

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

REPLY COMMENTS

**Beasley Media Group, LLC
Cox Media Group, LLC
Entercom Communications Corp.
Gradick Communications, LLC
iHeartCommunications, Inc.
Neuhoff Corp.
Radio One Licenses, LLC/Urban One, Inc.
Withers Broadcasting Companies**

September 5, 2018

SUMMARY

The Joint Commenters commend the Commission for its efforts to bring more consistency and predictability to the process for resolving FM translator interference complaints. In doing so, it is critical for the Commission to act consistent with the secondary service nature of FM translators. Existing listeners of full-service FM stations, with their public service obligations, should continue to be protected with reasonable measures against interference from the operations of FM translators.

The Joint Commenters here, as licensees of both full-service FM and FM translator stations, have urged the Commission in their Joint Comments in this proceeding to adopt the consensus reform initiatives in the Commission's Notice of Proposed Rulemaking, *In the Matter of Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, MB Docket No. 18-119 ("NPRM"), while cautioning against the establishment of a 54 dB μ contour limit for the remediation of FM translator interference complaints. The adoption of such consensus reforms will provide more predictability and options for FM translator operators, and further the Commission's important goal of revitalizing AM radio.

The Joint Commenters submitted into the record of this proceeding comprehensive studies empirically documenting extensive listening by the public to full-service FM radio stations well beyond each studied station's 54 dB μ contour. Based on the Nielsen audience data submitted by the Joint Commenters, it is clear that there are a substantial number of documented listeners who would be jettisoned from protection against FM translator interference if the 54 dB μ contour limit was adopted. Moreover, as referenced in these Reply Comments, other radio broadcasters have placed into the record of this proceeding data-based evidence of distant listening, further establishing that a 54 dB μ contour limit for FM translator

interference complaints would be detrimental to the public. Such data of distant listening include these broadcasters' Nielsen audience data, as well as membership, underwriter and donation databases, and individual listener statements.

To the extent that the Commission determines that adopting a geographic boundary on FM translator interference complaints is justified, the Joint Commenters submit that the record of distant listening set forth in this proceeding does not support a cut-off any higher than the desired station's F(50,50) 42 dB μ contour. A geographic limit would not have to be a hard stop on actionable complaints. It would be more consistent with the secondary status of FM translators for any contour boundary to set the threshold at which a higher burden of proof – such as a greater number of listener complaints – would be required for interference resolution. Based on the Nielsen data for all 43 Metros studied in the Joint Comments, on average, 2.6% of the listeners reside outside each FM station's F(50,50) 42 dB μ contour, in contrast to an average of 13.4% of the listeners residing outside each station's 54 dB μ contour. Significantly diminished impacts on listeners from the 54 dB μ contour to the 42 dB μ contour are also recurring in the studies of individual markets filed with the Joint Comments. Even at the 42 dB μ contour level, full-service FM station listeners potentially subject to interference would be above the two percent threshold recognized by the Commission when it adopted a *de minimis* interference standard for the development of DTV allotments/assignments, modifications. Certainly, a 42 dB μ geographic threshold would be far more tenable than the desired station's 54 dB μ contour, which would subject a much greater population of established listeners to non-addressable interference from FM translator operations.

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REPLY COMMENTS

The undersigned radio broadcasters (the “Joint Commenters”) submitted Comments in this proceeding (the “Joint Comments”) supporting many of the reform initiatives in the Commission’s Notice of Proposed Rulemaking, *In the Matter of Amendment of Part 74 of the Commission’s Rules Regarding FM Translator Interference*, MB Docket No. 18-119.¹ Most of the other commenters in this proceeding agree overall with the direction of the *NPRM*’s sweeping reforms to improve the FCC’s FM translator interference resolution process and to provide more predictability and options for FM translator operators. Given the increased reliance on FM translators by many AM stations, these reforms further the Commission’s important goal of revitalizing AM radio.

The Joint Commenters, along with many other commenters, have cautioned the Commission against establishing a 54 dBμ contour limit for FM translator interference complaints. Specifically, the Joint Commenters submitted into the record of this proceeding

¹ *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 (rel. May 10, 2018) (“*NPRM*”). Entercom Communications Corp. (“Entercom”) was not one of the original Joint Commenters. However, Entercom supports the Joint Comments and signs on to these Reply Comments.

comprehensive studies empirically documenting extensive listening by the public to full-service FM radio stations well beyond each studied station's 54 dBμ contour.

As highlighted here, other radio broadcasters have placed into the record of this proceeding additional data-based evidence of distant listening, further bolstering the Joint Commenters' cautioning that establishment of a 54 dBμ contour limit for FM translator interference complaints would be detrimental to the public.

The Joint Commenters continue to urge the Commission to adopt those FM translator interference complaint procedural reforms with widespread support, including those supported by the National Association of Broadcasters. In the event the Commission does proceed to impose a geographic limit (whether an absolute limit cutting off interference complaints from remediation or a geographic threshold at which additional evidence of interference would be required), the evidence supplied in the record does not support a contour limit any greater than the desired station's 42 dBμ contour.

Generally, the *NPRM's* proposed changes to the Commission's rules and process in handling complaints of interference to the reception by the public of radio service from the operation of FM translator stations have garnered wide support in the industry -- *except for the NPRM's proposal to adopt a 54 dBμ contour limit, which is vigorously contested*. Many of the commenting broadcasters and industry organizations generally supporting the *NPRM's* procedural reforms, while opposed to the 54 dBμ contour limit, are similarly situated to the Joint Commenters, as broadcasters, or representatives of broadcasters, operating both full-service FM stations and FM translators, and thus who can see the picture from both sides.²

² See, e.g., Comments of National Public Radio, Inc. ("NPR") at 1 (NPR distributes noncommercial educational ("NCE") programming through more than 1,000 public radio stations, many of which make significant use of FM translators); Comments of Crawford

As established in the Joint Comments, Nielsen audience data measures current listeners to full-service FM stations, which such listening is tied to the listener's listening at home, and therefore serves as a solid foundation for identifying actual listening beyond a station's 54 dBμ contour. Specifically, the 43 Metro Market study filed with the Joint Comments established that, on average, *each* FM radio station in the study has 25,872 Nielsen-measured listeners residing outside the measured station's F(50,50) 54 dBμ contour.³ Based on the data submitted, it is clear that there are a substantial number of documented listeners who would be jettisoned from protection against FM translator interference if the 54 dBμ contour limit was adopted as proposed in the *NPRM*.

Other commenters in this docket also cited to Nielsen audience data to establish the damage to the listening public that would result from a 54 dBμ contour limit on actionable FM translator interference complaints. For example, the New Jersey Broadcasters Association described how a 54 dBμ contour limit “will significantly adversely affect our full-service broadcasting membership stations.”⁴ The New Jersey Broadcasters Association submitted Nielsen data for New Jersey radio stations to establish that “listening patterns are largely outside

Broadcasting Company (“Crawford”) (Crawford and affiliates are licensees of 15 AM, nine FM and nine FM translator stations); Comments of Calvary Chapel of Costa Mesa, Inc. (“Calvary Chapel”) (Calvary Chapel is the licensee of three full power FM stations and two FM translators); Comments of Blue Ridge Broadcasting Corporation (“Blue Ridge”) (Blue Ridge is the licensee of two NCE FM stations and two FM translators).

³ See Joint Comments at 6 and Chart #1. The study supplied with the Joint Comments also expressed the average number of measured listeners residing outside of further contour levels; for example, the average number of measured listeners residing outside each station's 51 dBμ contour is 16,869 listeners per station; outside each station's 48 dBμ contour is 11,053 listeners per station; outside each station's 45 dBμ contour is 6,917 listeners per station; outside each station's 42 dBμ contour is 4,338 listeners per station; outside each station's 39 dBμ contour is 2,432 listeners per station; and outside each station's 37 dBμ contour is 1,688 listeners per station. *Id.*

⁴ See Comments of New Jersey Broadcasters Association at 2.

the 54 dBu. Therefore, setting this contour level would significantly impair stations and their listening patterns.”⁵

Likewise, New York Public Radio (“NYPR”) mined Nielsen audience data for its station WNYC-FM, New York, New York, and documented that it has 43,600 “CUME persons” living within WNYC-FM’s 54-50 dBμ contour band, 22,800 residing within the 49-40 dBμ contour band, and 500 residing with the 39-30 dBμ contour band.⁶ Thus, NYPR concludes on this empirical record that “*thousands*, if not *tens of thousands*, of bona fide WNYC-FM listeners would be disenfranchised, ineligible for FCC consideration of their complaints about translator interference affecting their reception of a top-rated station” if the 54 dBμ contour limit was adopted.⁷

NYPR also documented its listener bases outside the proposed 54 dBμ contour limit via reviews of its membership and donation databases, as did other broadcasters supported by memberships or donations. Specifically, NYPR conducted a study of its membership database, isolated zip codes around WNYC-FM’s 39-30 dBμ contour band and cross-referenced those zip codes with the members’ home addresses.⁸ NYPR determined that 193 of its members living within WNYC-FM’s 39-30 dBμ contour band contributed to the station within the last

⁵ See *id.* at 3-4.

⁶ See Comments of NYPR at 3.

⁷ See *Id.* Other commenters citing to Nielsen audience data as to distant listening include Grant County Broadcasters, Inc., noting significant Nielsen-tracked listeners of WNKR(FM), Williamstown, Kentucky, in counties extending past WKNR’s 54 dBμ contour, and Sam Brown, observing that, based on Nielsen data, Frederick, Maryland, could lose service from up to nine of its top 15 rated stations under a 54 dBμ contour limit. See also Comments of Pueblo Broadcasting Group (“Pueblo”) at 13, 30, 31 (WPEN(FM), Burlington, NJ, established listener base in Manhattan via Nielsen data and listener complaints; WDHA-FM, Dover, NJ, supported listenership to its 34 dBμ contour with Nielsen data; WBEN-FM, Philadelphia, PA, cites Nielsen data of substantial listenership out to its 34 dBμ contour).

⁸ See Comments of NYPR at 4.

18 months.⁹ A similar study conducted for WNYC-FM’s sister station, WQXR-FM, found 213 members living within the station’s 39-30 dBμ contour band who contributed to that station within the last 18 months.¹⁰ NYPR summarized these studies as “demonstrat[ing] that NYPR’s stations have dedicated listeners – who, importantly, are financially contributing members – at contour levels as low as 30 dBu. Designating the 54 dBu contour as the cut-off for interference complaints could result in public stations like WNYC-FM facing both diminished listenership and funding, which would significantly impair their ability to continue providing top quality programming.”¹¹

Educational Media Foundation (“EMF”), which is the licensee of over 300 full-power NCE radio stations and a similar number of FM translators, also documented, with the submission of data from its registered listeners and donors, that cutting off protection from FM translator interference would result in significant disruption to its listening audience.¹² EMF observes that its listener and donor data establishes that its “listeners often reside outside even the 48, 42, 40 and 39 dBu contour depending on the unique characteristics of each market and its terrain.”¹³ EMF concludes that “losing coverage beyond the 54 dBu contours of its stations in populated areas served by many of its stations (where it would be particularly attractive for a translator operator to seek a station) would be very disruptive to its listening audiences and could result in a potential loss of a significant percentage of EMF’s annual support from listener donations” so that “the proposal to limit protection to the 54 dBu contour

⁹ *See id.*

¹⁰ *See id.*

¹¹ *See id.* NYPR also cited to an earlier proceeding against an unbuilt FM translator at Flanders, New York, where NYPR submitted evidence of seven regular WNYC-FM listeners, all of whom lived within WNYC-FM’s 39-30 dBμ contour band. *See id.* at n. 6.

¹² *See* Comments of EMF at 7-10 and Exhibit 1.

¹³ *See id.* at 7.

undermines both radio's mission of providing service to the public, and erodes the financial ability of many stations (like many of EMF's stations) to carry out that mission.”¹⁴

Seton Hall University, the licensee of noncommercial educational station WSOU(FM), South Orange, New Jersey, cited to donor and underwriter lists, request logs, on-air contest winners and social media analytics to establish that it has numerous listeners and supporters beyond WSOU's 54 dBμ contour.¹⁵ Seton Hall University states that “[g]iven that the vast major[ity] of FM listening in America is via over the air and that WSOU, like so many other full power FM stations, has a significant number of listeners outside of its 54 dBu contour, FCC policies must ensure that FM translator interference is not acceptable even beyond [the] 54 dBu contour.”¹⁶

Another noncommercial educational broadcaster, Blue Ridge Broadcasting Corporation (“Blue Ridge”), licensee of WMIT(FM), Black Mountain, North Carolina, and WFGW(FM), Norris, Tennessee, as well as two FM translators, found more than 3,750 listener-contributors outside of WMIT's 54 dBμ contour as calculated per F(50,50), and 2,160 listener-contributors outside of WMIT's 48 dBμ F(50,50) contour.¹⁷ Blue Ridge concludes that “[i]mplementation of the ‘54 dBu’ proposal would erode the audience of WMIT and numerous other full service stations (and, consequently, the monetary contributions to and/or underwriting revenues generated by such stations would also decline), upsetting the ‘existing balance of equities’ between translators and other broadcast stations.”¹⁸

¹⁴ See *id.* at 8.

¹⁵ See Comments of WSOU-FM at 3.

¹⁶ See *id.* at 4.

¹⁷ See Comments of Blue Ridge at 8.

¹⁸ See *id.* at 2 (footnote citing to *NPRM* at ¶ 26 omitted).

Other commenters also document that their stations have significant numbers of listeners outside, indeed well outside, their station's 54 dBμ contour. For example, Station WJFD-FM, New Bedford, Massachusetts, broadcasting in the Portuguese language, submitted the statements of 135 distant listeners of WJFD-FM that would experience interference from proposed FM translators, as well current statements from listeners in communities outside not only WJFD-FM's 54 dBμ contour, but also outside its 38 dBμ contour.¹⁹ The licensee of WPLM-FM, Plymouth, Massachusetts, obtained signed declarations from 17 unaffiliated regular listeners located outside of the station's 54 dBμ contour.²⁰ Moreover, ratings data indicates that WPLM-FM has in the range of 3,000 listeners in Worcester, which is outside of the station's 54 dBμ contour.²¹ Crawford Broadcasting Company, in a recent targeted listener survey in one of its markets, found that "92% of the respondents regularly listen in areas beyond the 54 dBμ contour and with predicted field strengths well below that value."²² Calvary Chapel has collected since July 2016 declarations from approximately 140 unaffiliated, regular listeners with listening locations outside of its San Clemente, California station KWVE-FM's 54 dBμ contour.²³

As noted in the Joint Comments, establishing a 54 dBμ outer contour limit for which listener complaints of interference from FM translator stations would not be actionable "would fundamentally change the existing balance of equities between translators and other broadcast stations and affect the listening options for listeners outside the other broadcast station's protected contour" to the detriment of the public and full-service FM stations, which are

¹⁹ See Comments of WJFD-FM, Inc. at 3-4 and Exhibits.

²⁰ See Comments of Plymouth Rock Broadcasting Co., Inc. at 3 and Exhibit 1.

²¹ See *id.* at 4.

²² See Comments of Crawford Broadcasting Company at 4.

²³ See Comments of Calvary Chapel at 2 and attached map.

not, in contrast to FM translator stations, repeater stations.²⁴ Indeed, while promoters of the 54 dBμ contour limit give lip service to maintaining the secondary status of FM translators,²⁵ other commenters warn that such a hard cut-off from interference protection would essentially create a new, equal, class of FM service, yet without the public service obligations of full-service FM stations: “FM translator stations should not be provided equal or near-equal status to full power FM radio stations as the regulatory obligations for an FM translator station license will remain much less burdensome than a full power FM radio station license.”²⁶

With the record submitted by the Joint Commenters and others in this proceeding, it is clear that adoption of a 54 dBμ contour limit on actionable complaints of interference from FM translators is untenable.²⁷ NPR states that the adoption of the *NPRM* reform to require a

²⁴ See Joint Comments at Summary at 1.

²⁵ Aztec Capital Partners, Inc. (“Aztec”) goes so far as to redefine the plain meaning of “secondary” by suggesting that FM translators’ secondary status refers only to allotments and assignments, and not interference remediation, so that FM translators should be deemed secondary to full-service FM stations only by not blocking the allotment of a new FM station or a facility change of an existing FM station. See Comments of Aztec at 4-5. With this backflip, Aztec attempts to assert, with a straight face, that “[n]othing the FCC is proposing in its *NPRM* will change that secondary status of FM translators as set forth in the rules.” *Id.* at 5.

²⁶ See Comments of Coastal Broadcasting Systems, Inc. at 3; *accord* Comments of Monroe Public Access Cable Television, Inc. at 3; Comments of Kids First, Incorporated at 3; Comments of Araiza Revival Ministries, Inc. at 5; Comments of WSOU-FM at 4; Comments of Beaver Springs Faith Baptist Church, Inc. at 3.

²⁷ In addition to Aztec, Cumulus Media Inc. (“Cumulus”) also supports limiting FM translator interference complaints to locations within the desired station’s 54 dBμ. See Comments of Cumulus at 4-6. Cumulus’ support for such a geographic limit appears to be the result of its short-sighted focus on what it considers to have been a bad experience in its operation of FM translator W266AN, Lexington, Kentucky. There, a station operating more than 100 miles from W266AN’s community of license filed interference complaints. See *id.* at 5. However, Cumulus would likely have had a seamless and satisfactory resolution for the W266AN interference complaint if the consensus complaint procedural reforms proposed in the *NPRM* were in effect at the time, such as requiring the listener’s signature and demonstration of disinterest. Moreover, Cumulus’ ultimate solution, a non-adjacent channel change for W266AN via a special filing window, would have been available without any disruption of service if the *NPRM*’s minor channel change proposal were in effect.

minimum number of *bona fide* listener complaints would obviate the need to limit the coverage area over which an existing station is entitled to protection.²⁸ Added to that are the other general-consensus reforms of the *NPRM* not involving a geographic limit, which, once adopted, will improve significantly the resolution system and predictability of FM translator interference complaints.²⁹ As it has chosen to do in other areas of regulatory reform, the Commission could determine to adopt at this time the consensus reforms of the *NPRM*, and then gauge the impact of those reforms before considering a more fundamental change, such as an outer contour limit on actionable interference complaints.

Nevertheless, to the extent that the Commission determines that adopting a geographic boundary on FM translator interference complaints at this time is justified, the Joint Commenters submit that the record of distant listening set forth in this proceeding does not support a cut-off any higher than the desired station's F(50,50) 42 dBμ contour. Moreover, such a geographic boundary would not have to be a "hard stop" on actionable complaints. It would be more consistent with the secondary status of FM translators for any contour boundary to set the

²⁸ See Comments of NPR at 4-5.

²⁹ A non-consensus suggestion that should *not* be implemented is a time-limit on interference complaints, such as a proposed one-year limit from the start of the FM translator's operations suggested by certain commenters. See, e.g., Comments of Aztec at 12. The record here is replete with evidence of incorrect FM translator operations (intentional or not), for example, by improperly installing directional antennas or overpowering FM translator transmitters. See, e.g., Comments of Pueblo at 40-42. Unscrupulous or inexperienced FM translator operators could simply underpower for the first year of operations to limit interference and then, once interference complaints were barred by such a time limit, crank the power up to the licensed (or above-licensed) level. Likewise, a directional antenna could be conservatively mounted for the first-year, but then aggressively adjusted once the time limit on interference complaints had passed. The FM listening public deserves protection from interference no matter the date.

threshold at which a higher burden of proof – such as a greater number of listener complaints – would be required for interference resolution.³⁰

Based on the Nielsen studies for all 43 Metros in the Nielsen data set presented in the Joint Comments, in contrast to the 54 dB μ contour, where on average 13.4% of the listeners to each FM radio station in the study reside outside the measured station's F(50,50) 54 dB μ contour, 2.6% of the listeners reside outside the station's 42 dB μ contour.³¹ Likewise, the percentage of at-home listeners that would be impacted by a contour limit is far more attenuated at the 42 dB μ contour (6.6%) than at the 54 dB μ contour (29.8%).³² Those diminished impacts from the 54 dB μ contour to the 42 dB μ contour are recurring in the studies of individual markets expressed in Charts 4 through 15 filed with the Joint Comments. For example, 4.4% of the listeners reside outside the station's 42 dB μ contour in the Baltimore, Maryland Metro, as compared to 26.2% outside the station's 54 dB μ contour.³³ In Providence, the difference is from 4.0% outside the 42 dB μ contour to 25.8% outside the 54 dB μ contour.³⁴ In Memphis, the difference is from 3.4% outside the 42 dB μ contour to 19.9% outside the 54 dB μ contour.³⁵ And so on through the studied markets.

Even at the 42 dB μ contour level, full-service FM station listeners potentially subject to interference would be above the two percent threshold recognized by the Commission when it adopted a *de minimis* interference standard for the development of DTV

³⁰ See, e.g., Comments of WJFD-FM, Inc. at 6 (if the Commission adopts an outside contour limit, it should be a presumption that is rebuttable with double the number of listener complaints).

³¹ See Joint Comments at 7 and Declaration at Chart #2.

³² See Joint Comments at 7-8 and Declaration at Chart #3.

³³ See Joint Comments at 9 and Declaration at Chart #5.

³⁴ See Joint Comments at 9 and Declaration at Chart #13.

³⁵ See Joint Comments at 9 and Declaration at Chart #9.

allotments/assignments, modifications.³⁶ Certainly, a 42 dBμ geographic threshold would be far more tenable than the *NPRM* proposal of the desired station's 54 dBμ contour, which would subject a much greater population of established listeners to non-addressable interference from FM translator operations.

The Joint Commenters commend the Commission for its efforts to bring more consistency and predictability to the process for resolving FM translator interference complaints. In doing so, it is critical for the Commission to act consistent with the secondary service nature of FM translators. Existing listeners of full-service FM stations, with their public service obligations, should continue to be protected with reasonable measures against interference from the operations of FM translators.

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³⁶ See *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 13 FCC Rcd 7418, 7450 [¶ 80] (1998) (DTV modifications could not result in more than a two percent increase in interference to the population served by another station).

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September 5, 2018