

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
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Termination of Certain Proceedings as Dormant) CG Docket No. 12-39
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To: The Commission

COMMENTS

The New Jersey Broadcasters Association (the “NJBA”), its members being substantially all of the radio and television broadcast stations licensed to New Jersey, hereby submits its comments to the Commission in response to the February 15, 2012 *Public Notice*, in which the Consumer & Governmental Affairs Bureau proposes to terminate certain proceedings before the Commission as dormant, and in particular the NJBA’s Petition RM-11099 entitled: “In the Matter of the Commissions’ Rules to protect New Jersey Listeners from FM Translator and Low Power FM 100 Watt Interference” (the “Petition”) dated May 27, 2004. (It should be noted that many of the within Comments are also applicable to the subject matter contained in the Comments we intend to file relative to the latest LPFM Fifth Report and Order and Third Order on Reconsideration adopted on March 19, 2012, and released on March 19, 2012, bearing MM Docket No. 99-25.)

1. The serious issue of interference has been a source of controversy and thoughtful concern for New Jersey broadcasters for decades. This is so because of the inequitable distribution of radio spectrum and power allocations given the Garden State. To be sure, New Jersey is a unique broadcast environment. With only one traditional network television affiliate

licensed to the least populated area of the state, local public service demands are being met almost exclusively by full power New Jersey radio stations. The New Jersey Broadcasters Association has had the above referenced Petition seeking relief from interference pending before the Commission since May of 2004. Although the Petition was filed almost eight years ago, the Association has yet to receive any response from the Commission. As demonstrably shown in our 2004 filing, many of our New Jersey stations have nearly half their audience residing outside their protected contours. Accordingly, special consideration should always be afforded New Jersey broadcasters in the zealous protection of these effective contours to insure adequate local news coverage and sufficient emergency communications capability to the audiences they serve.

2. Now, the FCC is proposing to dismiss our Petition, without ruling on its merits, on the basis of it being “dormant”. The reason why our petition is dormant is that the FCC, other than initially putting our filing out for comment, never acted on it over the ensuing 8 years.

3. New Jersey broadcasters, especially Class A radio broadcasters, have historically been short-changed on commercial full power FM’s, spectrum allocation, and signal contour protection. In our Petition, the NJBA advocates amendments to the Commission’s rules to remedy a severely inequitable allotment of full power commercial FM stations to the state of New Jersey, pursuant to Section 307(b) of the Communications Act, which requires the Commission to distribute “licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same,” and any other regulatory or equitable relief.

4. The NJBA has submitted evidence which scientifically examined comparative data from neighboring states to conclude that commercial FM licenses have been unfairly,

inefficiently, and inequitably distributed to New Jersey. We submit that this data, and our findings contained therein, have not been refuted to this day. And yet, the FCC has apparently ignored our fervent Petition for relief under the rules.

5. The Petition also traces the history of Commission policies that have brought the New Jersey FM broadcast environment to this critical juncture. Among other things, the allotment of a disproportionate number of higher power stations to neighboring New York and Pennsylvania has left the New Jersey landscape dominated by small Class A stations never designed to serve vast suburban areas that epitomizes modern New Jersey. Accordingly, many New Jersey stations are underpowered Class A stations or disadvantaged Class B stations inadequately protected from interference. Indeed, many New Jersey Class A and B stations are severely short-spaced. Most New Jersey stations are pushed literally to lands edge as they protect out of state stations in Pennsylvania and Delaware. Thus more than 50% of New Jersey FM stations cover only two-thirds or less of the area they would have covered had they been built as maximum facilities at the center - rather than the periphery-of populated areas. Eleven of these stations cover only one-third or less of what they would achieve as maximum class stations were most of their signals not wasted over the Atlantic Ocean.

6. The Petition examines comparative data from neighboring states concluding commercial FM licenses have been unfairly, inefficiently, and inequitably distributed to New Jersey. Large population centers of the state do not have even one local FM station. Take, for example, that eighteen of the 46 commercial band FM stations allocated to the state have transmitter sites in the Atlantic/Cape May region -the least populous area of the state. *Put another way, 40% of the state's FM stations are licensed to a market with only 4% of the state's population.* The remaining 28 stations cover a population of about 7.5 million, far out of line

with allocations in neighboring states. More disconcerting is the fact that some populous NJ counties, such as Bergen, with nearly a million residents, have no local FM stations at all.

7. The NJBA has heretofore reached a reasonable legislative compromise on the siting of LPFM stations in our state (which presently are limited to 100 watts at roughly 100 feet). But unlike LPFMs, translators are considered secondary service; supposedly subject to reductions in power or loss of operational authority should they cause interference to full power facilities. However, the burden of proof is on the aggrieved broadcaster, not the translator. And while the Commission has, on occasion, taken relatively quick action when presented with factual information involving interference claims, in most instances the process of having translator interference remediated by the FCC is tedious and time consuming, taking many months with an uncertain outcome. In the meanwhile, the broadcaster is confronted with smaller audiences and consequently less revenue to support local service.

8. The NJBA 2004 filing treated LPFM and translators in the same vein as both may create the same amount of interference to a full power commercial FM station for a given power, height and distance. And, while the Commission has given all commercial broadcasters added protection from current LPFMs in the form of a 20 km buffer (12 miles) on co and 1st adjacent channels, full power stations have no effective interference buffer from translators. Translators only have to protect the existing 60, 57 or 54 dbu contour of class A, B1, and Class B facilities respectively. It should also be noted that the NJBA has never taken an omnibus stance against translators in New Jersey. We are only concerned with translators that pose interference problems to existing New Jersey stations and then, in reality, only on co-channels, and 1st, and 2nd adjacent channels. We maintain that our instant proposal would only apply to translator

applications and/or CPs issued after 2004. All others would be grandfathered, assuming no interference is generated to existing stations.

9. The NJBA also proposes the prohibition of new translators in New Jersey with effective radiated power of less than 100 watts because they do not contribute to spectrum efficiency. For example, a translator operating at 10 watts has a service area of only 12.36 square miles, but with an interference contour ranging from 126.26 square miles with respect to Class A stations, to 244.69 square miles with respect to Class B stations. In other words, for a service area of a mere 12.36 square miles, a translator carves out an area of interference that is almost 2000% larger with respect to Class B stations. In New Jersey, this would result in the cannibalization of the already limited existing FM service. The same argument can be made regarding LPFM 10 watt stations. Accordingly, we agree with and support the Commission's proposal to eliminate the allocation of LP10s.

10. In assessing the need to protect New Jersey stations from additional interference, we asked the Commission to take into account that the FM listening audience no longer consists of static listeners, sitting at home, receiving signals from a fixed antenna. A mobile audience will not tolerate fluctuating signals as they drive into squalls of interference. Increased interference will result in the needless and potentially dangerous abandonment of FM by its audience, in favor of clear reception that may be offered from satellite, CDs and MP3s, or one of many music services now offered via Wi-Fi, cell phones, or in car through such services like Pandora, none of which have an obligation (or ability) to provide local news, weather, traffic, AMBER Alerts, and advanced warnings of hazardous weather or road conditions that NJ stations diligently and proudly provide.

11. We should also note the Commission allows non-profit organizations to feed programming material to translators by any of a number of means including satellite or internet with no commitment or obligation to provide local service to the community. For example, a California entity can own and operate translators authorized by the FCC in New Jersey, creating intolerable interference to a local station or stations in NJ denying NJ residents previously available local service. Meanwhile, because of height and/or power and/or geographic limitations, many NJ stations cannot even fully serve the NJ markets they are licensed to serve.

12. Despite these technical infirmities, most New Jersey stations reach and serve audiences far beyond their predicted coverage contours. Indeed, many New Jersey stations reasonably count on, serve, and rely upon, an audience that in some instances is larger than the audience inside their FCC “protected” contours. The influx of hundreds of applications for translator stations awaiting action at the Commission if granted will introduce intolerable levels of interference. This holds true even if the Commission dismisses many of the pending translator applications as a result of its current rule making(s) regarding LPFMs and translators. We believe once LPFM service has been accommodated in each market, the Commission will, in all probability, once again open a window for new translator applications which, without the protections requested herein, will bring us back full circle to the reason why the 2004 Petition was filed.

13. NJBA’s Petition presents an engineering study coupled with real world audience data that graphically illustrates how severely the interference invasion will encroach on New Jersey FM stations. In view of the paucity of FM stations in New Jersey, the added interference will strip FM stations from the dials of the New Jersey audience, without substituted coverage.

The reduction in audience to these stations could financially cripple them, severely reducing the precious local coverage offered by these New Jersey stations.

14. The NJBA originally proposed the Commission amend the rules to require FM translator stations to protect full power New Jersey licensed stations to the 44 dBu (50,50) contour (with maximum permitted facilities assumed for each station), along with a 20 dB desired to undesired (“D/U”) ratio for the second adjacent channel. There is considerable support for adoption of this standard.

15. The most compelling data are from actual listenership reports that demonstrate audience beyond the 44 dBu contour. These reports are supplemented and confirmed by our studies. Nevertheless, as proven in the crafting of the LPFM legislation, we are willing to work with the Commission to explore other possible solutions or standards that will protect the New Jersey listening audience from losing reception to the comparatively few stations allotted to and serving the residents of New Jersey while allowing translator operation where it will not interfere with existing broadcast operations.

16. In our 2004 filing, NJBA proposed the following amendments to the Commission’s rules: (1) amend the rules to require FM translator stations to provide protection to full power licensed New Jersey stations to the 44 dBu (50,50) FM curves (with maximum permitted facilities assumed for each station), (2) adopt the use of the 20 dB desired to undesired (“D/U”) ratio for the second adjacent channel to stations in the state, (3) prohibit the grant of future licenses to translator or other stations in New Jersey with effective radiated power of less than 100 watts.

17. New Jersey FM broadcasting is at a crossroads. The unique facts contained in the NJBA Petition commands exceptional consideration. Our unique geography alone compels

special consideration for any legislative or regulatory rulemaking, especially given our coastal stations' bifurcation of useable signal disbursement.

20. Accordingly, we respectfully request the FCC to rule on the Petition and grant the relief set forth therein rather than simply dismiss it as is currently proposed. At the very least, the sincere effort, considerable expense, and vast amount of time that has been expended by the NJBA and other stakeholders in this proceeding demand a substantive response to the New Jersey Broadcasters Association's remaining concerns. We passionately share the Commission's conviction that broadcasting is a public trust and a public service. New Jersey needs the protections requested in our Petition, and to dismiss it out-of-hand serves neither the public nor their trust. In the alternative, we would be delighted to explore and discuss an amicable resolution to this matter in compromise, rather than our re-visiting the matter with a new filing. As always, we would appreciate the Commission's response to this matter in earnest.

Respectfully submitted,

NEW JERSEY BROADCASTERS ASSOCIATION

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