

both translators and FM stations gives it the perspective to evaluate the Commission's proposals for the potential of interference from LPFM stations. As a noncommercial broadcaster, many of EMF's full-power stations have facilities that are less than the maximum facilities in any given market it serves. Many have less than optimal service in their markets. However, due to the programming provided by the company, its stations have loyal listeners far beyond their stations' protected contours. These listeners are important to EMF and the many other niche broadcasters who find themselves in positions similar to EMF – *i.e.*, not having stations with big signals in the center of the markets, but still wanting to reach as much of their intended audience as possible.

In the *Fourth NPRM*, the Commission set out its interpretation of the steps to be taken to protect full-power FM stations from interference from LPFM stations that no longer have limitations on their locations based on third-adjacent channel mileage separations. *Fourth NPRM*, § IV.2. The Commission has also been given the authority to allow for waivers of the mileage separation requirements to second-adjacent channel full-power FM stations. In connection with such second-adjacent channel waivers, the Commission has concluded its prior interim policy of balancing interference that might be caused by such a waiver against the benefits of the waiver can no longer be justified. Instead, the LCRA imposes a stricter standard – requiring that an LPFM applicant seeking a waiver establish that “no actual interference will occur.” *Id.* at ¶ 18. EMF believes the Commission's statutory interpretation is correct, and that there are many policy reasons underlying that interpretation.

As the Commission correctly notes, the LCRA demands a very strict price to be paid by any LPFM operating with a second-adjacent channel waiver who in fact causes interference to the regularly used signal of a full-power station, even outside of the protected contour of that full-power station. Upon receiving notice of a complaint, the LPFM station must immediately

cease operations unless and until it can resolve that interference or prove that it is not the cause of the interference.³ In essence, this requirement poses a death sentence on any LPFM that locates its transmitter at the wrong location, too close to a full-power station. That obligation, to cease operations in the event of an interference complaint, mandates that the Commission carefully evaluate the circumstances in which second-adjacent channel waivers are granted.

In the *Fourth NPRM*, the Commission asks if the same kinds of interference showings permitted to be made by FM translator applicants to justify second-adjacent channel interference waivers should be permitted to LPFM applicants, including justifications such as the ability to demonstrate that there is no population within the area in which interference would be predicted using standard interference-prediction methodologies. *Fourth NPRM*, ¶ 18. EMF urges the Commission to go very slowly in expanding the use of second-adjacent channel waivers so broadly, as the LPFM service is dramatically different than the FM translator service.

As an experienced operator of FM translators, EMF is very knowledgeable in evaluating where translators can be located on second-adjacent channels in relation to full-power stations, while still avoiding destructive interference. In determining the potential location for translators, particularly those using alternate methods of demonstrating that no interference will occur such as those mentioned in the *Fourth NPRM*, EMF carefully considers the locations for translators, using past experience and significant engineering study to determine if a proposed location is in fact likely to create any interference to a full-power station in areas where that station is likely to be heard. Such evaluation goes beyond simply looking at the predicted overlap of protected and interfering contours. It also involves an analysis of the actual terrain in a particular area, as well

³ See Pub. L. No. 111-371 § 3(b)(2)(B).

as commuting patterns, station formats and other factors that are likely to determine where a full-power station may have listeners beyond its protected contours.

Despite almost 20 years of experience in the location of translators, and an experienced in-house engineering staff with access to significant computerized interference-prediction software, EMF runs into interference complaints in connection with a significant number of applications. It estimates that it is forced to cease operations or take other engineering corrective actions, based on complaints of full-power listeners beyond the protected contour of full-power stations, in connection with as many as 5% of its translators using such alternate prediction methods.

A translator is, by definition, an adjunct to another service – rebroadcasting the main station with which it is associated. Thus, when a translator operator like EMF is forced to cease operations because of interference considerations, it is a concern, but it is but a small part of the business of the company. The great bulk of the contributions that support the noncommercial mission of EMF will continue to come into the company through listeners to its full-power stations and other translators. If one translator is forced to cease operations permanently, the equipment often can be redirected to another translator project in some other location. Thus, while there are significant costs to locating a translator at the wrong spot which a noncommercial operator like EMF does not look forward to forfeiting, in the overall view of its entire operations, those costs can be absorbed.

An LPFM station, on the other hand, is not part of a larger operation, but is instead a stand-alone project. If a local non-profit organization funds the construction of an LPFM station and that station is forced to cease operations due to an interference complaint, the entire organi-

zation's investment may well be gone, with no way of recouping that investment. Where it is the sole activity of the nonprofit, it may well devastate the entire organization.

As LPFM stations are intended to be used by those new to the broadcast industry, the fear of such interference disputes arising increases. LPFM applicants are not likely to have sophisticated engineering staffs with access to computerized interference-modeling software able to carefully assess when interference to the regularly-used signal of a full-power station might be created. Instead, they are far more likely to be using simple "channel finder" tools that provide a minimum of analysis of the true potential for interference. And the applicants themselves are less likely to understand the nuances of FCC practice and procedure, and the potential for having to cease operations even after they are granted authority to construct a station if there is an interference complaint. If the Commission uses second-adjacent channel waivers in other than the most justified circumstance, where it is clearly and convincingly shown that no interference will likely be caused, EMF fears that broadcasters and the Commission will be deluged with complaints that arise from disappointed LPFM supporters whose station faces operational termination.

For these reasons, EMF advocates a "go-slow" approach to second-adjacent channel waiver requests for LPFM. Initially, such waivers should be granted only in unique circumstances where the applicant can clearly demonstrate that, due to intervening terrain or other similar factors, there is little or no appreciable potential for interference to any nearby FM station. Moreover, an LPFM applicant seeking such a waiver should be required to serve that request on the licensee of the full-power station to which it would be short-spaced. By allowing the full-power station to evaluate the application, and raise objections where there will be likely

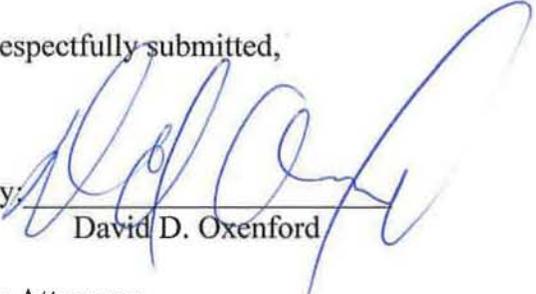
interference, potentially catastrophic situations where a fully constructed LPFM station must cease operations can be minimized.

After more experience by the LPFM community and the Commission, these standards can be re-evaluated to see if more flexibility should be permitted. But for now, the FCC should go slow on LPFM second-adjacent channel waivers to protect small nonprofit broadcasters from potentially forfeiting the contributions of its supporters though the construction of a station that causes interference to a full-power FM operation.

EMF respectfully offers these comments, and requests that the Commission move forward cautiously in connection with second-adjacent channel waivers for LPFM stations.

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