

**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 CUMULUS MEDIA INC.

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August 6, 2018

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Summary

As demonstrated herein, in resolving interference disputes between full-power FM stations and translator stations, translators should be allowed to move to any available channel as a minor change, including channels in the reserved band. Translator stations should not be required to demonstrate the unavailability of an adjacent-channel or IF-spaced channel, unless they are seeking to move to a reserved channel.

In addition, the Commission should amend Sections 74.1203(a) and 74.1204(f) of the Commission's rules to require a minimum of six (6) or more listener complaints. The Commission should not consider any complaint, however, that is filed more than one (1) year after the translator commences on-air operations. The Commission also should revise Section 74.1203(a) of the rules to provide that no complaint of actual interference will be actionable if the area of interference is outside the full-power station's 54 dBu contour.

The Commission's proposal to no longer require a listener/complainant to cooperate in the remediation process should not be adopted. As demonstrated herein, there are many contexts in which a translator station can resolve an interference complaint if it has an opportunity to communicate with the listener and the complainant is required to cooperate in the remediation process. Relieving the complainant from being obligated to participate in the remediation process would result in more interference complaints being filed against translator stations and therefore would be contrary to the public interest.

Finally, the Commission should not adopt its proposal to rely on its U/D ratio methodology and standard prediction methodology in attempting to resolve these types of interference complaints. As illustrated herein, there are many instances where the Commission's U/D showings and standard prediction methodology either will not be useful or fail to produce

an accurate result. Further, it would serve the public interest, promote the objectives of Section 307(b) of the Communications Act of 1934, as amended, and better enable the Commission to achieve its objectives in the *AM Revitalization Proceeding* by amending Section 74.1203(a) of the rules to allow parties to submit a Longley-Rice terrain dependent propagation study to demonstrate that actual interference will not occur.

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Cumulus Media Inc. (“Cumulus”) hereby submits these comments in response to the *Notice of Proposed Rulemaking*, FCC 18-60 (rel. May 10, 2018) (“*NPRM*”), in the above-captioned proceeding. Cumulus, through a series of indirect, wholly-owned subsidiaries, owns and operates over 440 radio stations in 90 radio markets across the country, 25 licensed translator stations, and holds construction permits for 53 additional translator stations. Cumulus respectfully submits that it can provide the Commission with a unique perspective concerning the issues raised in this proceeding. For the reasons stated herein, Cumulus supports many of the Commission’s proposals in the *NPRM*, but respectfully urges the Commission to take steps to ensure that the interests the Commission desires to promote in the AM Revitalization proceeding¹ by making FM translators available to struggling AM stations are adequately protected in this proceeding.

¹ See generally *Revitalization of the AM Radio Service*, First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, 30 FCC Rcd 12145 (2015) (“*AM Revitalization Proceeding*”).

I. Introduction.

In the Commission's *AM Revitalization Proceeding*, the Commission stated that it was seeking ways to further revitalize the AM band by identifying ways to enhance the quality of AM broadcasting by proposing changes in its technical rules that would enable AM stations to improve their service and thereby "better serve the public by advancing the Commission's fundamental goals of localism, competition, and diversity in broadcast media."² The Commission further noted that AM radio remains an important source of entertainment and informational programming, especially for local content, and that AM stations often provide unique, community-based programming in an effort to distinguish their programming from other media sources in an ever-increasing competitive media market-place.³

The Commission subsequently opened three filing windows for licensees of AM stations to file applications for new FM translator stations in an effort to promote and enhance the long-term viability of AM service. Cumulus submits these comments in an effort to ensure that the proposals adopted by the Commission in this proceeding are consistent with the public interest objectives which the Commission seeks to achieve in the *AM Revitalization Proceeding*.

II. Proposals.

A. Channel Changes

Section 74.1233 of the Commission's rules should be amended to allow the licensee of an FM translator station to resolve interference by moving to any available channel as a minor change, including channels in the reserved band. A licensee requesting such change should be required to continue to provide service to some portion of the translator's previously authorized

² *Revitalization of the AM Radio Service*, Notice of Proposed Rulemaking, 28 FCC Rcd 15221 (2013) ("AMR NPRM").

³ *AMR NPRM*, 28 FCC Rcd at 15221-15222.

service area and comply with all of its existing allocation requirements as a secondary service. Consistent with the Commission's proposal, there should be no requirement to demonstrate that there is no adjacent or IF-spaced channel available. If there is such a channel available, however, the translator licensee should be required to utilize such channel before being permitted to utilize a channel in the reserved band. Further, where a translator station is forced to change channels in order to avoid causing interference to a full-power station, it should be permitted to do so without having its proposal being subject to competing applications. Accordingly, the translator station which has been effectively displaced should be afforded a priority over any mutually exclusive application.

If the Commission were to restrict channel changes to the same band (i.e., either within the reserved or non-reserved band), such a restriction would essentially limit the availability of the rule change to only smaller markets. In most large markets there are few, if any, channels available which would render the Commission's proposal effectively meaningless in those markets. Permitting an FM translator to move to an available channel in the reserved band would provide substantial public interest benefits and promote the objectives of Section 307(b) of the Communications Act of 1934, as amended (the "Act"),⁴ because it would enable the translator station to continue to serve the residents of its community and surrounding service area by moving to an available alternative frequency. To the extent the Commission believes it necessary, it should limit the availability of such channels in the reserved band to those translator stations which are licensed facilities.

⁴ Section 307(b) of the Act provides in pertinent part: "... the Commission shall make such distribution of licenses, frequencies, hours of operation, and power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." 47 U.S.C. § 307(b).

B. Minimum Number of Complaints

Cumulus supports the Commission's proposal to amend Sections 74.1203(a) and 74.1204(f) of the rules to require a minimum of six (6) or more listener complaints. Cumulus also believes, however, that the minimum number of listener complaints should be required to be filed within one (1) year from the date the FM translator station commences on-air operation.⁵ This time limitation for filing a complaint will help to prevent translator stations from being subject to a myriad of listener complaints which have been actively recruited by a full-power station years after a translator has been a licensed operating facility. Indeed, if a translator is, in fact, causing actual interference to the listeners of a full-power station, that interference is going to surface long before twelve (12) months from the date the translator commences on-air operations.⁶

C. Limits on Actual Interference Complaints

The Commission's proposal to modify Section 74.1203(a) of the rules to provide that no complaint of actual interference will be considered if the alleged interference occurs outside the full-power station's 54 dBu contour should be adopted. *NPRM* at ¶28. One of the purposes of the Commission opening the various filing windows and making FM translators available through the *AM Revitalization Proceeding* is to facilitate and promote local AM service. The proposed revision to Section 74.1203(a) of the Commission's rules would help prevent distant

⁵ The on-air date should either be the date that the translator station first commences operation or, in the event the translator's facilities are modified, the date the translator first commences on-air operation with its modified facilities. This proposal is consistent with Section 73.318 of the Commission's rules which requires a permittee to satisfy "all complaints of blanketing interference which are received by the station during a one year period."

⁶ Cumulus recognizes, of course, that one or more listeners may move into the service area of the full-power station after the one-year period. If that should occur, the Commission should consider that listener complaint, but apply a rebuttable presumption in favor of the translator station with respect to that complainant, including the facts and circumstances regarding his or her move into the alleged interference area.

full-power FM stations from claiming areas which are on the outer-most fringe of their coverage areas, far removed from their service areas, which for all practical purposes they do not serve and have no intention of serving.

One example of this situation involved former FM translator station W266AN, Lexington, Kentucky, which rebroadcast station WVLK(AM), Lexington, Kentucky.⁷ The translator received complaints from listeners of station WSGS(FM), Hazard, Kentucky, who claimed to have experienced interference while they drove into the Lexington area. The Lexington area is more than 100 miles from Hazard, the community of license of the full-power station. As a result of the listener complaints, the Commission issued a letter dated June 20, 2016 directing W266AN to cease operations.

Cumulus obviously recognizes that translators operate as a secondary service and may not cause interference to any other authorized station. Nevertheless, if the public interest benefits the Commission articulated in the *AM Revitalization Proceeding* are going to be achieved, prior to expending the funds necessary to construct and operate the new FM translators that have been made available as a result of that proceeding, those FM translator permittees must have some assurance that, upon building out their new facilities, the translators will not be forced off the air, nor will they have their coverage areas substantially diminished due to interference complaints associated with distant FM stations claiming to have listeners on the outer-most fringe of their coverage areas, well outside their protected service areas. Therefore, the implementation of the 54 dBu contour limit proposed in the *NPRM* is necessary to avoid results such as that in the Lexington case set forth above where the loss of service to a relatively small

⁷ In obtaining the authorization for W266AN, the Commission granted the licensee, Cumulus Licensing LLC (“CLL”), a “Mattoon” waiver which required the translator to rebroadcast the primary AM station for a period of four (4) years. See *John F. Garziglia, Esq.*, Letter, 26 FCC Rcd 12685 (MB 2011).

number of listeners commuting to Lexington, who were approximately 100 miles from the full-power station's community of license, was found to outweigh the complete loss of local, enhanced AM service provided to the Lexington community by W266AN.⁸

D. Complaint Requirements and Remediation Procedures

The Commission proposed to eliminate the existing requirement in Section 74.1203(a) that a listener complainant cooperate in remediation efforts. *NPRM* at ¶22. Once interference presumably has been established through a listener complaint, the Commission proposed to require the FM translator station to submit a showing demonstrating that the interference has been eliminated. The technical showing is to be based on the same U/D ratio methodology applicable in Section 74.1204(f) of the Commission's rules using the Commission's standard prediction methodology specified in Section 73.313 of the rules. *Id.* As demonstrated below, however, the Commission's proposal to eliminate listeners from the remediation process and rely exclusively on its U/D ratio applicable to Section 74.1204(f) complaints using the standard prediction methodology specified in Section 73.313 of the rules should not be adopted.

As a threshold matter, the suggestion that a "regular" listener of a station is someone who listens to an FM station "at least twice monthly for at least six months" is not consistent with contemporary standards in the radio broadcast industry. *See NPRM* at ¶18. A listener could satisfy that definition by channel surfing, stopping on the same full-power FM station twice within the same month and, by way of example: (i) finding a song they liked and listening to the end of that song for, e.g., as little as thirty (30) seconds; and (ii) finding an interesting news or weather report and listening to that report for as little as two (2) or three (3) minutes. As

⁸ Cumulus subsequently was able to replace W266AN with FM translator W247CT, Lexington, KY (File No. BLFT-20170612AAV). W247CT is forced to operate, however, with a severe null to the east in order to protect another full-power FM station.

demonstrated below, that limited amount of time spent listening does not constitute a “regular” or average radio listener of that particular station.

According to an Arbitron report, most people generally listen to three (3) to five (5) radio stations during an average week, and 70 percent (70%) to 80 percent (80%) of their listening is to one station (a “P1 listener”).⁹ Arbitron has determined that, in general, a P1 listener contributes as much time spent listening as six P2 listeners or 17 P3 listeners. *Id.* at 4. Thus, there is no basis to allow a listener who may spend only a few minutes a month on two occasions to file a complaint which potentially could result in a translator being taken off the air, or cause it to have to modify its facilities, both of which could result in a substantial reduction in its coverage which thereby would result in a significant loss of service to a substantial number of listeners. Instead, the Commission should require the listener/complainant to certify that at least 20% of his or her total overall time spent listening to radio is spent listening to the subject full-power FM station.

The Commission’s proposal to relieve the complainant from cooperating in the remediation process should not be adopted. *See NPRM* at ¶22. There are any number of reasons that the licensee of a translator station may need to communicate with the listener who filed the complaint. There have been instances in the past where listener/complainants have moved and no longer live in the same state. It is also possible that a listener of the full-power station may change jobs and no longer have any contact with the full-power station’s service area in which he or she previously experienced the interference. If the listener is not required to cooperate in the remediation process, it is doubtful that the translator station would become aware of these facts and thereby be able to bring them to the Commission’s attention.

⁹ *See* Arbitron, Direct Marketing Results, A.C. Nielsen Center for Marketing Research at 3.

There are a number of other possibilities that would be foreclosed as well if the listener/complainant were to be eliminated from the remediation process. First, if the alleged interference involves adjacent channels, the ability to be able to communicate with the listener and request that he or she cooperate in the remediation process can be essential to resolving the interference. For example, if the complaint involves interference during the listener's commute, many older model cars are equipped with the manufacturer's original stereo receiver. If the complainant is a listener who commutes back and forth from work and the desired FM station is second-adjacent to the FM translator, the translator station may be able to resolve the listener's interference problem by replacing the listener's car stereo system. Modern car stereos generally are of a higher quality, their receivers have a higher selectivity and are much better at rejecting adjacent-channels. Thus, the translator station may well be able to resolve the interference problem in this instance by replacing the listener's car stereo. On the other hand, if the Commission were to eliminate the requirement that the complainant participate in the remediation process and the complainant therefore had no obligation to cooperate with the licensee of the translator station, the translator station would be precluded from having an opportunity to resolve this complaint without, at a minimum, reducing its existing coverage which thereby would result in a loss of local service to its listening audience. This result could significantly undercut the public interest objectives the Commission is seeking to promote in the *AM Revitalization Proceeding* because it has the potential to substantially diminish the ability of AM licensees to enhance their AM stations through the use of their FM translators.

Although listening to radio from one's residence may be less common today, requiring listeners to cooperate in the remediation process also is important if the complainant listens to the desired FM station from their home. Regardless of the channel relationship between the

desired full-power station and the translator, to the extent interference exists it often can be eliminated through the use of either a new receiver or a directional antenna. In either case, the current language in Section 74.1203(a) which requires a listener to cooperate in the remediation process is hardly too much to ask given that the complainant may be only one of six (6) individuals (under the Commission's proposal)¹⁰ who, at least in the larger markets, ultimately could cause *tens of thousands* of listeners to lose service from the translator they have grown to depend on. Cumulus therefore respectfully submits that for purposes of Section 307(b) of the Act, it would be far better from a public interest perspective for those six (6) listener complainants to be required to continue to cooperate in the remediation process and, to the extent necessary, be required to accept certain equipment and/or equipment modifications in order to resolve the interference they claim to exist, rather than have tens of thousands of listeners lose service because a translator is required to cease operations.¹¹

The proposal to eliminate the requirement to cooperate in the remediation process raises even more concerns with respect to those AM station licensees who, in reliance on the Commission's statements in the *AM Revitalization Proceeding*, filed one or more applications for a new FM translator in one of the recent filing windows in an effort to save their struggling AM stations and obtained an authorization for a new translator station through the Commission's auction process. Those AM licensees undoubtedly did so with full knowledge of the risks that FM translator stations were secondary services and that translators are required to protect full-power FM stations. It also is reasonable to assume that they filed their applications for new

¹⁰ See *NPRM* at ¶16.

¹¹ This is especially the case where the FM translator station has made a substantial financial investment, operated for many years, is serving a substantial number of listeners, and its listeners have come to rely on service from that translator.

translator stations and submitted their respective bids based on the existing requirements contained in Section 74.1203(a) of the Commission's rules. If the Commission now were to eliminate the requirement that a complainant cooperate in the remediation process, the Commission would be changing a material term in its original proposal with respect to making FM translator stations available to those AM licensees. The proposal to eliminate the requirement that listener/complainants cooperate in the remediation process should not be adopted because not only have applications for new translator stations been filed based on the existing language in Section 74.1203(a) of the Commission's rules and the Commission accepted funds through the auction process, but the proposed rule change is likely to result in significantly more interference complaints being filed.¹² Moreover, as shown above, the proposed change will make it substantially more difficult for the translator station to resolve those complaints. For all of these reasons, the Commission's proposal to no longer require complainants to cooperate in the remediation process is grossly inequitable and should not be adopted.

The Commission's proposal to rely exclusively on the U/D ratio methodology applicable in Section 74.1204(f) of the Commission's rules using the Commission's standard prediction methodology (collectively, the "U/D Ratio Methodology") also should not be adopted. There undoubtedly would be many instances where the U/D Ratio Methodology will not be sufficient to resolve the question of whether a translator is causing interference to an FM station and may, in fact, produce inaccurate results. This is particularly true where there is terrain between either

¹² In Cumulus' experience, if a listener were required only to complete the certification proposed in the *NPRM* and be relieved of the obligation to cooperate in the remediation process, there are likely to be substantially more listener complaints of interference, particularly complaints that are not credible. Indeed, the listener/complainant will know beforehand that he or she will not have to answer any questions regarding the complaint after it is submitted to the Commission.

the transmitter of the FM station and the location of listener/complainant, or the translator's transmitter and the listener/complainant.

Where terrain is involved and the listener claims to hear "static," that also raises a question regarding the reliability of the listener's assessment of the claimed "interference." There also may be cases where the claimed interference is due to another station (or stations). In some instances, the facts necessary to reach the correct determination can only be elicited from the listener, and may require more than one visit to the area where the interference is claimed to exist. Therefore, it is imperative that the listener – who is the real party in interest in these complaint proceedings – continue to be involved in the matter and cooperate with the translator station so that he or she can explain to the translator station not only the extent of the interference, but when, where and how long the interference has existed, and to what extent, if any, certain conditions may affect the interference.

Furthermore, if the Commission were to rely exclusively on its U/D Ratio Methodology, it is possible that a translator station may be able to eliminate actual interference between the translator and an FM station, but that information would not be relevant under the Commission's current proposal. By way of example, assume a listener's interference claim against a first-adjacent channel translator involved the following facts: (i) under the Commission's U/D Ratio Methodology, the translator was predicted to cause interference at the listener/complainant's location; (ii) a Longley-Rice analysis demonstrates that there is intervening terrain between the transmitter site of the translator and the location of the listener/complainant such that the translator's signal cannot be received at the complainant's location; (iii) a co-channel signal of another full-power station can be received at the location where the listener/complainant claims to be receiving interference from the translator; and (iv) the listener/complainant claims that he

constantly hears a “hiss” and “static” in attempting to tune into the desired full-power FM station.

Under the Commission’s current proposal, even though the translator station could demonstrate through a Longley-Rice propagation study that its signal does not cause any actual interference to the signal of the desired full-power station at the listener/complainant’s location, and therefore would not have any impact on the listener’s ability to receive the desired FM station’s signal, that study would be irrelevant and presumably not be considered by the Commission. *See NPRM* at ¶22. The translator would be required to either reduce power and/or employ a directional antenna to the extent necessary to satisfy the Commission’s U/D Ratio Methodology, or be forced off the air entirely.¹³ In either case, there would be a loss of service to the translator station’s existing listening audience. That result would be contrary to the purposes of Section 307(b) of the Act, would not serve the public interest, and it would be entirely unnecessary because, as demonstrated in the example above, the translator was not causing any actual interference to the full-power FM station.

For the reasons set forth above, rather than relying exclusively upon the U/D Ratio Methodology, the Commission should revise Section 74.1203(a) of the rules to add language similar to that contained in Section 74.703 to provide that, due to terrain shielding, the Commission will accept a Longley-Rice terrain dependent propagation study to show that

¹³ Even assuming, *arguendo*, that a translator station may be able to modify its facilities in order to come into compliance with the Commission’s U/D Ratio Methodology, such a modification could require relocating the translator to a new transmitter site. Given the current status of the TV repack, there is no guarantee that a translator station would be able to find an alternative transmitter site, and even if it could, the costs of such relocation may be prohibitive. Relocating to a new site often results in higher monthly tower rent, additional costs for new equipment, and the translator may not be able to locate its antenna at the same height on the new tower which could result even lesser coverage than originally anticipated, which could mean loss of service to even more listeners.

interference will not occur.¹⁴ *See* 47 C.F.R. § 74.703(a). Cumulus respectfully submits that Section 74.1203(a) of the Commission’s rules should be amended and brought up to date with other Commission rules which allow for the use of an alternative terrain analysis. Specifically, allowing translator stations to submit a Longley-Rice terrain dependent propagation study to demonstrate that actual interference will not occur will serve the public interest, promote the objectives of Section 307(b) of the Act, and facilitate the public interest objectives that the Commission seeks to achieve through the *AM Revitalization Proceeding*.

For the reasons stated above, the Commission should not rely exclusively on its U/D Radio Methodology as a means of resolving interference disputes between translator stations and full-power FM stations.

III. Conclusion.

For the reasons stated herein, Cumulus respectfully requests that the Commission: (i) allow FM translator stations to move to any available channel as a minor change, including channels in the reserved band; (ii) amend Section 74.1203(a) and 74.1204(f) of the Commission’s rules to require a minimum of six (6) or more listener complaints; (iii) revise Section 74.1203(a) of the rules to provide that no complaint of actual interference will be actionable if the alleged interference area is outside the full-power station’s 54 dBu contour; (iv) *not* adopt the proposal to revise Section 74.1203(a) to eliminate the requirement that the listener/complainant cooperate in the remediation process; (v) *not* adopt the proposal to rely (either exclusively or otherwise) on the Commission’s U/D ratio methodology and standard

¹⁴ *See also* Section 74.1204(d): “The provisions of this section concerning prohibited overlap will not apply where the area of such overlap lies entirely over water. In addition, an application otherwise precluded by this section will be accepted if it can be demonstrated that *no actual interference will occur due to intervening terrain*, lack of population or such other factors as may be applicable.” 47 U.S.C. § 74.1204(d) (emphasis added).

prediction methodology; and (vi) amend Section 74.1203(a) of the rules to allow parties to submit a Longley-Rice terrain dependent propagation study to demonstrate that actual interference will not occur.

Respectfully submitted,

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August 6, 2018