵ *Id.*

⁶ *See NPRM* ¶ 2.

caused by FM translators,⁷ the *NPRM* proposes rule changes that would set additional conditions on actionable interference complaints and otherwise define what constitutes “harmful interference” warranting remediation. The *NPRM* also proposes to define an existing station’s coverage area entitled to protection from FM translators and permit an FM translator station to move to an available, non-interfering channel to resolve interference without having to wait for an application filing window. While NPR recognizes that administering publicly available spectrum necessitates a certain amount of line drawing, and NPR supports the Commission’s efforts to simplify the interference remediation process, the *NPRM* inadequately accounts for the important public interest principles favoring origination over retransmission broadcast services.

NPR therefore urges the Commission to refine its proposed approach in several important ways. First, assuming an appropriate number of bona fide listener complaints, the Commission should not impose an arbitrary coverage area limitation on the interference protection FM translators are obligated to afford other licensed FM stations. Second, in permitting FM translator stations to change channels outside of an application filing window to resolve harmful interference, the Commission should not limit NCE FM translators operating with reserved FM spectrum to change channels only within the reserved portion of the FM band. Finally, the ability of stations predicted to suffer FM translator-induced harmful interference to obtain redress should not depend on their ability to enlist listeners even more significantly in the Commission’s administrative processes.

⁷ *Id* at ¶ 1.

Discussion

1. Requiring a minimum number of bona fide listener complaints to require remediation of actual FM translator interference obviates the need to establish a protected service area for affected FM stations.

The *NPRM* proposes to streamline the interference remediation process by imposing additional requirements for listener complaints, including by requiring a minimum number of them, and limiting the coverage area over which an existing station is entitled to protection. While imposing additional criteria for listener complaints may be warranted,⁸ at least in the case of actual interference,⁹ doing so should obviate the need to limit the protection afforded full power and other affected FM stations. With the basic prioritization of primary stations over secondary services, the presence of harmful interference to bona fide listeners should be sufficient to require remediation by the FM translator.

The proposal to limit interference protection to the affected station's 54 DB μ contour appears to be based on a misplaced assumption that a predicted service contour defines the point at which regular listening no longer occurs. As posited by the *NPRM*, "[t]his approach is based on the common language of Sections 74.1203(a)(3) and 74.1204(f), which prohibit interference to a 'regularly used' broadcast signal, and Section 74.1203(a)(3), which prohibits interference

⁸ While any minimum number of listeners beyond a single one is arbitrary, NPR maintains that no more than six listener complaints should be required to demonstrate actual interference and logic dictates requiring fewer complaints in less populous areas. While such areas may have more available FM spectrum, applicants have no obligation to apply for the channel least likely to cause interference. As a secondary service, an FM translator must also give way to a later established full power FM station. For these reasons, while interference may be less likely to occur in less populous areas, a disproportionately greater number of affected listeners should not be required to remedy the interference when it occurs.

⁹ With respect to predicted interference at the FM translator application stage, see Section 3, *infra*.

with another station's 'reception by the public.'"¹⁰ The *NPRM* proposes the same reduced protected coverage area for FM translators predicted to cause interference at the application stage.¹¹

While the *NPRM* proposes a 54 DBμ protected contour rather than a less protective 60 DBμ contour, it inappropriately disparages the substantial listening that often occurs well outside a station's 54 DBμ contour. For instance, harmful interference to those listeners is equated with "stations . . . making specious interference allegations."¹² In addition, establishing a protected service contour for purposes of FM translator station interference is cited as "preserving translators' status as a secondary service," but it may also be characterized as defining the point at which an FM translator station attains co-primary status with an affected station. If the affected station is able to document or predict harmful interference, it should not matter whether the interference occurs within or immediately beyond the 54 DBμ contour or anywhere else where listening to the affected station regularly occurs.

2. NPR supports permitting FM translator stations to make channel changes as a minor modification to resolve interference but opposes restricting FM translator stations operating in the reserved portion of the FM band to channel changes within the reserved spectrum as harmful to NCE service and unjustified.

NPR supports the proposal to facilitate the resolution of harmful interference by allowing FM translator stations to move to a new channel to ameliorate interference.¹³ Treating such changes as minor modifications may limit spectrum access more generally, but such a byproduct

¹⁰ *NPRM* at ¶ 27.

¹¹ *Id.* at ¶ 29.

¹² *Id.*

¹³ *Id.* at ¶ 13.

enables the preservation of existing services. NPR disagrees, however, that “channel hopping” is appropriate but so-called “band-hopping” is not.¹⁴

While it is important to maintain the integrity of the window filing system to assure open access to spectrum,¹⁵ it is also worth noting that the Commission has never opened a filing window for reserved band FM translator stations since adopting the current window filing system in 2000.¹⁶ NPR attributes the Commission’s failure to open such a filing window neither to animus nor oversight but to congestion in the reserved portion of the FM band, which significantly limits opportunities to construct new reserved band FM translators as well as full power stations. The Commission historically has employed different frequency allocation methodologies in the reserved and the non-reserved portions of the FM band.¹⁷ As a result of this difference, reserved spectrum stations are generally packed more closely together, resulting in fewer opportunities to place new NCE stations, including NCE FM translator stations that may be causing interference to an adjacent full power station.

¹⁴ *Id.* at ¶ 14.

¹⁵ *Id.*

¹⁶ *In re Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 15 FCC Rcd 7386 (2000), *vacated in part*, *Nat’l Pub. Radio, Inc. v. FCC*, 254 F.3d 226 (D.C. Cir. 2001). Indeed, in 2010, the Media Bureau dismissed a number of then-pending NCE FM translator applications filed before the adoption of the window filing system because it “anticipate[d] that it will not open a reserved band FM translator window for several years.” *Public Notice, Reserved Band FM Translator Applications Dismissed*, 25 FCC Rcd 3276, at 3277 (2010).

¹⁷ *In the Matter of Creation of a Low Power Radio Service*, 14 FCC Rcd. 2471, at 2481 n.38 (1999). Noncommercial educational stations in the reserved band are protected according to signal strength contour methodology. *Id.* Stations in the non-reserved portion of the FM band, including commercial and NCE stations, are generally protected according to a distance separations methodology. *Id.* Some stations are protected according to a combination of distance and contour based-restrictions. *See* 47 C.F.R. § 73.215.

It is also important to note that the reservation of the lowest 20 channels of the FM band for noncommercial educational radio was intended to ensure the availability of a minimum amount of such services. It was not intended to be the exclusive preserve of NCE stations.¹⁸ Indeed, NCE stations have long operated throughout the FM band, and the options for NCE FM translator stations to remediate interference through a channel change should not depend on the portion of the band in which the FM translator station's current channel happens to fall. Nor should the Commission limit the channel change option for reserved band FM translator stations to 20 of the 100 channels allocated to the FM band simply because non-reserved *commercial* FM translators seeking such a change may be limited to 80 of the 100 FM channels.

In seeking to protect the integrity of the window filing system, the Commission should take these important practical and policy considerations into account. At the same time, the Commission's stated concern about maintaining consistency between how the translator rules address unbuilt and existing FM translator stations is misplaced.¹⁹ Once a station is constructed and serving its community, the equities generally favor preserving the service. An unbuilt station, on the other hand, is obviously not serving the public, and the onus is properly borne by the applicant to propose a suitable channel and construct the station expeditiously. Allowing applicants to obtain a construction permit and then to change the technical parameters fundamentally would tend to encourage spectrum speculators. In short, a consistent approach is not required to address fundamentally dissimilar circumstances.

¹⁸ See *Nat'l Pub. Radio, Inc. v. FCC*, 254 F.3d 226, 227 (D.C. Cir. 2001).

¹⁹ See *NPRM* at § 14 n.58.

NPR therefore urges the Commission to continue limiting the “band-hopping” prohibition to unbuilt stations as provided for under the current rules,²⁰ but to permit FM translator stations operating in the reserved portion of the FM band to make channel changes throughout the FM band as a minor modification.

3. NPR opposes the proposal to require stations predicted to suffer FM translator-induced harmful interference to enlist listeners even more significantly in the Commission’s administrative processes as contrary to the Commission’s stated objectives for this proceeding and the prioritization of primary full power stations over secondary FM translator stations.

In explaining the need for the proposed rule changes, the *NPRM* cites the particular difficulty of resolving interference complaints because of “disputes over the validity of claimed interference, the objectivity of complaining listeners, or procrastination by one of the parties.”²¹ In response, the *NPRM* promises rule changes that could, “if implemented, limit or avoid protracted and contentious interference resolution disputes, provide translator licenses both additional flexibility to remediate interference and additional investment certainty, and allow earlier and expedited resolution of interference complaints by affected stations.”²² NPR certainly supports efforts to streamline the interference remediation process, but the proposed rule changes for resolving interference disputes at the application stage are contrary to the Commission’s stated objective and tip the scale inappropriately in favor of proposed new FM translator service at the expense of existing FM service, including that of existing full power FM stations.

²⁰ 47 C.F.R. § 74.1233(a)(1).

²¹ *NPRM* at ¶3.

²² *Id.* at ¶1.

If involving complaining listeners in the interference resolution process is a significant contributor to the problem the Commission is seeking to address, it is unclear why the solution at the FM translator application stage would involve listeners at all. Under the current rule,²³ the existing station can demonstrate the presence of interference at a specific location based on well-established field strength criteria. While implementation of the current rule may require the identification of actual listeners within the area likely to experience harmful interference,²⁴ it is not clear why even that is necessary. If the complaining station can demonstrate through engineering means that (1) the affected area is populated and (2) harmful interference is predicted to occur, that should be sufficient given the secondary status of FM translators. Indeed, the Commission has long allowed FM translator applicants to demonstrate the converse, overcoming the presence of a prohibited contour overlap by relying on the same field strength criteria and population data.²⁵

Assuming a need to demonstrate the presence of actual listeners among the population in the affected area, NPR opposes making the demonstration more onerous for the affected station and its listeners. Obtaining a declaration from a listener that they regularly listen to the affected station can be challenging enough because there is little personal incentive and often a perceived risk to participating in a contested proceeding before a federal government agency. Even so, a station currently need only document the fact that individuals actually listen to the station at the

²³ 47 C.F.R. § 74.1204.

²⁴ See *NPRM* at ¶ 6.

²⁵ See *Living Way Ministries, Inc., Memorandum Opinion and Order*, 17 FCC Rcd 17054 (2002).

specified location.²⁶ Harmful interference can otherwise be established by the affected station through a technical showing.

As proposed, the *NPRM* would require that each listener attest to all of the required information, including “a clear, concise, and accurate description of the location where the interference is alleged to occur.”²⁷ When the FM translator has yet to be built, it is unrealistic to expect ordinary individuals to offer a declaration attesting to non-existent interference. The *NPRM* characterizes the change as intended “to avoid post-complaint disputes over listener *bona fides*,”²⁸ and the aim may be to streamline and expedite the interference complaint resolution process, but NPR is concerned that the objective will be achieved at the expense of existing service, including full power FM origination services, by making it much more difficult for affected stations to obtain redress. NPR suggests, instead, that the Commission streamline the process at the application stage by relying on established engineering criteria to predict interference to a populated area. If documenting the presence of actual listeners in the affected area is important enough to offset the problems cited by the *NPRM*, the Commission should not involve actual listeners in the process to any greater degree than is currently required.

²⁶ *NPRM* at ¶ 4.

²⁷ *Id.* at ¶ 19. The proposed rule would now read, in material part, that an “*application* for an FM translator station will not be accepted for filing . . . if grant of the authorization *will result in interference* to the reception of a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, . . . *as demonstrated by six or more listener complaints, as defined in §74.1201(k).*” *NPRM*, Appendix B (Proposed revisions to Section 74.1204) (*emphasis added*).

²⁸ *NPRM* at ¶ 19.

Conclusion

For all these reasons and as more fully addressed above, the Commission should modify the rule changes proposed in the *NPRM* in accordance with these comments.

Respectfully submitted,

NATIONAL PUBLIC RADIO, INC.

A handwritten signature in dark ink, appearing to read "Jonathan D. Hart".

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