



## NEW JERSEY BROADCASTERS ASSOCIATION

7 Centre Drive, Suite 12  
Monroe Township, New Jersey 08831  
Office of the President and CEO  
Paul S. Rotella, Esq.

*"Representing the Radio and Television Industry in the Garden State"*

**Marlene Dortch, Secretary**  
**Federal Communications Commission**  
**455 12<sup>th</sup> Street SW**  
**Washington DC 20554**

**RE: MB Docket No: 18-119**

**Media Bureau Announces Notice of Proposed Rulemaking (NPRM) *In the Matter of*  
*Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*  
Published in the Federal Register**

Dear Ms. Dortch:

On May 10, 2018, the Commission adopted and released a Notice of Proposed Rulemaking In the Matter of Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference<sup>1</sup> - MB Docket No. 18-119 - (hereinafter the "NPRM"). The Commission sought comment on a number of proposals designed to streamline the rules relating to interference issues caused by FM translators and to expedite the translator complaint resolution process.

The FM Translator Interference NPRM set deadlines for filing comments and reply comments at 30 and 60 days, respectively, after publication of the FM Translator Interference NPRM in the Federal Register. That deadline is August 6, 2018 and we are hereby responding accordingly. Note, that while our response is limited to the NPRM on Translator's we express the same concern for the recent proposals made by the low-power FM ("LPFM") advocacy firm REC Networks as it relates to several key changes they are seeking to have enacted. Both the NPRM on Translators and the recent initiatives related to LPFM's as it relates to expanding their contour protections and thereby limiting the rights of full service stations and their radio station listening, is a major concern of the New Jersey Broadcasters Association ("NJBA").

### **Background and Analysis on Further Notice of Proposed Rule Making:**

The crux of the current issues at hand stem from the 1970 decision to improve radio station reception in areas where radio reception was hampered by terrain, distance or other obstructions. The Commission sought to address these concerns by awarding Translator licenses to overcome these issues. Undeniably broadcasters understood the use and application of Translator's to overcome the topography issues which were beyond their control. That said, as the years unfolded, the use of Translators was widened and is at

---

<sup>1</sup> *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Notice of Proposed Rule Making, MB Docket No. 18-119, FCC 18-60 (rel. May 10, 2018) (*FM Translator Interference NPRM*).

the heart of many of today's issues. Back in 2009, the Commission enacted "Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations" (MB Docket No. 07-172) which was adopted on June 29, 2009<sup>2</sup>. This docket allowed AM stations to use their FM Translators to rebroadcast their AM stations. Translator use became further exacerbated as a consequence of the "Revitalization of the AM Radio Service" (Docket No. 13-249) adopted on October 29, 2013 which expanded that use<sup>3</sup>. The impetus behind the allowance to use Translators for AM station re-broadcasting was arguably "valid". Namely, to create a greater life cycle for AM station operators who were finding issues with the quality and overall listening effectiveness on the AM dial. However, the subsequent application of "how" these Translators were used is just one of the reasons underlying today's signal interference issues. Adding to foregoing, is the all-important decision made by FCC's Audio Division in 2010 which allowed FM Translators to rebroadcast the signal of a HD digital multicast channels.

#### **Position of the NJBA on the NPRM:**

The NJBA and its members feel that the NPRM will significantly adversely affect our full-service broadcasting membership stations by no longer providing contour protections that were formerly provided to the full-service stations. Under the Commission's existing rules, complaints regarding interference may be raised at the application stage (predicted interference) or after a station has begun operation (actual interference). Claims of predicted interference raised in opposition to an application must provide "convincing evidence" that the proposed translator will cause interference to reception of an existing station. A complaining party must provide the name and address of a listener whose address is located within the proposed contour of the translator and who will receive interference if the application is granted.

Claims of actual interference may be raised at any time and may be supported by statements from one or more *bona fide* listeners at any location. To qualify as *bona fide*, a listener complaining of interference must provide his or her name, address, the location where the interference occurs, and statements that he or she is a listener, and does not have any legal, economic, or financial stake in the outcome of the proceeding (*i.e.*, he or she cannot be affiliated with the stations involved). Finally, the complaining listener is, under current rules, required to cooperate with the translator licensee in attempting to resolve the interference. Presently, the complaints are not restricted to any contour limiting factor as promulgated under the NPRM. Namely, such complaints are not restricted to only being with the 54 dBu contour.

Going forward, the NPRM proposes that a complaint of actual interference filed by another broadcast station must be supported by at least six bona fide listener complaints. To qualify as a bona fide listener complaint, the NPRM proposes requiring complaints to include:

- a full name and contact information;
- a clear, concise, and accurate description of the location of the alleged interference;
- a statement that the listener listens to the affected station at least twice per month; and
- a statement that the complainant has no legal, financial, or familial affiliation with the affected station.

---

<sup>2</sup> <https://docs.fcc.gov/public/attachments/FCC-09-59A1.pdf>

<sup>3</sup> [https://docs.fcc.gov/public/attachments/FCC-13-139A1\\_Rcd.pdf](https://docs.fcc.gov/public/attachments/FCC-13-139A1_Rcd.pdf)

On that final point, the NPRM clarifies that social media connections with the station (e.g., “liking” the station’s Facebook page) will not be disqualifying and that complaints solicited by the station or presented in a standardized format will be acceptable. The proposed rules will not prevent a translator licensee from reaching out directly to listeners whose complaints are filed with the Commission, but those listeners will no longer be required to cooperate in efforts to eliminate interference.

In addition to submitting the requisite number of listener complaints, a station complaining of actual interference would, under the proposed rules, also need to submit a map showing the locations of the alleged interference in relation to the contours of the stations involved. Complaints, whether related to actual interference or predicted interference, **would only be accepted if they demonstrate interference at locations within the complaining station’s 54 dBu contour** (emphasis added). Once a station has filed an interference complaint that is supported by the required information, the NPRM proposes requiring the translator licensee to submit a technical showing demonstrating that interference has been eliminated (e.g., submission of desired/undesired signal ratios at the relevant locations).

Essentially, the most significant area of concern for the NJBA, is the **contour limiting aspect of the proposed NPRM** (i.e. limiting such listener complaints to the complaining stations’ 54 dBu). By using the 54 dBu, it seems the FCC is suggesting that the “primary listening” patterns worth protecting only occur within this 54 dBu contour designation. Unfortunately, quite to the contrary, as noted below, listening patterns are largely outside the 54 dBu. Therefore, setting this contour level would significantly impair stations and their listening patterns as noted in the tables below. **As noted in the Table below, we analyzed stations in the New Jersey Market (including the Monmouth-Ocean NJ Market - Nielsen Market #53) and how “contour” listening occurred for those stations within those markets. As noted below, the predominance of listening (generally over 50% of the listeners) occurs OUTSIDE the FCC proposed 54 dBu and thus the NPRM would detrimentally affect full service radio stations and the broadcasters in NJ, which we strongly oppose.**

Listener Counts By dBu Contour								
Contour	WAWZ Listeners	WBBO Listeners	WBHX Listeners	WCHR Listeners	WDHA Listeners	WFGP Listeners	WJLK Listeners	WJRZ Listeners
60 dBu	130,048	15,396	1,637	39,041	16,999	37,825	65,685	12,472
57 dBu	142,219	15,396	1,637	39,424	31,863	38,901	76,756	16,631
54 dBu	160,960	23,276	1,637	49,943	38,752	41,194	92,156	17,705
50 dBu	184,799	27,773	1,637	55,686	51,540	41,620	94,940	22,327
48 dBu	208,688	27,773	1,637	58,260	68,680	41,620	94,940	22,327
45 dBu	244,918	34,123	3,211	58,260	76,542	42,539	103,907	22,327
40 dBu	274,414	38,752	4,300	58,652	119,179	44,933	108,087	22,540

Percentage of Listening Outside the 54 dBu Contour (Using the 54 dBu as Base Layer)								
Contour	WAWZ Listeners	WBBO Listeners	WBHX Listeners	WCHR Listeners	WDHA Listeners	WFGP Listeners	WJLK Listeners	WJRZ Listeners
60 dBu								
57 dBu								
54 dBu	FCC PROPOSED "BASE LAYER" PROTECTED CONTOUR							
50 dBu	15%	19%	0%	11%	33%	1%	3%	26%
48 dBu	30%	19%	0%	17%	77%	1%	3%	26%
45 dBu	52%	47%	96%	17%	98%	3%	13%	26%
40 dBu	70%	66%	163%	17%	208%	9%	17%	27%

Listening Counts by dBu Contour							
Contour	WKMK <sup>1</sup> Listeners	WKXW Listeners	WMGQ Listeners	WOBM Listeners	WRAT Listeners	WTHJ Listeners	WWZY <sup>2</sup> Listeners
60 dBu	12,686	245,437	119,969	20,046	25,585	6,273	51,345
57 dBu	17,890	277,603	141,442	21,003	27,496	6,273	51,358
54 dBu	27,385	327,961	166,774	22,339	28,758	7,520	73,370
50 dBu	31,056	400,891	188,500	24,831	37,025	8,721	89,768
48 dBu	31,056	403,771	194,179	28,049	42,931	10,873	91,685
45 dBu	40,727	451,122	211,287	28,247	45,634	11,486	101,498
40 dBu	60,908	540,883	237,306	30,173	55,658	18,474	122,179

Percentage of Listening Outside the 54 dBu (Using the 54 dBu as the Base Layer)							
Contour	WKMK Listeners	WKXW Listeners	WMGQ Listeners	WOBM Listeners	WRAT Listeners	WTHJ Listeners	WWZY Listeners
60 dBu							
57 dBu							
54 dBu	FCC PROPOSED "BASE LAYER" PROTECTED CONTOUR						
50 dBu	13%	22%	13%	11%	29%	16%	22%
48 dBu	13%	23%	16%	26%	49%	45%	25%
45 dBu	49%	38%	27%	26%	59%	53%	38%
40 dBu	122%	65%	42%	35%	94%	146%	67%

<sup>1</sup> Simulcasted with WTHJ

<sup>2</sup> Simulcasted with WBHX

*Note: the above data is 18+ information that was extracted from Nielsen's Scarborough Reporting and does NOT reflect the Diary Reported listening of the listeners from 12+ to 18. Accordingly, the observations noted below are understated in terms of the actual number of listeners who would be adversely affected by the NPRM and the 54 dBu contour restrictive clause of that NPRM – namely, the above table does not include a valuable listening audience segment from 12 -18 years old.*

As noted in the Tables above, we used the FCC's proposed 54 dBu as a "Base Layer" and then showed the Nielsen listener counts for each successive dBu contour outside of the 54dBu. As an example, for radio station WKMK, 1.2 times (or 122%) of the number of listeners occurs outside the 54 dBu contour as contrasted with the listening inside the 54 dBu. In terms of the number of listeners, WKMK has 27,385 listeners inside the 54 dBu and 33,523 outside the 54 dBu (i.e. 60,908 listeners @ the 40 dBu – 27,385 listeners @ the 54 dBu) or 55% of the listening occurs outside the 54 dBu!

Simply said, in using the NPRM's proposed 54 dBu contour protection area, WKMK would have 33,523 listeners or 55% of its listening audience who would be essentially "unprotected" and could be adversely affected by Translator applications if the NPRM is enacted as presently written. That clearly "protects" an "unprotected service" (Translators) to the detriment of a "protected service" (Broadcasters). As proposed, this would be a major setback to full-service broadcasters who have spent millions of dollars attracting listeners and providing valuable content to those listeners. If the NPRM is enacted as is, that will potentially place over 50% of full service listening audiences as possibly being eroded by Translator applications. Namely, over 50% of such listening audience will no longer be able to "object" to interference from Translators! That is simply unfairly turning the table on full-service broadcasters and improperly benefitting Translators by essentially allowing translators to disenfranchise over 50% of the listening audiences of full service Broadcasters.

En masse, if you examine the New Jersey marketplace for the major broadcasting groups of Townsquare Media, Beasley Media Group and Press Communications, LLC (as noted in the table above), if the NPRM were to be enacted as proposed by the FCC using the 54 dBu, these broadcasters would have a minimum (on average) of over 50% of their listening audiences unprotected from interference by Translators. Why would the Media Bureau seek to place the interests of Translators over those of full service broadcasters who have the responsibility of a host of other public interest issues including but not limited to EAS alerts and other valuable public interest issues which Translators do not have to do?

**With that in mind, the NJBA proposes that the NPRM be amended to allow full-service broadcasters with protection of their listening by allowing listener objections out to the 45 dBu.**

#### **Additional Thoughts:**

Insofar as New Jersey is concerned, we offer some added thoughts which makes the NPRM even that much more troublesome. As you know, the "*Consolidation Act*" actually did away with the contour designations in which radio stations operate and set forth the principle that stations operate in "markets". The importance of that cannot be understated. The NPRM sets forth arbitrary "contour designations" (namely the 54 dBu) and ignores the "market" concept at the heart of the *Consolidation Act*. It is important to acknowledge that radio stations do not operate in protected contours as the FCC seems to suggest as evidenced by the NPRM. Rather, radio stations operate and serve "markets" as defined by BIA and Nielsen.

Radio station diversity was based on the number of stations in a "market", purposely dispensing with the concept of using overlapping "contours". The Act assumed that all stations in a market could be heard throughout the market. The NJBA is merely trying to preserve the spirit and intent of that legislation.

Market classification/determination was also written into the Commission's rules on ownership (See 47 CFR 73.3555). And while the larger Class "B" stations in New York and Philadelphia determine their markets with their signals, the broadcasters in New Jersey live in a world where the market is determined for us. To produce the revenue we need to exist, we need to be heard throughout those markets.

As you can deduce, the NPRM would work against that by essentially fragmenting "markets" and make station listening "unlistenable" due to "pockets" of interference being caused by the Translators under the NPRM which could affect 50% of the listening patterns that occur outside the NPRM's 54 dBu contour protection area. While the NJBA acknowledges Congresses and the Commission's long expressed need for localism, diversity of voices, equal opportunity initiatives, and intelligent local content, that should NOT come from the hide of the already established full-service broadcasters, especially in New Jersey where the Class-A broadcasters are already at a disadvantage with the larger market signals coming from NYC and Philadelphia.

On that note, interference is interference. Interference from any source is always harmful to a station's viability, especially small market Class A's. New Jersey was allocated mostly "Class A's" while New York City and Philadelphia receive all "Class B's", which New Jersey "A's" have to compete with. Most New York City and Philadelphia Class "B" stations enjoy substantially higher power, better interference protection and greater coverage over New Jersey stations. Adding interference from any source, including NPRM Translators (and pending review of LPFM's), will leave many areas within the state with no local in-market FM full service broadcasting.

We think that it is important for the Commission to also acknowledge what is being proposed under the NPRM. Namely, the NPRM will have the effect of be selectively "dicing" up the State of New Jersey (and potentially other markets) to benefit lower reach and less powerful Translator stations. Today, in the post-Internet world, competition is fierce with many full-service broadcasters facing eroding margins and finding it hard to make ends meet. The introduction of possibly a slew of new Translators bifurcating market after market will only serve to drive many stations out of business thereby hurting the community at large and working directly against the Act and its public purpose. If a full-service broadcaster has difficulty in the current landscape, how is introducing more stations making sense? The FCC imposes many requirements of licensure which instill on broadcasters the need to fulfill localism conscientiousness programming, local news, local information, increased employment, diversity, and many other public service obligations.

The NPRM would only negatively affect listening patterns and thereby threaten the viability of full-service broadcasters resulting in the erosion of the FCC's requirements of licensure. In order for a station to meet these duties of License ownership, a station must remain commercially viable through its ability to generate revenue. The NPRM legislation would seriously jeopardize most, if not all, of New Jersey's full power radio stations thereby depriving the citizens of the Garden State of meaningful radio service, leaving the state's already disadvantaged stations without an ability to remain profitable and serving the public needs, including the EAS needs which clearly following Hurricane Sandy in 2012 are essential. The proposed NPRM will undermine exactly what the FCC and Congress is looking for in its pronouncements.

As noted elsewhere in this filing, the existing efforts to address the issues presented by HD radio resulted in prior rule-makings that have benefitted the HD community at the detriment of many full power broadcasters. Translators are being used to re-broadcast HD2 signals and again that creates many more

interference issues that essentially are at the heart of the existing NPRM and the interference issues resulting therefrom.

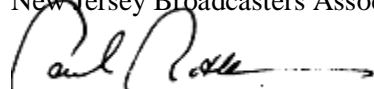
The New Jersey Broadcaster Association (NJBA) respectfully submits that the NPRM will work to substantially harm New Jersey's lopsidedly allocated full power FM stations and that added interference, from any source, will reduce the already meager coverage of many New Jersey stations, and in particular, Class A stations. Broadcasting is a public trust and a public service that transcends politics. To be sure, no other business is so public spirited. In that regard, the NJBA will continue to work in a cooperative and constructive manner to address the vital issues impacting our state in the demanding times we face together. **Again, as to the NPRM, the NJBA proposes that we ask that the Commission amend the NPRM to allow full-service broadcasters with listening protections by allowing listener objections out to the 45 dBu as contrasted with the FCC proposed 54 dBu in the NPRM.**

Finally, the NJBA respectfully reserves the possibility of supplementing this filing with additional data and comments. As always, we appreciate the attention given to this matter.

Please do not hesitate to contact me should you have any questions or require any additional information.

Most respectfully,

New Jersey Broadcasters Association

A handwritten signature in black ink, appearing to read "Paul Rotella", with a long horizontal flourish extending to the right.

Paul S. Rotella, Esq.,  
President and CEO

CC: NJBA Board of Directors