

**Before the
Federal Communications Commission
Washington, D.C.**

In the matter of:

Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference)))))	MB Docket 18-119
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To: Office of the Secretary
Attn: The Commission

COMMENTS OF SCOTT FYBUSH

Scott Fybush hereby submits these comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding:

QUALIFICATIONS

Fybush has worked in broadcasting since 1991, as a journalist at WKOX(AM), Framingham, Massachusetts, WCAP(AM), Lowell, Massachusetts, WBZ(AM), Boston, Massachusetts and WXXI(AM), Rochester, N.Y. As a journalist and analyst covering the broadcast industry, Fybush has edited or written for trade publications including The Radio Journal, Radio World, Radio Guide, Current, and since 1994 his own *NorthEast Radio Watch* (www.fybush.com), covering broadcast engineering, technology, regulatory and business issues.

As a consultant, Fybush has advised station owners and groups on signal improvement and acquisition strategy. Through his website StationSale.com, assisted station owners in buying and selling FM translators during the "AM Revitalization" window that opened in January 2016. During the Auction 99 and Auction 100 translator windows, Fybush provided technical consultation services to more than a dozen

broadcasters, filing for new translator facilities for some 20 AM stations in large and small markets around the country.

Since 2000, Fybush has profiled broadcast facilities on the weekly Tower Site of the Week page and in the annual "Tower Site Calendar," with special attention to the history of AM transmission in the United States. He has visited and studied thousands of broadcast facilities from coast to coast. Fybush (hereinafter, "Commenter") is a member of trade organizations including the Society of Broadcast Engineers and the National Association of Media Brokers. His comments here are strictly his own.

OVERVIEW

1. As the Commission has learned repeatedly each time it has made new FM translator facilities available, there is a nearly insatiable demand from broadcasters for the rapidly decreasing number of open spaces on the FM band. The so-called "Great Translator Invasion" of 2003 triggered a land rush of thousands of applications, followed by thousands more in the four stages of "AM Revitalization" between 2015 and 2018. Even after the closure of the most recent Auction 100 window, commenter continues to receive inquiries on a regular basis from AM broadcasters who remain interested in new FM facilities.

2. The "AM Revitalization" proceeding has, thus far, been something of a misnomer. While the proceeding has brought welcome new life to thousands of small AM broadcasters around the country, that new life has largely been on the FM dial, not on the AM dial itself. That is the result not of any FCC action or inaction, commenter believes, but simply the reality of a medium that is entering its senior years. As AM radio approaches its centennial, consumers have voted with their fingers: while a handful of heritage operators continue to attract substantial audiences and revenue on their heritage AM signals, the combination of massively increased man-made interference, declining receiver quality and a plethora of new choices have taken listeners away from the AM band, most of them for good. The marketplace has spoken: the listeners who remain with terrestrial linear radio prefer FM, almost to the complete exclusion of any ability for a new AM format or signal to gain any traction with listeners.

3. While the FM translator service remains, *de jure*, a secondary service, it has become, *de facto*, the primary means by which many "AM broadcasters" actually reach their real-world audiences. An increasing number of AM licensees, including many of commenter's clients, now promote their programming to listeners exclusively by way of their FM translator frequencies. Whatever the Commission's original intent may have been during the AM Revitalization proceeding, the marketplace reality in 2018 is one in which many small broadcasters now depend heavily or even exclusively on the FM translator service as their *de facto* primary means of reaching their listeners.

4. As the instant NPRM correctly recognizes, the current system for interference remediation is significantly flawed. As commenter has observed from assisting clients on both sides of the current system, and as the record already amply indicates, the Commission's present system is highly susceptible to being gamed in ways that leave both full-power licensees and translator operators with too much uncertainty and expense. The "real-world listeners" whose interference complaints are submitted by full-power licensees too often turn out to have ties to those licensees that are deeper than they initially appear to be. When their complaints are valid, those listeners find themselves subject to remediation efforts from the translator operators that can sometimes be perceived as invasions of privacy. After spending tens of thousands of dollars on legal fees, even after successfully protecting their signals from interference complaints, full-power licensees can find themselves right back in the fray against other translators also attempting to move to their channels. The system requires too many judgment calls by an overworked Commission staff trying to evaluate what is often a woefully incomplete picture of real-world interference, or the lack thereof.

5. The conclusion of the Auction 100 filing window can provide the Commission and the industry with an opportunity for at least some degree of clarity. For the first time in some fifteen years, the universe of contenders for FM spectrum space will be largely fixed: most (though not all) AM broadcasters seeking FM translators have now had a fair opportunity to obtain space on the FM dial, while the existing roster of full-power FM stations is largely locked into place by current spacing standards, at least pending the Commission's decision on the Class C4 FM proceeding. With the exception of LPFMs, where there is evidence of at least some demand for new facilities from a community that

has been waiting too patiently for a window that has been too long in coming, the Commission can at least evaluate the instant proceeding with the knowledge that most stakeholders are now accounted for, with no major filing windows on the horizon. It is in that light that commenter submits the following observations on the NPRM's specific questions:

A. Channel Changes

6. Commenter endorses the flexibility proposed by the Commission in this regard. In several real-world instances in which commenter has engineered translator facilities that have proved susceptible to actual interference (even when none was predicted), this rule change would allow for the use of alternate channels that are not currently available as adjacent or IF-channel moves. Should the Commission require an interference showing in order to make such a change, commenter notes the likelihood of real-world gamesmanship, in which a translator operator could "manufacture" an interference case that would require Commission resources to investigate and resolve; as a result, commenter would support a rule change allowing such moves (to any available same-service channel) to be made simply as a minor change with at most a minimal interference showing. In the real world of 2018, most markets are now sufficiently congested across the FM dial that any move will both alleviate some existing interference and create at least the possibility of new interference.

B. Minimum number of listener complaints

7. Having experienced the listener-complaint process from various sides (serving as a consultant both to full-power stations experiencing translator interference and to translators defending against complaints from full-power listeners), commenter is deeply inclined to cynicism about the underlying nature of the process. Almost by definition, the "average listener" this process seeks as a complainant will not be aware of any of the intricacies of FM reception and interference. The "average listener" who tunes occasionally to WAAA on 92.1 is highly unlikely to know why their reception of WAAA

suddenly becomes scratchy or nonexistent, much less that the culprit is new translator W221ZZ nearby, and even less how to go about complaining to either WAAA or W221ZZ. As a result, the current process is almost unavoidably dependent on WAAA's management broadcasting a request for listener complaints. As the record now thoroughly shows, those complaints create a record that is always incomplete (many WAAA listeners either will not respond, will provide incomplete or inaccurate information, will turn out to be somehow "connected" to the station, or will be complaining about interference that does not track back to W221ZZ but to other sources.)

8. Commenter, therefore, believes that neither three nor six such "listener complaints" provide a full, or even useful, picture of real-world interference to WAAA.

9. In any event, commenter is opposed to including boosters in the same interference complaint system as translators. By their nature, on-channel boosters are designed to fill in the signal envelope of existing full-power FM stations, and in the real world, the interference they create, if any, is not to other full-power stations but to their own parent station, thus becoming a matter for the station's own management to resolve, if needed.

C. Complaint Requirements and Remediation Procedures

10. In keeping with the above thesis that the current listener-complaint system is irremediably broken, commenter believes the proposals in this section of the NPRM will lead to new headaches for participants on all sides of this process. Removing the requirement that a translator operator attempt to remediate a specific listener's interference (or even be able to identify a specific listener) increases the likelihood that some full-power broadcasters will encourage frivolous or nonexistent "complaints" to be submitted, as well as leaving translator operators at the mercy of some current FM receivers that are of substandard design and thus appearing to show "interference" that a better receiver would reject.

11. Whatever standard the Commission adopts should recognize that real-world FM reception is often - indeed, almost always - at variance with the contour predictions the Commission now requires from applicants. Especially with low-power translator

signals, terrain and propagation variations (e.g. seasonal tropospheric ducting and enhancement) can and usually do create real-world listening environments that are wildly at odds with the neat circles and ellipses of a mapped 60 dBu (F:50,10) predicted interfering contour.

D. Limits on actual interference complaints

12. Following on the observations in para. 11, above, commenter notes that predicted service contours are equally subject to real-world variations. When the core of the current FM class structure was set into the rules in 1964, distant FM reception was more the norm than the exception. With only a few thousand FM stations on the air across the country and entire channels nearly vacant (there was, for instance, no signal at all using channel 259, 99.7 MHz, anywhere in New York State or all of New England until Docket 80-90 created drop-in signals in the 1990s), many listeners depended on rooftop antennas and sensitive receivers to pick up distant signals far beyond their official "service" contours, in part because few choices were available locally in many areas.

13. Beginning with Docket 80-90 and continuing through the LPFM and translator windows, the Commission's own actions (in tandem with the industry) over the last three decades have all but eliminated significant out-of-market listening to weaker signals. This is, in part, because those thousands of new FM signals have made it all but impossible to hear out-of-market stations, and in part because most format choices are now available locally, leaving listeners with no compelling reason to seek out weaker out-of-market stations.

14. Against that backdrop, the preservation of a full-power station's ability to protest interference to its own signal no matter the signal level becomes an anachronism. While commenter appreciates the desire of many stations (including, at times, commenter's own clients) to continue to reach listeners in areas where predicted signal levels are well below 50 dBu, commenter also notes the irony that those signals could, if spacing allowed, be legally obliterated by the move of another full-power station with absolutely no recourse. (While unlikely in many congested markets under current rules, the Class C4 proceeding presents the prospect of a real-world test of this possibility in the

future.) The translator service, especially as a secondary service, ought not to face a more stringent set of rules than full-power primary stations here.

15. At the same time, many years of real-world experience (again, see para. 11 above) have convincingly demonstrated to commenter that actual signal levels often vary substantially from predictions. When signals travel over bodies of water, interact with hills and mountains or attempt to penetrate urban canyons, pockets of real-world reception at levels of 60 dBu and above can and do exist in areas where predicted signals are much lower.

16. Commenter thus endorses a compromise solution that recognizes real-world reception conditions. Such a solution could include expanded use of Longley-Rice showings that could demonstrate a significant (both geographic and population-based) potential listener base that would suffer real-world interference. It should also, however, include some real-world tests to demonstrate some degree of connection between the distant interference area and the full-power station's home base (e.g.: is the full-power station in the same Nielsen ratings market as the reception area being tested for protection? Is there listener support or an advertiser base in the distant area?) Some sort of mileage test, based on station class, might also apply here, creating an absolute outer ring beyond which a full-power station can no longer claim occupancy over scarce spectrum that might be reused locally.

E. Non-substantive changes

17. Commenter endorses the Commission's proposed modifications here.

Conclusion

18. The FM band in 2018 would be almost unrecognizable to a visitor from, say, 1968. The Commission cannot, and should not, undo the changes that have made dozens of FM signals available across the dial in almost any populated area. From tiny community LPFM stations to AM broadcasters finding new vitality on translators to full-power FM stations that have benefited from move-ins and class upgrades, these changes

have enhanced the level of service available to listeners and the opportunities available to broadcasters. Now that the FM band is fully mature and all but full to bursting with signals, a reasonable set of compromises ought to allow existing full-power stations to preserve nearly all their real-world listening while eliminating the substantial uncertainty that the current rules impose on translator operators whose significant investments can now be all but wiped out by an interference complaint, as well as reducing the considerable Commission workload now expended on reviewing these complaints. Commenter looks forward to providing continued insight and advice to the Commission as this proceeding continues.

Respectfully,

/s/

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August 6, 2018