

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

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

REPLY COMMENTS OF EDUCATIONAL MEDIA FOUNDATION

Educational Media Foundation (“EMF”) hereby submits its Reply Comments in response to the initial comments filed in the above-referenced proceeding.¹

I. INTRODUCTION AND SUMMARY

As noted in its initial comments in this proceeding,² EMF is the licensee of over 300 full-power FM stations and a similar number of FM translator stations. With those interests, EMF has likely had more experience on both sides of the issues being considered in this proceeding than virtually any other commenting party – both defending service to full-power radio listeners which is threatened by interference from new translators, and in resolving complaints about interference from its new translators. In its initial comments, EMF urged the Commission to adopt a listener-based approach to resolving complaints, always acting so as to defend the rights of the listening audience to hear stations to which they are accustomed to listening. In connection with that general guidance, EMF took specific issue with the Commission’s proposal to cut off complaints of translator interference if the interference occurred beyond the 54 dBu contour of the full-power station. In reviewing the comments filed in this proceeding, EMF

¹ *Amendment of Part 74 of the Commission’s Rules Regarding FM Translator Interference*, Notice of Proposed Rulemaking, MB Docket No. 18-119, FCC 18-60 (rel. May 10, 2018) (“NPRM”).

² Comments of Educational Media Foundation, MB Docket No. 18-119 (filed Aug. 6, 2018) (“EMF Comments”).

submits that it is very clear the adoption of the 54 dBu contour as the limit of protection for a full-service station will do great harm to many FM stations by potentially cutting off substantial radio listening which occurs well beyond that contour.

In the comments filed in this proceeding, it appears all the parties which provided evidence of listening data have demonstrated the Commission's proposal to cut-off protection of full-service stations at their 54 dBu contour would be inconsistent with the status of translators as secondary stations. Based on the evidence submitted in this proceeding, a significant percentage of almost every FM station's listeners reside outside the 54 dBu contour. Showings submitted to the Commission demonstrate this listening is very significant – representing at least 10 percent of the listening audience in almost every case, in the majority of cases constituting more than 20 percent of the listening, and in many cases representing even a far larger portion of the listening audience of FM stations. The Commission cannot allow service to potentially millions of listeners nationwide to be imperiled by new translator stations. To protect the listeners and the legitimate expectations of existing broadcasters that their listening audience not be radically reduced, the 54 dBu contour cannot be a cut-off for complaints about translator interference to full-power stations. EMF offers details below on this issue and on one other issue raised in initial comments in this proceeding.

II. THE 54 DBU CONTOUR CANNOT BE THE LIMIT OF PROTECTION FOR EXISTING STATION LISTENERS

The Notice of Proposed Rulemaking (“NPRM”) suggests the Commission use an existing station's 54 dBu contour as the limit of its protection from translator interference.³ The Commission identified its reasoning for this decision as follows: “we propose to identify a predicted signal contour within which most of a station's listeners are located and to not require

³ NPRM ¶ 28.

the elimination of interference beyond that contour.”⁴ From the evidence produced in the comments in this proceeding, that contour is not the one which defines the limits where there is a signal “capable of being regularly received by the public.”⁵ In reviewing the initial comments, it appears no party produced any evidence that this (or any) contour defines the location at which listening to a radio station precipitously drops off. Instead, numerous parties provided evidence supporting EMF’s arguments that significant listening to FM stations goes well beyond the 54 dBu contour.⁶ EMF continues to believe that no contour-based test should be adopted but, if one must be specified, all the evidence advanced in the initial comments shows it should be the 39 dBu contour or one with lesser signal strength.⁷

If one reviews the comments filed by other parties, the 39 dBu contour is the one which seems to most closely represent the signal strength at which listening to full-service stations begins to noticeably drop off. EMF in its comments demonstrated that fact through data reflecting the location of registered listeners or donors to its noncommercial stations.⁸ It demonstrated there are thousands of listeners outside of the 54 dBu contour in virtually all of its markets. Only at the 39 dBu contour does listening drop to a level at which it could begin to be considered negligible – though there is still listening beyond that predicted contour. Joint comments filed by several commercial broadcasting groups showed almost exactly the same

⁴ *Id.* ¶ 27.

⁵ *Id.*

⁶ *See, e.g.*, EMF Comments at 7-9; Comments of WJFD-FM, MB Docket No. 18-119, at 1, 4-7 (filed Aug. 6, 2018) (“WJFD Comments”); Joint Comments of Beasley Media Group, Cox Media Group, Gradick Communications, iHeart Communications, Neuhoff Corporation, Radio One Licenses, and Withers Broadcasting Companies, MB Docket No. 18-119, at 4 (filed Aug. 6, 2018) (“Joint Broadcasting Comments”).

⁷ *See* EMF Comments at 12-13; WJFD Comments at 6; Joint Broadcasting Comments at 6-7; Comments of Pueblo Broadcasting Group, MB Docket No. 18-119, at 14 (filed July 27, 2018) (“Pueblo Comments”).

⁸ EMF Comments at Exhibit 1.

thing through ratings data from Nielsen.⁹ Many other commercial and noncommercial broadcasters filed similar comments detailing listening far beyond their 54 dBu contours.¹⁰

Even data submitted by other parties who supported a stronger contour as the cut-off for protection, when reviewed carefully, seem to support the 39 dBu contour as the contour as the contour at which listening begins to significantly decline. In the comments of the New Jersey Broadcasters Association (“NJBA”), a table of listening to stations in the Monmouth/Ocean, New Jersey market was provided.¹¹ NJBA noted that over 50 percent of the audience to these stations generally occurred outside the 54 dBu contour.¹² A review of the numbers which NJBA provides suggests that cutting off protection at the 48 dBu contour as they suggest, rather than going to the 40 dBu contour,¹³ would for two-thirds of their stations surveyed abandon from 14 percent to more than 50 percent of the audience of those stations – with most of these 10 stations having 25 percent or more of their listening beyond the 48 dBu contour. Blue Ridge Broadcasting Company also suggests using the 48 dBu contour, but one measured by Longley-

⁹ See Joint Broadcasting Comments at 4-11.

¹⁰ See, e.g., Comments of New York Public Radio, MB Docket No. 18-119, at 2-3 (filed Aug. 6, 2018); Comments of National Public Radio, MB Docket No. 18-119, at 4-5 (filed Aug. 6, 2018); Comments of Plymouth Rock Broadcasting Company, MB Docket No. 18-119, at 3-4 (filed Aug. 6, 2018); Comments of Calvary Chapel of Costa Mesa, MB Docket No. 18-119, at 2-3 (filed Aug. 6, 2018); Comments of Araiza Revival Ministries, MB Docket No. 18-119, at 1-3 (filed July 27, 2018); Comments of Kids First, MB Docket No. 18-119, at 2 (filed July 26, 2018); Comments of Coastal Broadcasting System, MB Docket No. 18-119, at 2 (filed July 23, 2018); Comments of Monroe Public Access Cable Television, MB Docket No. 18-119, at 2 (filed July 24, 2018).

¹¹ See Comments of the New Jersey Broadcasters Association, MB Docket No. 18-119, at 3 (filed Aug. 6, 2018) (“NJBA Comments”).

¹² *Id.* at 3-4.

¹³ The NJBA comments did not provide any calculations for the 39 dBu contour – the 40 dBu contour being the closest provided in their table. EMF would not expect that there would be a significant audience drop-off between the 40 and 39 dBu contour, so the NJBA information supports the position taken by EMF and in the Joint Broadcasting Comments. *Id.*

Rice methodologies rather than the standard prediction methods.¹⁴ EMF is concerned that relying solely on Longley-Rice to establish a cut-off for listening will create anomalous results which could end up protecting isolated pockets of population far from a station. But a review of Blue Ridge Broadcasting Company's Table 1 shows all but one of the population centers in which they have significant listening they wish to protect would be within a contour, predicted using the standard methodology, of approximately 38 dBu or higher.¹⁵

It appears none of the parties supporting the 54 dBu contour provides any evidence that this contour in any way approximates the limits of the regular use of FM stations. Only the comments of Charles Anderson purport to having done any engineering analysis of the location of actual listening to FM stations.¹⁶ His comments state that using a 48 dBu contour would have a "devastating impact" on the prospects for successful translator applications.¹⁷ But what his comment really demonstrates is that there is real listening out to that contour and beyond, which, if protected, would preclude translators in those areas. As the objective of the Commission should be to protect the established listening preferences of the radio audience from secondary stations, it should be those listeners who are protected, not the potential for new translators to be squeezed into markets at the expense of existing listeners.

The comments of Pueblo Broadcasting Group are instructive in this regard. Analyzing recent translator complaints, the comments suggest that using the 54 dBu contour, 94 percent of the complaints would have been resolved in favor of the translator applicant, as the listeners who

¹⁴ See Comments of Blue Ridge Broadcasting Company, MB Docket No. 18-119, at 5-7, 13 (filed Aug. 6, 2018) ("Blue Ridge Comments").

¹⁵ *Id.*

¹⁶ See *generally* Comments of Charles Anderson, MB Docket No. 18-119 (filed Aug. 6, 2018).

¹⁷ *Id.*

had interference issues were beyond that contour.¹⁸ Even using the 48 dBu contour, Pueblo finds 90 percent of the interference complaints would have been rejected outright as coming from listeners beyond that contour.¹⁹ While some have suggested some translator interference objections come from less than fully bona fide complainants, to assume that 94 percent have no justification is completely unreasonable, as is the proposal to rely on the 54 dBu contour as the limit of protection for full power stations. The comments filed in response to the NPRM establish listening well beyond the 54 dBu contour, extending at least to the 39 dBu contour. There are real listeners in these areas whose interests need to be protected. If the Commission is seeking to find a contour beyond which it is not reasonable to assume that there are real listeners to a full-power station, that contour is not the 54 dBu contour. To set the 54 dBu contour as the limit of protection from translator interference would be arbitrary and capricious, as there is no record evidence demonstrating this contour in any way defines the limits of regular listening to an FM station, even in spectrum-congested areas.

EMF explained at length in its initial comments that there are significant areas of service from full-power stations well beyond their 54 dBu contours simply because predicted contours are not a true measure of real-world listenability. Stations can be—and are regularly—heard well beyond their protected contours. Because of station spacing and the irregularity of terrain, there are vast areas well beyond any protected contour (and well beyond the 54 dBu contour) where stations have substantial listening audiences as proven by the evidence submitted in the initial replies. For many stations, these areas are protected from encroachment by other full-power stations because spacing rules prevent other stations operating on relevant frequencies from moving closer. These well-established areas of service have always been protected from

¹⁸ Pueblo Comments at 3-4.

¹⁹ *Id.* at 4.

interference from new translator service, and there has been no factual support provided for the departure from this policy.²⁰ Thus, this proposal to use the 54 dBu contour to cut off translator interference objections must be rejected.

III. TRANSLATOR APPLICANTS SHOULD BE ALLOWED TO MOVE TO ANY AVAILABLE CHANNEL

The Commission has proposed, and EMF has supported, the ability of a translator applicant to move to any available FM channel if they are faced with an interference objection.²¹ The principal objection to this proposal seems to arise from Low-Power FM (“LPFM”) licensees who worry that a translator moving to a different channel will somehow preclude LPFM opportunities in the future. This, they contend, is in contravention of the requirements of the Local Community Radio Act (“LCRA”) which requires opportunities for both LPFM and FM translator applicants.²² Some of the LPFM advocates suggest that, without an examination of each channel proposed by a translator applicant to see if it would preclude LPFM opportunities, the LCRA is being violated by potentially precluding those opportunities.²³

²⁰ Cutting off the protection of real listeners to full-power stations would effectively elevate translators to primary rather than secondary status. Aztec Capital Partners suggest that this “secondary” status refers only to allotment and assignment of FM stations. *See* Comments of Aztec Capital Partners, MB Docket No. 18-119, at 4-5 (filed Aug. 6, 2018). The existence of Section 74.1203(a)(3) belies such an interpretation, as the FCC has clearly decided that listeners to existing stations should be protected no matter where they may be, a position that the FCC has not proposed to change in this proceeding. The only issue in this proceeding is how to enforce this protection by determining where translator interference complaints are likely to be bona fide. As shown in the data described above, it is clear that complaints are likely to be bona fide well beyond the 54 dBu contour proposed in the NPRM.

²¹ NPRM ¶¶ 11-14.

²² Local Community Radio Act of 2010, Pub. L. No. 111-371, 124 Stat. 4072 (2011) (“LCRA”).

²³ *See, e.g.*, Comments of Jeff Siebert, MB Docket No. 18-119, at 2-4 (filed Aug. 6, 2018); *see also* Comments of LPFM Coalition, MB Docket No. 18-119, at 4-6 (filed Aug. 6, 2018).

This question was resolved in a recent Media Bureau decision denying a mass objection by LPFM advocates to pending translator applications.²⁴ There, the Media Bureau determined that the LCRA does not require each application for a new translator be assessed as to whether or not it will preclude opportunities for future LPFM applicants.²⁵ Instead, the Commission has and will provide opportunities for applicants in each of these services to apply for new stations, and it will process those applications according to the technical standards which apply to those services.²⁶

The decision of the Media Bureau makes perfect sense, and thus this objection of LPFM advocates must be rejected. If the Commission was to require that each translator application be examined to determine if it precluded LPFM opportunities, under the LCRA, to be treated equally, the same examination would need to be undertaken with each LPFM application to insure it did not preclude translator opportunities. But if the Commission had to examine each and every application filed for a translator or for an LPFM station to determine whether the application would preclude the opportunity for a new station in the other service, the processing of such applications would grind to a halt. In fact, in spectrum-congested markets, there might be situations where the last remaining channel would lie fallow, as a translator application would preclude its use by an LPFM station, and an LPFM application could preclude its use by a translator. Clearly, that was not what was intended by Congress in saying the Commission would make opportunities available for applicants in each service.

²⁴ *Letter to Center for International Media Action et al*, DA 18-597 (released June 8, 2018) reconsideration denied by Letter, DA 18-729 (released July 13, 2018).

²⁵ *Id.*

²⁶ *Id.*

The Commission has provided opportunities for applicants in each service to apply for new stations. The Commission just two years ago concluded an LPFM filing window where thousands of new LPFM construction permits were granted. There, mutually exclusive LPFM applicants could resolve their mutual exclusivity by amending their applications to specify any vacant channel without any study whatsoever as to whether the amended application would have an impact on potential future translator applicants. If LPFM applicants can use any channel to resolve their conflicts with other proposals, that option to resolve conflicts should also be open to translator applicants. Thus, the objections to the proposal to allow translator applicants to amend to specify any unreserved channel must be rejected.

One other objection to the proposal for unrestricted channel changes was raised in the comments of Linda C. Corso, who was worried that translator applicants could amend to new channels without notice to potentially affected full-power stations operating on the channel to which the translator applicant amends.²⁷ EMF understands the concern, and would support a limited requirement for notice in situations where there is likely to be interference to the listeners of a station beyond the station's protected contour. From the experience of EMF, that is most likely to occur when a translator agrees to accept incoming interference within its predicted 60 dBu contour from any co-channel or first- adjacent channel station. In that case, notice should be given to the potentially affected licensee of the application to change channels by the translator seeking to escape an interference objection. While initial translator applications are usually filed in a mass filing window, and existing stations know of the window dates and can determine from a review of the Commission's database whether any application filed in the window will affect them, amendments to resolve interference can come at random intervals after the window,

²⁷ Comments of Linda C. Corso, MB Docket No. 18-119, at 2-3 (filed Aug. 6, 2018).

making constant monitoring of the Commission database necessary to detect a potentially interfering application. Requiring some notice to potentially affected existing stations after the filing of an amendment in the circumstances described above would be reasonable.²⁸

IV. CONCLUSION

While there are many other issues raised in the NPRM in this proceeding, EMF believes its initial comments already address the principal issues. Thus, EMF respectfully requests that the Commission reject the arbitrary use of the 54 dBu contour as a limit on the filing of interference complaints. It also supports the proposal to allow translator applicants subject to bona fide interference complaints to amend to any available channel to resolve such interference issues. EMF commends the Commission for tackling this difficult issue, and hopes the final decision in this proceeding will defend regular radio listeners from interference translators may cause to their favorite stations.

Respectfully submitted,

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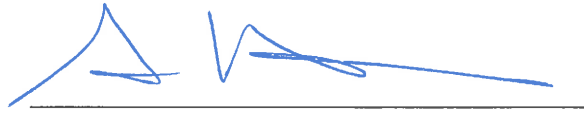
/s/ Sam Wallington
By: Sam Wallington
Title: Vice President of Operations and Engineering

September 5, 2018

²⁸ While it may be beyond the scope of this proceeding, EMF supports the suggestion of Wheeler Broadcast Consulting suggesting that the FCC review 2nd and 3rd adjacent channel interference restrictions. Relaxing such rules may provide some relief to displaced translators without unduly interfering with full-power stations. *See* Comments of Wheeler Broadcast Consulting, MB Docket No. 18-119, at 5-6 (filed May 17, 2018).

DECLARATION

I, Sam Wallington, Vice President of Operations and Engineering of Educational Media Foundation, hereby declare under penalty of perjury, that these *Reply Comments of Educational Media Foundation* were prepared by me or at my direction, and are true and correct to the best of my knowledge and belief.

A handwritten signature in blue ink, consisting of a stylized 'S' followed by a series of loops and a long horizontal stroke.

Sam Wallington

Date: September 5, 2018