**Before the**

**FEDERAL COMMUNICATIONS COMMISSION**

**Washington, DC. 20554**

In the Matter of )

)

Amendment of Part 74 of the ) FMB Docket No. 18-119

Commission’s Rules regarding )

FM Translator Interference )

To: The Office of the Secretary,

For the Attention of the Chief, Audio Division, Media Bureau

**REPLY TO COMMENTS ON NPRM (MB Docket No. 18-119)**

Radio Sharon Foundation, the Licensee of the translator W235CN in Providence, RI. Facility FCC ID # 41191 hereby provides its reply to Comments with respect to the Notice of Proposed Rule Making.

**BACKGROUND**

For decades, AM stations have been dying because of the audio quality of the AM Band in comparison with the audio quality of the FM Band. This makes unequal competition between FM and AM Broadcasters. Paying attention to the AM Small broadcasters request, The FCC started to consider to satisfy and give a small chance to survive to the AM Broadcasters opening subsequently “AM Revitalization windows”.

Following this process “AM Revitalization Windows” on 02/18/2016 FCC granted a Construction Permit BMPFT-20160129ALD, W221DS to Aztec WHAT 1340AM for a translator in Channel 221 in Philadelphia. On 02/26/2016 Clear Communication filed a Petition for Reconsideration since Clear is the Licensee of WVLT co-channel in Vineland NJ. Some alleged Listeners in Philadelphia inside the W221DS 60 dBu contour from WVLT were over 40 miles away from WVLT, far outside of WVLT's 60dBu contour.

Thereafter, Aztec asked the FCC to consider a NPRM to provide some relief from these potentially devastating interference claims. Among the points proposed by the FCC were

1.- six listeners as minimum complaints for interference to be considered

2.- to move frequency to any available channel when interference exists

3.- Limiting interference complaints to the affected station's 54 dBu contour instead of supporting complaints down to ridiculously low numbers like 40 and 30 dBu.

**We support the FCC proposal, especially the 54 dBu protected contour concept**

Radio Sharon Foundation the licensee of W235CN has been the target of dozens of Informal Objections from Red Wolf Broadcasting, licensee of WJJF, alleging interference from W235CN to WJJF. W235CN is located in the heart of Providence RI while WJJF is in Montauk, NY. WJJF's objection is involving 3 states. NY, CT and RI. W235CN is over 100km away from WJJF and there is high terrain between WJJF and W235CN. Although there are dozens of complaints of interference, not one of these seems to be legitimate. Extensive ON-Off testing by W235CN in the indicated complaint areas has repeatedly demonstrated that no such interference exists. However, WJJF has a poor signal that listeners appear to be unable to distinguish simple static from interference. Further, in some places where WJJF cannot be heard, W235CN can be heard which causes listeners to report interference when there is none since WJJF cannot be heard.

W235CN case is a prime example of how the existing rules can be abused and why it is necessary for the FCC to enact the proposed changes. Here is a case where a class A FM station in a small market two states and over 100km away had people complain of interference where there was simply a very poor signal, but no actual interference. This has cost thousands of dollars defending our signal against claims that never should have been made. If the proposed 54dBu rule had been in effect, then situation like this would be prevented which would have blocked manipulation of the FCC Procedures by some individuals or companies.

Secondarily to the fact that the dozens of interference complaints were and are frivolous, WJJF is licensed to serve Montauk, NY. WJJF isn't licensed to serve remote areas of CT and RI, far beyond their 60dBu or even 50dBu contours. When WJJF is trying to serve those areas, it means that they are not focused on their own community. If localism is really an important value, then a translator serving Providence, RI is certainly more desirable than a class A station in Montauk, NY trying to reach Providence with a weak signal. Why then do we allow primary stations to complain when a new translator serves a distant market that the primary station isn't even licensed to cover or reach? Although Radio Sharon has demonstrated no interference exists with the “On and Off” test procedure in real-time, Red Wolf has also asked Radio Sharon to Cease and Desist operations alleging a non-compete violation for WKKB Providence a competitor of W235CN. We believe that Red Wolf has used the fiction of interference complaints as an ulterior method to try to shut down W235CN when their non-compete failed.

There are many examples like WJJF. Another case is WRNR in the Annapolis, MD area. When new translators are proposed on the WRNR channel in Baltimore, WRNR objects claiming a few dozen listeners in Baltimore, even though WRNR is more than 50km away. In another case, Class C station WPCV, licensed to Winter Haven, FL and serving Orlando, objected to a new translator in St. Petersburg, FL more than 200km away. The complaint tried to silence the translator, serving over a half-million people in favor of about 10 alleged listeners. The translator licensee ended up reducing his coverage in a compromise, but the war of words is still being waged at the FCC in that case, as is our own. Clearly this situation has reached epidemic proportions, at least in larger cities. We don't know how many more similar situations like this exist, but there must be many more.

The bottom line is that these FM stations feel entitled to extended coverage into other cities and are perfectly happy to destroy stations serving many thousands of people in their communities just to protect their own weak signals.

Why does a station in the Orlando market care about a facility in another market entirely where they have no presence, no offices, no sales staff, provide no local news or programming, and has no ratings? We don't know, but the FCC should care about this because these stations should be told to focus on their own communities and stop worrying about other communities. We are not saying that serving fringe listeners is necessarily bad. What we are saying is that serving those fringe listeners is not guaranteed and we believe that a broadcaster that relies on reaching fringe listeners is being foolish.

Some big corporations like: I-Heart, Beasley Media Group, LLC. Cox Media Group, LLC, Gradick Communications, LLC, iHeart Communications, Inc., Neuhoff Corp, Radio One Licenses, LLC, Urban One, Inc. Withers Broadcasting Companies among others have specifically not supported the 54 dBu proposal.

The large groups are more interested in protecting their own fringe coverage than they are in promoting increased localism or saving AM stations.   Most large groups are heavily invested in full power FM stations.  Although they may also have some AM stations and also some valuable translators, none of those comes close to the value of their full power FM signals.  They see translators as potentially reducing their stations' values by increasing competition and restricting their range and ability to cover fringe markets

FCC has been, for decades, making efforts to diversify the media ownership. At the same time, the FCC provides incentives for small local businesses, females and minority to entrants in the broadcast industry and recently launched for public comments an Incubator program. Many, possibly most, small and minority broadcasters can only afford smaller AM stations or occasionally just a translator and a leased HD signal. We submit that allowing a class A station 60 miles away to object to the establishment of a LOCAL FM translator in a different market entirely must be in direct conflict with the FCC's goals for localism and encouraging small entrepreneurs, small business, female and minority entrants to the industry.

If FCC declines his proposal regarding the 54 dBu contour rule, then the whole FMB Docket No. 18-119, The incubator program and other efforts to diversify the competition, incentive the localism, small business, female and community to entrant in the Broadcast Industry severely weakened.

**Ultimately, Listener Complaints are Tied to Formats. It's a Beauty Contest.**

Because a translator can only cause interference to existing listeners of a station, then any station that upgrades or comes on the air after the translator cannot claim interference. Similarly, any station that changes its format will lose its existing listeners and a translator that comes on or upgrades during that time cannot cause interference. This means that a translator that is unacceptable today would almost certainly be perfectly acceptable tomorrow if the affected station changes formats or if there is a single affected listener that moves. Possibly even changing a single personality or show on a station will be enough for listeners to move on. Ultimately, 47 CFR § 74.1203(a)(3), while intended to be a technical rule, is actually completely dependent upon the particular format that an affected station happens to play. This reliance on formats and statistically insignificant numbers of listeners results in disproportionate results that cannot be in the public interest.

**Other Secondary Services Have Reasonable Limits on Distant Signal Complaints**

LPFM stations are secondary services, however, a fully spaced LPFM cannot be silenced by interference complaints caused by normal LPFM operation. Since a station with a few listeners in a distant community cannot silence an LPFM, then there is already precedence that says there's a reasonable limit to how far a primary station can lay claim to the spectrum. This principle simply has to be adapted to the translator service. The 54dBu protection scheme is an attempt to apply this principle. Naturally, some station owners will be unhappy with the proposed rule because they perceive that it limits their fringe coverage. As a translator operator, I am unhappy because we already protect the service contour. Our position is that no radio station is guaranteed coverage beyond their service contour. In the case of class A or C signals, why are we giving them an extra 12dB of protection beyond what they are entitled to receive? So, both the translators and primary stations are unhappy. That suggests that a good compromise has been found.

**Evolution of the Role of FM Translators**

When the FM translator rules were adopted in 1970, AM broadcasting was the dominant medium in the United States. At the time, there were only around 2500 FM stations in the USA. In that same year, there were around 4300 AM stations. A substantial portion of those FM stations were simulcasting AM sister stations or were programming niche formats. FM receivers were still uncommon and were considerably more expensive than AM receivers. Very few FM stations garnered significant audience ratings. Today, the number of full powered FM stations has more that quadrupled to approximately 10,700, while the number of AM stations has increased very little to only about 4700. In addition to the full powered stations, there are more than 6000 translators and around 1000 LPFM stations authorized. The total number of FM signals nationwide is closing in on 20,000. FM broadcasting is, and has been for many years, the dominant radio medium in most communities.

FM translators were envisioned as a way to bring distant signals into remote communities, as TV translators had done starting in 1963. Although the original rules required only protection of other station’s service contours, the rules were subsequently revised to disallow any interference to any received station. Since the most common purpose of a translator of that era was to bring distant signals into remote communities, it made sense that a translator bringing in some remote signal should not be permitted to interfere with any other distant signal already being received in that community. There was no reason to favor one distant signal being received via a translator over another distant signal being received directly. Given the relative scarcity of FM signals of the day, preventing interference to any signal was clearly in the public’s interest. Since there were so many available channels for translators in those days, there really was no reason to ever interfere with another signal except, possibly in a few of the most congested urban centers.

Today the situation is markedly different. The FM band has exploded with signals over the past 45 years. In virtually every urbanized area, there are literally dozens, if not scores, of available signals. Formats are now heavily duplicated by local stations in all major cities. Formats heard in one city are almost always heard in other cities with similar size and ethnic composition. Often, when a distant signal is strong enough to be received, it simply shares a preset on the radio along with local stations playing the same format. It is hard to imagine a case, in a top 100 market where a distant signal would be so unique so as to compel listeners to tune to a weak, out of market signal. Rather, a local station would be more inclined to change formats if there was significant demand for some unavailable format.

Within the last few years, the FCC has begun authorizing translators to be "fill-in" services for AM and HD multi-channel radio stations. In this new capacity, many translators are no longer bringing distant signals into a community. Instead, they are used to rebroadcast a LOCAL signal to the public on an FM frequency. These fill-in translators have become the primary source for local news, entertainment and community information for many listeners. Unfortunately, the rules have not yet been modernized to keep up with the vital role that FM translators now play. We now find that translators, serving hundreds of thousands of people with local programming can be permanently forced off the air by a distant station, if that station can find a few, or even one, fringe listener that is no longer able to receive that station as a result of the translator's operation. Translators costing many tens of thousands of dollars to build are simply forced off the air as a result of insignificant numbers of complaints, leaving the population that they formerly served with only a very weak, non-local signal in their place. This situation cannot benefit the public.

FCC rule 47 CFR § 74.1203(a)(3), as interpreted up till now, has become very contrary to the public interest because the rule does not draw any distinction between a fill in translator and a non-fill-in. Since so many translators are now local fill-ins, the rule is now being used to strongly favor out of market signals over local signals. This rule might also favor the larger broadcasters by allowing the corporate entities that typically own the more powerful stations to suppress locally owned facilities. In this regard, we believe that this rule is unintentionally restraining trade by allowing distant, corporately owned, stations to silence smaller local ones.

**Significant Number of Complaints Standard Should be Adopted**

In DA-18-119, a standard of six affected listeners has been proposed as a trigger for a complaint to move forward. This number appears to be arbitrary. It's going to be a lot easier to find six listeners in an urban setting than it is in a rural one. However, the ratio of affected listeners vs the number of listeners served by a translator will be tiny in a big city when compared to a rural facility. In a rural community, it might be understandable to shut down a new translator serving 1000 people if it were affecting 10 people's ability to receive another signal. However, how can a translator covering 500,000 people in a big city be jeapordized by 6 or 10 affected listeners? In most cities, there are no frequencies available for a translator to be displaced to, so this isn't going to be an option for most translators.

If there is to be a listener threshold number, then that number must be keyed to the marked size so as to be adjusted for population density. In sub-200 markets, 10 might be a reasonable number. However, in a top 25 market, 100 or more probably makes a lot more sense.

In 1990, the FCC considered applying the “significant number of complaints” standard for determining interference to direct public reception. At the time, they decided against adding that standard to the rules. However, the Commission reserved the judgment to determine the validity of uncorrected interference complaints based on the individual circumstances of the case. This leaves open the possibility that the “Significant numbers of complaints” standard can still be applied to specific cases, as was noted in the 'Forus FM Broadcasting' case of 1992. It is time once again to consider if the application of this standard would be appropriate and in the public interest.

In 1992, the Commission stated that “The judgment to determine the validity of uncorrected interference complaint or complaints would be dependent upon the individual circumstances presented in each case. Therefore a question can be raised