

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Proposals for a New FM Radio Broadcast Class C4)	MB Docket No. 18-184
and to Modify the Requirements for Designating)	
Short-Spaced Assignments)	

COMMENTS OF iHEARTCOMMUNICATIONS, INC. ON NOTICE OF INQUIRY

iHeartCommunications, Inc., as debtor in possession (“iHeart”), hereby submits these Comments on the Commission’s Notice of Inquiry, FCC 18-69 (the “*NOI*”) in the above captioned docket.

The first portion of the *NOI*, based on a petition for rulemaking filed by SSR Communications, Inc. (“SSR”), asks whether the Commission should consider creating an intermediate class of FM broadcast stations in Zone II between Class A and Class C3, to be designated Class C4. ^{1/} The *NOI* asks many discerning questions on the Class C4 proposal, such as “Given the maturity of the FM service, would an increased density of signals resulting from Class A stations upgrading to Class C4 provide improved FM service coverage, or merely contribute to a higher ‘noise floor’ overall while only modestly benefiting individual stations?” ^{2/} While this record is being developed, iHeart is reserving taking a position on the creation of a new Class C4.

However, the record is already well developed that the second proposal explored in the *NOI* – the involuntary designation as Section 73.215 facilities of under-class maximum

^{1/} See *NOI* at ¶¶ 1-7, 12-18.

^{2/} See *id.* at ¶ 15.

facilities FM stations – would be deleterious to the public interest. Under such a proposal, the Commission would establish a procedure “whereby an FM station in the non-reserved band (Channels 221-300), regardless of Zone or station class, could be designated as a Section 73.215 facility, resulting in such station receiving interference protection based on its actual authorized operating parameters rather than the maximum permitted parameters for its station class.” ^{3/}

The involuntary Section 73.215 proposal, also hard-pressed by SSR, was the subject of comments in RM-11643, ^{4/} as well as RM-11727. In response to SSR’s Petition for Rulemaking in RM-11643, iHeart participated in a Joint Statement with other broadcasters observing the detriments to the FM band and the public of SSR’s proposal to involuntarily limit interference protection for FM stations to the contour protections of Section 73.215, in lieu of protection to maximum class facilities. ^{5/}

Many of the questions raised by the Commission in the *NOI* have been addressed by the Joint Statement filed in RM-11643, which iHeart hereby incorporates by reference.

For example, in the *NOI*, the Commission asks: “Does the Commission’s long history of licensing thousands of stations in the reserved band—using a contour methodology based on stations’ authorized facilities—show that expanding eligibility for Section 73.215 processing would result in increased or decreased services for listeners?” ^{6/} As pointed out in

^{3/} See *id.* at ¶ 1; see also *id.* at ¶¶ 8-10.

^{4/} Statements in opposition or support of SSR’s Petition for Rulemaking in RM-11643 were solicited by the Commission by *Public Notice*, Report No. 2934 (rel. Sep. 28, 2011).

^{5/} See Joint Statement of Beasley Broadcast Group, Inc., Bryan Broadcasting Corporation, Clear Channel Communications, Inc. [prior name of iHeart entity], Delmarva Broadcasting Company, Merlin Media License, LLC, and Radioactive, LLC, RM-11643 (October 28, 2011) (the “Joint Statement”).

^{6/} See *NOI* at ¶ 22.

the Joint Statement, the Commission already experimented with contour protection spacing in the non-reserved band, and found a deleterious impact. ^{7/} Specifically, prior to the establishment of minimum distance spacing requirements for the non-reserved FM band, the use of a contour protection system meant that “FM assignments have been concentrated to a great extent in the larger cities and surrounding metropolitan areas, precluding in many instances the making of Class B assignments, or even lower-power Class A assignments, in other communities in the same area.” ^{8/} Thus, the Commission found that the contour-based process “has worked to prevent achievement of the ... provision of local outlets for as many communities as possible.” ^{9/}

In the *NOI*, the Commission observes “that its policy of protecting all stations as if they are operating at maximum permitted height or power for their class, even if they are in fact operating at or near the minimum permitted height and power for their class, ‘permits stations to improve technical facilities over time and provides a certain degree of flexibility for transmitter relocations.’” ^{10/} Consequently, the Commission inquires “[t]o what extent would adoption of the Section 73.215 proposal undermine this policy?” and “[i]s this proposal [for involuntary Section 73.215 designation] in tension with the original purpose of Section 73.215 to afford applicants greater flexibility in the selection of transmitter sites?” ^{11/}

^{7/} See Joint Statement at 5.

^{8/} *Id.* (citing *Revision of FM Broadcast Rules*, 40 F.C.C. 662, 665 [¶ 5] (1962) (“*First Report and Order*”)).

^{9/} *First Report and Order* at 665 [¶ 5].

^{10/} See *NOI* at ¶ 20 (citing *Thunderbolt Broadcasting Co.*, 13 FCC Rcd 6959, 6962 (1998)).

^{11/} *NOI* at ¶¶ 20, 22.

The Joint Statement incorporated by reference here cites to the still relevant conclusion of the Commission when it rejected a contour protection system in 1962 that “existing stations (both those now in existence, and those which might be authorized ... under such a system) would be forever limited to their existing facilities....” ^{12/} The Joint Statement notes that even in a so-called “mature” service, the term of a tower lease rarely extends for the lifetime of a broadcast station, and landlord desires to redevelop broadcast-tower real estate to more lucrative uses, or to extract exorbitant rents from captive broadcasters, can be expected to force relocations of even “mature” broadcast facilities. ^{13/}

The on-going pressures necessitating FM station transmitter location flexibility are also highlighted by iHeart in recent *ex parte* meetings. For example, iHeart noted that, at present, relocation flexibility is a particular concern given the pressures on tower locations due to a fluid TV repack environment which leaves unsettled whether any given radio station will need the flexibility afforded by Section 73.207 spacing protection due to a forced relocation during the TV repack. ^{14/} Indeed, in recognition of the pressure on tower slots imposed by the TV repack, Congress adopted the Reimbursement Expansion Act (“REA”), which expands the list of entities eligible to be reimbursed to include FM broadcast stations, in addition to LPTV and TV translator stations. ^{15/} In implementing REA, the Commission has proposed reimbursing the

^{12/} See Joint Statement at 7 (*citing First Report and Order* at 673 [¶ 29]).

^{13/} See Joint Statement at 10.

^{14/} See, e.g., iHeartCommunications, Inc., Notice of Ex Parte Communication with Audio Division, Media Bureau, RM-11727; RM-11643; MB Docket No. 18-119 (May 23, 2018).

^{15/} See *In the Matter of LPTV, TV Translator, and FN Broadcast Station Reimbursement, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking and Order, FCC 18-113 (rel. Aug. 23, 2018).

expenses of FM stations incurring costs due to TV repacking pressures, including the costs to permanently relocate. ^{16/} With these extraordinary transmitter site pressures, on top of the uncertainty always associated with a fluid real estate climate, involuntarily restricting the flexibility of FM stations via compulsory Section 73.215 designation would be particularly ill-timed.

Other critical questions asked by the Commission in the *NOI* are: “[w]ould there be a corresponding detrimental effect on listeners regarding loss of existing interference-free service provided by sub-maximum stations? and “would the increased density of signals resulting from upgraded stations provide improved FM service coverage, or merely contribute to a higher ‘noise floor’ overall while only modestly benefiting individual stations?” ^{17/}

Addressing these issues, the Joint Statement highlighted the relative inefficiency of a contour protection system, which the Commission recognized when it explained, in regard to existing co- and adjacent channel stations: “any new assignment creates interfering signals over much greater distances than the extent of its service area — thus creating islands of service in the midst of seas of interference....There comes a point of diminishing returns beyond which additional assignments on a channel, even though nominally protecting the ... contour of existing stations, result in over-all inefficiency of use.” ^{18/} The end result of the weakening of the minimum spacing system would be many small and interference-ridden signals rather than high quality services, that is, the “AM-ization” of the FM band.

Furthermore, in its *ex parte* discussions with the Commission, iHeart notes that

^{16/} *See id.*

^{17/} *See NOI* at ¶¶ 20, 22.

^{18/} *See Joint Statement* at 6 (*citing First Report and Order* at 673 [¶ 29]).

there are many established radio listeners at the edges of a station's predicted contour that would be harmed by forced Section 73.215 reclassification, exposing these listeners to loss of service by their favored radio stations. That observation is confirmed by the recent extensive study of Nielsen-measured listening outside of FM stations' predicted service contours in 43 Nielsen PPM/Diary Combined markets, undertaken by iHeart in connection with the Commission's proceeding on FM Translator Interference. 19/ The charts submitted with the Translator Comments document significant Nielsen-measured listeners residing outside of various predicted F(50,50) contours and establish the large numbers and percentages of listeners that tune in and rely on their favorite FM radio stations well past the standard protected F(50,50) contours. 20/ SSR's proposal for involuntary-Section 73.215 designation would provide a windfall to stations such as SSR's, allowing such stations to squeeze their way in closer to Metropolitan areas at the expense of established listeners that exist outside protected contours, yet still receive service that they rely upon.

In the *NOI*, the Commission states: "we are concerned with any adverse effects SSR's proposals may have on FM translators and LPFM stations. Therefore, we seek comment on the likely impact of full service station upgrades using the proposed Section 73.215 procedure on nearby secondary services or AM primary stations that rebroadcast on FM translator

19/ See Comments of Beasley Media Group, LLC, Cox Media Group, LLC, Gradick Communications, LLC, iHeartCommunications, Inc., Neuhoff Corp., Radio One Licenses, LLC/Urban One, Inc. and Withers Broadcasting Companies, MB Docket No. 18-119, at Declaration (Aug. 6, 2018) ("Translator Comments") (incorporated by reference herein).

20/ The Nielsen audience study filed with the Translator Comments includes Nielsen-rated FM stations in the 43 analyzed markets and does not segregate listenership between stations operating at maximum class facilities versus sub-maximum facilities. Nevertheless, this Nielsen audience study illuminates the strong degree of distant listenership averaged over all studied FM stations, including both maximum and sub-maximum facility stations.

stations.... we note again that we would be reluctant to adopt any proposal in this area that would have a significantly negative impact on FM translators and LPFM stations.” 21/

The Joint Statement observed that the “‘squeezing in’ of service under a contour protection system as favored by [SSR], can also be expected to ‘squeeze out’ opportunities for new allotments to unserved communities, particularly in those areas abutting metropolitan centers and the rural areas beyond. ...Among those facilities that would be squeezed out under [SSR]’s proposal, would of course, also be LPFM stations, as non-reserved FM band stations expand into the spaces now existing under, and fostered by, the minimum distance spacing requirements.” 22/ Such “squeezing out” will also necessarily apply to FM translators, including those rebroadcasting AM primary stations. Moreover, those FM translators forced to explore changing channels by impinging full-service FM stations or interference issues will face reduced opportunities for open FM channels by the squeezing out that would be fostered by the involuntary Section 73.215 proposal. 23/

As concluded in the Joint Statement, the proposal to impose Section 73.215 spacing involuntarily on sub-maximum FM stations of any class might advance the individual interests of certain non-reserved FM band stations, but at a high price to the public interest. Such a proposal would undermine the current cohesive and efficient spacing system that accommodates newcomers and innovative uses, including LPFMs and FM translators, as well as

21/ See NOI at ¶ 21.

22/ See Joint Statement at 11.

23/ Among the reforms being considered by the Commission in MB Docket No. 18-119 is to allow FM translators to change to *available* non-adjacent channels in response to interference issues. See *In the Matter of Amendment of Part 74 of the Commission’s Rules Regarding FM Translator Interference*, Notice of Proposed Rulemaking, FCC 18-60, MB Docket No. 18-119 [¶ 1] (rel. May 10, 2018).

the expansion of existing full-service FM signals and necessary relocations, while limiting interference, as the public has come to expect.

Respectfully submitted,

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as debtor in possession**

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