

**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)

SUPPLEMENT TO REPLY

1. The LPFM Coalition ("LPFM Coalition"), through counsel, hereby supplements ("Supplement") its Reply to Comments on the "Notice of Proposed Rulemaking" in the above-captioned proceeding to amend Part 74 of the Commission's Rules Regarding FM Translator Interference ("NPRM"). A request for leave to file this Supplement is simultaneously submitted.¹
2. The LPFM Coalition brings together Low Power FM Station ("LPFM") licensees with community advocacy organizations that have led efforts to create community-based media through LPFM. More than 100 LPFM stations and advocacy organizations² have now joined the Coalition in firm support of the basic premise that the Commission must place the interests of listeners first as it considers streamlining Translator Interference procedures.
3. The LPFM Coalition files this supplement to: (A) correct erroneous information placed on the record by another party; and (B) oppose a related 11th hour proposal to place one aspect of the NPRM on a fast track rather than treat the issues raised by the NPRM in a global way, despite the NPRM's stated goal of systemic reform.³

¹ Pursuant to 47 C.F.R. Sec 1.415(d) or, alternatively, this Supplement may be treated as an *ex parte* communication, pursuant to 47 C.F.R. Sec 1.1200 *et seq.*

² An updated list of those participating in the coalition is attached hereto as Attachment S-1. The LPFM Coalition, collectively, and each of its members, individually, are therefore collectively and individually "parties" with standing in any further proceedings arising from the NPRM.

³ NPRM at para. 10 (describing goal as "update the interference complaint *process*" (emphasis added)).

A. ERRONEOUS INFORMATION

4. The National Association of Broadcasters (“NAB”) mis-states the position of the LPFM Coalition by asserting “LPFM advocates thus support a prohibition against any translator channel changes that reduce spectrum opportunities for LPFM operators, and propose a requirement that translator modification applications include a preclusion showing to ensure that only applications that do not block future LPFM licensing in the market are considered.”⁴

5. The NAB did not actually quote the LPFM Coalition’s comments. If it had, NAB could not have made the assertion it did – as it is not what the LPFM Coalition submitted. (For efficiency’s sake, the LPFM Coalition attaches, at Exhibit S-2, the actual section of text the NAB cites in making its erroneous claim.)

6. Anyone reading the *ACTUAL* LPFM Coalition comments would see arguments that state: (1) LCRA is law and FCC regulations must comport with that act’s legislative intent to foster LPFM service; (2) The FCC recognized this fact in LCRA-related regulations, procedures and policies and can best manage the issues in the NPRM by modeling new regulations on effective LCRA-compliant translator regulations that both regulators and industry successfully navigated before, as noted in on-point, properly cited and correctly quoted case law; and (3) that preclusion studies could again serve effectively, now, to meet the NPRM’s clearly articulated goal of improving administrative and adjudicative efficiency in Translator interference disputes.

7. Given the *ACTUAL* LPFM Coalition comments, it is indeed puzzling how any accurate paraphrasing could lead to the statement that so-called “LPFM Advocates” believe “all remaining spectrum in a market must be preserved for LPFM.”⁵ This assertion is simply not true.

⁴ Reply to Comments filed by the National Association of Broadcasters (“NAB Reply”), filed Sep. 5, 2018 at 3.

⁵ NAB Reply at 4.

8. The NAB also apparently conflates still unresolved challenges to a group of translator applications filed by two of the LPFM's Coalition's members ("Challenges") and seemingly attributes it to the LPFM Coalition as a whole.⁶ More than 100 organizations are in the coalition, not just those two.

9. The NAB also fails to state that (a) the Media Bureau reinstated one of the Challenges on reconsideration and (b) that the remaining Challenges are subject to appeal on Application for Review in FCC File Nos. BNPFT-20180507ACF *et al.*

10. In so doing, the NAB failed to provide relevant procedural history in its citations – or even notify the tribunal of relevant context through use of such standard legal citation signals as “subsequent history omitted.” This, despite its obligations to do so.⁷

11. The LPFM Coalition believes that the Commission's processes work best when facts are accurately stated and citations properly presented. Well-formed fair debate is good for policy development. The NAB's subjective goals are properly pursued ONLY if facts are neither ignored nor mis-stated in the course of such advocacy.⁸

12. The Administrative Procedure Act requires an agency to ignore such incorrect information. Reliance on such false information would fail to meet the fundamental concept that rulemaking be based on FACTS on the record, lest it prove arbitrary, capricious or contrary to law.⁹

⁶ NAB Reply at n. 15.

⁷ See D.C. Bar Appx. A, Rule 3.3, which states “a lawyer shall not knowingly . . . [f]ail to disclose to the tribunal legal authority in the controlling jurisdiction not disclosed by opposing counsel and known to the lawyer to be dispositive of a question at issue and directly adverse to the position of the client.)

⁸ See 47 C.F.R. Sec. 1.17. Requirements for candor with a tribunal is also a standard part of attorney ethics codes. See, e.g., D.C. Bar Appx. A, Rule 3.3, n. 7 *supra*.

⁹ See *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983).

B. THE FCC MUST CREATE A COMPREHENSIVE RESOLUTION AND REJECT SCATTERSHOT APPROACHES

13. While no one can read minds, the NAB's mischaracterization of LPFM Coalition views does seem to conjure an LPFM bogey-man (however false). Protection from such monsters usually militates for firm and fast action. In this case, fast also means scattershot – rather than the systematic and comprehensive solutions the NPRM explicitly seeks.

14. Contrary to NAB assertions, what it calls “LPFM advocates” do not make “requests for special consideration”¹⁰ The LPFM Coalition does not oppose channel hopping to alleviate Translator Interference *per se*. After all, some LPFM stations see themselves, eventually, improving service with Translators. But, the LPFM Coalition does insist on adherence to LCRA. Rule changes must not undermine Congressional intent in enacting LCRA.

15. Rather than being the nemesis of resolution of NPRM issues, the LPFM Coalition supports such resolution – albeit in a comprehensive way. Even if the NAB had not mischaracterized the LPFM Coalition's comments (which it has), the NAB's proposed fast-track resolution of a single subpart in a complex system fails to meet the NPRM's stated goal of a comprehensive solution to the issues identified.

16. The NPRM says “it is time to update the interference complaint process.”¹¹ As the NAB's fast-track breakout proposal does not reform the overall process, it would, thereby, fail the “logical outgrowth test”¹² under the Administrative Procedure Act (“APA”).

¹⁰ NAB Reply at 4.

¹¹ NPRM at para 10.

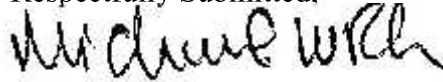
¹² See *Intl Union, UMW v. MSHA*, 407 F.3d 1250, 1260 (DC Cir, 2005) (citing *Shell Oil Co. v. EPA*, 950 F.2d 741, 751(DC Cir. 1991) holding that simply because an agency “invited comment on a proposed rule,” does not mean its implementation meets the logical outgrowth test.

17. In sum, the NAB wants the Commission to do what the APA prohibits. The NAB proposes the Commission enact a channel hopping rule while leaving unresolved – unsystematically – “innumerable alternatives in its Notice of Proposed Rulemaking only to justify any final rule it might be able to devise by whimsically picking and choosing within the four corners of a lengthy “notice.” Such an exercise in “looking over a crowd and picking out your friends,” does not advise interested parties how to direct their comments and does not comprise adequate notice under APA § 553(c).” *Envtl. Integrity Project v. EPA*, 425 F.3d 992, (DC Cir. 2005) (citing *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 547 (2005)).

CONCLUSION

18. THEREFORE, the Commission must reject both NAB’s mis-statements and its ill-founded fast-track channel hopping proposal. The NPRM seeks to improve a system. Fast tracking one thing, in isolation, as the NAB wants, fails to provide the kind of systemic, comprehensive solution the NPRM seeks.

Respectfully Submitted,



Michael W. Richards
Counsel to LPFM Coalition

Law Office of Michael W. Richards LC
P.O. Box 5842
Takoma Park, MD 20913
Tel. 202.657.5780

Sep. 21, 2018

EXHIBIT S-1

UPDATED LIST OF COALITION MEMBERS

CALL SIGN & LICENSEE

KAKU-LP Maui Community Television, Inc.
KALY-LP Somali American Community
KBOG-LP Bandon Community Radio
KCIW-LP Curry Coast Community Radio
KCLA-LP Civic Light Opera
KCMU-LP Jean Arnold Group Foundatoin
KCPK-LP Center of the World Festival
KCXU-LP Center for Careers and Training
KDAK-LP Dakota Media Access
KDLB-LP Future Roots, Inc.
KDLZ-LP Verge Center for the Arts
KDOO-LP Cascade Community Radio
KDRT-LP Davis Community Television
KEPW-LP Eugene Peaceworks
KEXU-LP Poor Magazine
KFFD-LP Freeform Portland
KFFP-LP Radio 23
KGCE-LP Grace Orthodox Presbyterian Church of Modesto, Ca
KGIG-LP Fellowship of The Earth
KHBG-LP National Hispanic Media Coalition
KHUG-LP Sloan Canyon Communications
KIEV-LP The Way to Salvation Community Church
KISJ-LP Borderlands Community Media Foundation, Inc.
KISN-LP Western Oregon Radio Club
KJJG-LP Iglesia Centro De Liberacion
KJMR-LP Ntrepid Group
KJSO-LP North Omaha Loves Jazz Center
KJZX-LP Third Coast Activist Resource Center
KLEK-LP The Voice of Arkansas Minority Advocacy Council
KMRD-LP Madrid Community Radio
KODX-LP Earth On-the-Air Independent Media
KOUV-LP Recording NW
KPCA-LP Petaluma Community Access
KPPQ-LP Community Access Partners of San Buenaventura
KPSQ-LP Omni Center For Peace Justice & Ecology
KPYT-LP Pascua Yaqui Tribe
KQRZ-LP Oregon Amateur Radio Club
KQUA-LP Umpqua Watersheds
KRSA-LP La Maestra Family Clinic
KRSM-LP Pillsbury United Communities
KSFP-LP San Francisco Public Press
KTAL-LP Southwest Environmental Center
KTDH-LP Two Harbors Community Radio
KUBU-LP Access Sacramento
KUHS-LP Low Key Arts Incorporated

LOCATION

Kahului, HI
Minneapolis, MN
Bandon, OR
Brookings, OR
San Pedro, CA
Napa, CA
Pine Mountain Club, CA
San Jose, CA
Bismarck, ND
Los Angeles, CA
Sacramento, CA
Portland, OR
Davis, CA
Eugene, OR
Oakland, CA
Beaverton, OR
Portland, OR
Modesto, CA
Modesto, CA
Pasadena, CA
Castaic, CA
Camas, WA
Bisbee, AZ
Portland, OR
South Houston, TX
Chattaroy, WA
Omaha, NE
Austin, TX
Jonesboro, AR
Madrid, NM
Seattle, WA
Vancouver, WA
Petaluma, CA
Ventura, CA
Fayetteville, AR
Tucson, AZ
Hillsboro, OR
Roseburg, OR
El Cajon, CA
Minneapolis, MN
San Francisco, CA
Las Cruces, NM
Two Harbors, MN
Sacramento, CA
Hot Springs, AR

KUPR-LP Las Placitas Association	Placitas, NM
KUTZ-LP Midtown Radio	Sacramento, CA
KVSH-LP Voice of Vashon	Vashon Island, WA
KWUS-LP Radio-4-Us	Clarksville, TN
KXRW-LP Media Institute for Social Change	Vancouver, WA
KXVS-LP Peace and Justice Network of San Joaquin County	Stockton, CA
KXVY-LP Wilsonville Radio Project	Wilsonville, OR
KYWS-LP West Sacramento Neighbors Fair, Inc.	West Sacramento, CA
KZNQ-LP Santa Clarita Public Broadcasters Corporation	Santa Clarita, CA
KZZH-LP Access Humboldt	Eureka, CA
WAMF-LP Voice of the People	New Orleans, LA
WAYO-LP Muccc, Inc.	Rochester, NY
WBPU-LP African People's Education and Defense Fund, Inc.	St. Petersburg, FL
WBTV-LP Vermont Community Access Media	Burlington, VT
WCIW-LP Coalition of Immokalee Workers	Immokalee, FL
WCXP-LP Chicago Independent Radio Project	Chicago, IL
WDYO-LP Workers' Dignity	Nashville, TN
WDYX-LP Woods and Waters Land Trust	Frankfort, KY
WEQY-LP Dayton's Bluff	St. Paul, MN
WFNU-LP Frogtown Community Radio	St. Paul, MN
WFPR-LP Franklin Public Radio	Franklin, MA
WHIV-LP New Orleans Society of Infectious Disease Awareness	New Orleans, LA
WHNH-LP Associated Churches Of Fort Wayne And Allen County, Inc	New Haven, IN
WHPB-LP Howell Family Consultant Inc	Orlando, FL
WJOP-LP Newburyport Community Media Center	Newburyport, MA
WKCG-LP The Ordinary People Society	Dothan, AL
WLGM-LP Edgewater Alliance Church	Edgewater, FL
WLWR-LP Marinette Radio Association	Marinette, WI
WNJI-LP Gospel Light Prayer Church	Kearney, NJ
WNRC-LP Nichols College	Dudley, MA
WOHM-LP Media Reform SC	Charleston, SC
WOMM-LP The Big Heavy World Foundation	Burlington, VT
WONH-LP Pequeñas Ligas Hispanas de New Haven Inc	New Haven, CT
WOOC-LP Media Alliance	Troy, NY
WOWD-LP Historic Takoma Inc.	Takoma Park, MD
WOZO-LP The Neighborhood Center	Knoxville, TN
WPPM-LP Philadelphia Public Access Corporation	Philadelphia, PA
WQNP-LP Beware, Inc.	Miami, FL
WQRT-LP Big Car Media	Indianapolis, IN
WRBG-LP Rhythm and Blues Group Harmony Association	Millsboro, DE
WRFN-LP Radio Free Nashville	Nashville, TN
WSPV-LP Valley Community Baptist Church	Avon, CT
WSVQ-LP Partnership of African American Churches	Charleston, WV
WSYP-LP Sankofa Youth Development Program Inc	Birmingham, AL
WUBP-LP All African People's Development and Empowerment Project	St. Petersburg, FL
WUGM-LP West Michigan Community Help Network	Muskegon, MI
WUJM-LP Caribbean Festival Association	St. Petersburg, FL

WUMO-LP Aframsouth
WUVS-LP West Michigan Community Help Network
WVAO-LP Athol-Orange Community TV
WWPP-LP WeCount!
WXDN-LP Awakening/Art & Culture
WXHR-LP Hillman Community Radio
WZMR-LP Zumix, Inc.
WZPH-LP Pasco County Educational Corporation
KLLG-LP Little Lake Grange #670
WLSP-LP Sun Prairie Media Center

Montgomery, AL
Muskegon, MI
Athol, MA
Homestead, FL
Orlando, FL
Hillman, MI
East Boston, MA
Dade City, FL
Willits, CA
Sun Prairie, WI

ADVOCACY ORGANIZATIONS

Common Frequency, Inc.
Prometheus Radio Project
Media Alliance at the Pacific Felt Factory

Davis, CA
Philadelphia, PA
San Francisco, CA

EXHIBIT S-2

ACTUAL TEXT OF LPFM COALITION COMMENTS
(Pages 4-5, as cited by NAB)

7. The NPRM lays out five broad areas for comment and consideration: (1) interference remedies involving looser channel change rules; (2) requiring a minimum number of interference complaints before interfering translators must take remedial measures (3) establishing both standardized interference complaint information requirements and more strictly defined listener eligibility requirements for such filing; (4) curtailing the geographic area from which interference complaints are accepted; and (5) limiting the scope of pre-licensing interference objections. The LPFM Coalition discusses each in turn, below.

8. **Channel Changes:** The Commission proposes to modify 47 C.F.R. Section 1233(a)(1) to allow a translator causing interference to fix the problem by filing a minor change application to relocate to any available FM channel.⁹ This regulation would replace current rules that severely limit channel relocation possibilities when utilizing minor change procedures.

9. While this regulatory change would potentially improve regulatory efficiency, the proposal is legally faulty, as proposed, because it does nothing to meet LCRA's mandate to foster LPFM service.

10. Should the Commission adopt a proposal of this type, it must include measures to meet LCRA mandates. To achieve this, the Commission should require that any such translator minor change application include preclusion showings to "facilitate the grant of *only* those translator applications that would not diminish or "block" future LPFM licensing in these markets."¹⁰

⁹ Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference, Notice of Proposed Rulemaking, FCC 18-60, MB Docket 18-119 (May 10, 2018) ("NPRM"), at 6, para. 11.

¹⁰ *Fourth Report and Order* at para. 20.

11. The industry is already familiar with such preclusion showings from recent translator filings. These showing were generally delivered to the Commission with a minimum of fuss or diversion of Commission administrative resources.

12. Requiring a preclusion study in a newly created minor change process would also (1) help prevent legal gamesmanship in ordinary minor change engineering by forcing applicants to think about and more completely demonstrate compliance with deeper policy goals (2) force applicants rather than FCC staff to analyze preclusive aspects that harm LPFM rather have Commission staff perform such analysis and (3) by providing more complete analysis at the application stage, cut the chances of actual interference complaints later and the attendant drain on FCC resources that explicitly the NPRM seeks to curtail.¹¹

13. In sum, by requiring such preclusion showings in any such expanded minor change application process, the Commission would achieve two significant regulatory imperatives: (a) improving administrative efficiency while still (b) meeting significant LCRA mandates.

14. The Commission should also allow LPFM stations to avail themselves of the same streamlined channel change procedure (by minor change application) as an alternative means to resolve interference. Such a flip-side procedure would allow even greater flexibility and potentially further diminish burdens on FCC staff. However, any such regulation must be structured so that LPFM station channel changes are *wholly voluntary* to prevent coercion that may arise when a financially struggling community-based LPFM is challenged by a larger organization with more litigation resources at its disposal.

15. In leveling the playing field in this way, the Commission should also allow *negotiated settlements* that include payments to LPFM licensees that agree to voluntary channel changes.

¹¹ “Addressing these matters can be time-consuming for Commission staff. . . .” *NPRM* at 2, para 3.