

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

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

NOTICE OF PROPOSED RULEMAKING

Adopted: May 10, 2018

Released: May 10, 2018

Comment Date: [30 days after date of publication in the Federal Register]
Reply Comment Date: [60 days after date of publication in the Federal Register]

By the Commission: Chairman Pai and Commissioners O'Rielly, and Carr issuing separate statements;
Commissioner Clyburn not participating

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM), we propose to streamline the rules relating to interference caused by FM translators and expedite the translator complaint resolution process, based in part upon the petitions for rulemaking filed by the National Association of Broadcasters (NAB) (NAB Petition) and Aztec Capital Partners, Inc. (Aztec) (Aztec Petition). Specifically, we seek comment on: (1) allowing FM translators to resolve interference issues by changing channels to any available frequency using a minor modification application; (2) requiring a minimum number of listener complaints to be submitted with any FM translator interference claim; (3) standardizing the information that must be included within such a listener complaint; (4) streamlining and expediting interference complaint resolution procedures; (5) establishing an outer contour limit for the affected station beyond which listener complaints would not be considered actionable; and (6) modifying the scope of interference complaints permitted to be filed by affected stations at the application stage. These proposals could, if implemented, limit or avoid protracted and contentious interference resolution disputes, provide translator licensees both additional flexibility to remediate interference and additional investment certainty, and allow earlier and expedited resolution of interference complaints by affected stations.

II. BACKGROUND

2. FM translators are radio stations that simultaneously rebroadcast the signal of an AM or FM primary station on a different frequency. Translators were first authorized in 1970 as a means of

1 Aztec filed the Aztec Petition on April 7, 2017. On April 18, 2017, the Aztec Petition was placed on public notice (RM-11786). Consumer and Governmental Affairs Bureau Reference Information Center Petition for Rulemaking Filed, Public Notice, Report No. 3074 (CGB Apr. 18, 2017). NAB filed the NAB Petition on April 20, 2017. On April 27, 2017, the NAB Petition was placed on public notice (RM-11787). Consumer and Governmental Affairs Bureau Reference Information Center Petition for Rulemaking Filed, Public Notice, Report No. 3076 (CGB Apr. 27, 2017). Lists of Commenters for both dockets, as of February 28, 2018, are included at Appendix C. These comments are incorporated into the record of this docket.

2 In contrast, FM booster stations operate on the same frequency as their primary station. See generally, Federal Communications Commission, FM Translators and Boosters, https://www.fcc.gov/media/radio/fm-translators-and-boosters (last visited Jan. 7, 2018). These proposals also apply to booster stations, although we note that, as booster stations are limited in operation to the same channel as their primary station, the proposal to allow non-adjacent frequency changes by minor change application will not be available to booster stations.

providing “supplementary service to areas in which direct reception of [full service] stations is unsatisfactory due to distance or intervening terrain barriers.”<sup>3</sup> Under the rules, FM translators must not cause either predicted or actual interference to any authorized broadcast station.<sup>4</sup> The FM translator rules were substantially revised in 1990 to strengthen protections to full service stations.<sup>5</sup> Because of their potential negative impact on full service FM stations, translators are authorized on a secondary basis only and governed by rules restricting their service, ownership, financial support, and program origination.<sup>6</sup> In particular, as a secondary service, translators have no protection against subsequently authorized full service FM facilities.<sup>7</sup> This secondary status represents a balance between expanding local listener options and the “technical degradation to the overall broadcasting system that could result from a proliferation of translator stations.”<sup>8</sup>

3. The existing interference resolution process consists of Commission staff mediating interference disputes based upon as little as one listener complaint of interference. Upon the receipt of a complaint of actual interference, Media Bureau staff will send an interference remediation letter to the FM translator licensee requesting that the licensee eliminate any interference caused by the translator, resolve all complaints, and submit a detailed report regarding its resolution of the complaints. However, as mentioned by NAB, the interference resolution process is often delayed or sidetracked by disputes over the validity of the claimed interference, the objectivity of complaining listeners, or procrastination by one of the parties.<sup>9</sup> Addressing these matters can be time-consuming for Commission staff and detrimental to one or both parties. Moreover, according to NAB, seemingly similar cases can vary in the time, effort, and expense needed to resolve them, “at times leading to a perception of an *ad hoc* process with inconsistent outcomes.”<sup>10</sup> Aztec likewise asserts that the current procedure for resolving interference complaints “is not a model of administrative procedural due process” and a “great burden on local broadcasters,” who may have to defend themselves from being removed from the air due to “questionable complainants.”<sup>11</sup> Finally, Aztec alleges that “distant” full service stations increasingly use the current interference complaint procedure to shut down “local” fill-in translators with minimal evidentiary support.<sup>12</sup>

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<sup>3</sup> *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7232, para. 143 (1990) (*1990 Translator Order*); *FM Translator and Booster Stations*, Report and Order, 20 RR.2d 1538 (1970) (*1970 Translator Order*) (collectively, *Translator Orders*).

<sup>4</sup> See 47 CFR §§ 74.1203(a)–(d); 74.1204(f). “Any broadcast station,” for Section 74.1204(f) purposes, includes other translators.

<sup>5</sup> *1990 Translator Order*, 5 FCC Rcd at 7212 et seq.

<sup>6</sup> *1990 Translator Order*, 5 FCC Rcd at 7212, para. 2; see also 47 CFR § 74.1203 et seq.

<sup>7</sup> See, e.g., *1990 Translator Order*, 5 FCC Rcd at 7230, para. 130 (“The absence of such entitlement [protection from, or ability to cause interference to, a subsequently authorized full service FM station] is a fundamental characteristic of the secondary nature of translator service.”).

<sup>8</sup> *1990 Translator Order*, 5 FCC Rcd at 7219, para. 48.

<sup>9</sup> NAB Petition at 8.

<sup>10</sup> NAB Petition at 8.

<sup>11</sup> Aztec Petition at 3.

<sup>12</sup> Aztec Petition at 2. An “other area” translator’s 60 dB $\mu$  signal contour extends beyond the protected contour of the primary station. By contrast, a “fill-in” translator’s 60 dB $\mu$  contour is located entirely within the protected service contour of the primary station. See 47 CFR § 74.1201(h),(i). AM stations may use FM translators solely on a “fill-in” basis.

4. Overall, the number of licensed FM translators has grown from approximately 1,850 in 1990 to approximately 7,575 in 2017.<sup>13</sup> There are more than 700 new translator construction permits authorized and 1100 applications for new translator construction permits pending. With the advent of terrestrial digital radio services, broadcasters have begun to use FM translators to rebroadcast analog versions of digital subchannels.<sup>14</sup> More recently, as part of the AM Revitalization (AMR) proceeding, the Commission has provided extensive opportunities for AM stations to modify or acquire new FM translators.<sup>15</sup> As NAB confirms, this substantial growth in the translator service, and the economic importance of translators for AM station viability, has led to increased industry interest in clarifying and streamlining the translator interference rules to create greater investment certainty and avoid protracted and expensive interference resolution disputes.<sup>16</sup> With this background in mind, we conclude that it would be timely to consider updating our translator interference rules and policies, as discussed below.

5. **Predicted interference.** Under the current translator rules, the Commission distinguishes between predicted interference, which is determined at the time a translator construction permit application is filed, and actual interference, which is determined after a translator station begins operation. Predicted interference is an application processing standard.<sup>17</sup> An application for an FM translator station will not be accepted for filing if the proposed operation would result in the overlap of the translator's interfering contour and the protected contour of any other broadcast station, as set out in the contour overlap tables of Section 74.1204(a).<sup>18</sup> However, under Section 74.1204(f), even an application that complies with the contour overlap requirements will not be granted if an objector provides "convincing evidence"<sup>19</sup> that the predicted 60 dB $\mu$  contour of the translator would overlap a "populated area already receiving a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station" and "grant of the authorization will result in interference to the reception of such signal."<sup>20</sup> Thus, Section 74.1204(f) prohibits any interference with another station's signal within the *translator's* predicted 60 dB $\mu$  contour but potentially outside the other station's protected contour.<sup>21</sup>

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<sup>13</sup> See Federal Communications Commission's Electronic Document Management System (EDOCS), Broadcast Station Totals, [https://apps.fcc.gov/edocs\\_public/Query.do?docTitleDesc=Broadcast+Station+Totals&parm=all](https://apps.fcc.gov/edocs_public/Query.do?docTitleDesc=Broadcast+Station+Totals&parm=all) (last visited Dec. 27, 2017).

<sup>14</sup> See NAB Petition at 2; Aztec Petition at 2-3; see generally, *Coe W. Ramsey, Esq.*, Letter, DA-17-1147 (MB rel. Nov. 29, 2017); see generally, *Digital Audio Broadcasting Systems*, First Report and Order, 17 FCC Rcd 19990 (2002).

<sup>15</sup> See *Filing Instructions for Second Cross-Service FM Translator Auction Filing Window for AM Broadcasters (Auction 100) to be Open January 25-January 31, 2018*, Public Notice, 32 FCC Rcd 10173 (MB/WTB Dec. 4, 2017); *Media Bureau Announces FM Translator Filing Window for Long-Form Applications*, Public Notice, 32 FCC Rcd 9248 (MB Nov. 1, 2017) (announcing filing window for new FM translator construction permit applications); *Filing Instructions for Cross-Service FM Translator Auction Filing Window for AM Broadcasters (Auction 99) to be Open July 26-August 2, 2017*, Public Notice, 32 FCC Rcd 4663 (MB/WTB 2017); *Media Bureau Announces Filing Dates and Procedures for AM Station Filing Window for FM Translator Modifications and Availability of FM Translator Technical Tools*, Public Notice, 30 FCC Rcd 14690 (MB 2015); see generally, *Revitalization of the AM Radio Service*, First Report and Order, 30 FCC Rcd 12145, 12148 *et seq.* (2015) (AM Revitalization First Report and Order).

<sup>16</sup> NAB Petition at 1-3.

<sup>17</sup> See, e.g., *1990 Translator Order*, 5 FCC Rcd at 7228, para. 116.

<sup>18</sup> 47 CFR § 74.1204(a).

<sup>19</sup> *1990 Translator Order*, 5 FCC Rcd at 7229, para. 128.

<sup>20</sup> 47 CFR § 74.1204(f) (Section 74.1204(f)). Another exception to the contour overlap methodology permits a translator applicant to show that interference will *not* occur despite contour overlap (due to factors such as terrain,

(continued....)

6. To provide “convincing evidence” under Section 74.1204(f) that grant of the translator construction permit “will result in interference to the reception” of an existing co-channel or adjacent channel broadcast station, an objector—i.e., a station claiming interference—currently must provide, at a minimum: (1) the name and specific address of each claimed listener; (2) some demonstration that the address of each purported listener falls within the 60 dB $\mu$  contour of the proposed translator station (with the best method being to plot specific addresses on a map displaying the translator station’s 60 dB $\mu$  contour); (3) some evidence, such as a declaration from each of the claimed listeners, that the person, in fact, listens to the full-service station at the specified location; and (4) evidence that grant of the authorization will result in interference to the reception of the “desired” station at that location.<sup>22</sup> Thus, the Commission has rejected interference complaints that fail to include identifiable and verifiable information for each complainant (name, address, location(s) at which the interference occurs, and a statement that the complainant is a regular listener of the affected station).<sup>23</sup> As with actual interference complaints (discussed in detail below), complaints must be from “bona fide” listeners who are unconnected with the affected station; however, no certification to that effect is required to be included in the complaint itself.<sup>24</sup> Interference to the reception of a “desired” station at a particular listener location is typically demonstrated by showing that a specific undesired/desired (U/D) signal strength ratio is exceeded at that location.<sup>25</sup>

7. **Actual interference.** Section 74.1203(a) prohibits “actual interference to . . . [t]he direct reception by the public of the off-the-air signals of any authorized broadcast station” at any time after the translator commences operation.<sup>26</sup> When it modified the translator rules in 1990, the Commission declined to set forth “explicit standards for determining whether actual interference exists” under Section 74.1203(a).<sup>27</sup> The Commission has since interpreted this rule broadly, placing no geographic or temporal limitation on complaints and accepting listener complaints concerning fixed or mobile receivers.<sup>28</sup> “Direct reception by the public,” however, has been interpreted to mean that actionable complaints must be made by “bona fide” listeners.<sup>29</sup> Although listeners are permitted to submit interference complaints directly to the Commission, it is much more common for the affected station to submit a claim of actual interference to the Commission based on complaints obtained from its listeners. As with Section

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lack of population, etc.). 47 CFR § 74.1204(d). At the time these exceptions were created, the Commission anticipated that they would be used “very rarely.” *1990 Translator Order*, 5 FCC Rcd at 7229, para. 128.

<sup>21</sup> Throughout this *NPRM*, “protected contour” means the contour protected by the overlap prohibition of 47 CFR § 74.1204(a).

<sup>22</sup> See *Association for Community Education, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12687 (2004) (*Community Education*).

<sup>23</sup> See, e.g., *Richard J. Bodorff, Esq.*, Letter, 27 FCC Rcd 4870, 4873 (MB 2012) (*Red Wolf*) (rejecting a Section 74.1204(f) objection based on event coverage, audience rating, and telephone calls received from listeners); *Community Education*, 19 FCC Rcd at 12686 (rejecting a Section 74.1204(f) objection based on full-service station’s statement that it had subscribers within a ZIP Code partially encompassed by the proposed translator station’s 60 dB $\mu$  contour).

<sup>24</sup> See, e.g., *Apple 107.1, Inc.*, Letter, 28 FCC Rcd 15722, 15728 n.55 (MB 2013); *Red Wolf*, 27 FCC Rcd at 4873.

<sup>25</sup> *Community Education*, 19 FCC Rcd at 12687; see also, e.g., *Frank Jazzo, Esq.*, Letter, 32 FCC Rcd 5692, 5696 (MB 2017).

<sup>26</sup> 47 CFR § 74.1203(a)(3) (Section 74.1203(a)).

<sup>27</sup> *1990 Translator Order*, 5 FCC Rcd at 7230, para 131.

<sup>28</sup> See *Community Education*, 19 FCC Rcd at 12688, para. 16.

<sup>29</sup> *Community Education*, 19 FCC Rcd at 12688, para. 16 (“[O]nly a complaint from a *bona fide* listener of the desired station can force a translator station off the air.”).

74.1204(f), the staff has routinely required a listener complaint to include the listener's name, address, location(s) at which FM translator interference occurs, and a statement that the complainant is, in fact, a listener of the affected station.<sup>30</sup> Furthermore, although staff does not currently require a certification to this effect in the initial complaint, listener complainants must be disinterested, i.e., have no legal, economic, or familial stake in the outcome of the proceeding.<sup>31</sup> Thus, the Commission has declined to credit claims of interference or lack of interference from station personnel involved in an interference dispute.<sup>32</sup> Moreover, as is the case with other types of interference complaints, the staff has considered only those complaints of translator interference where the complaining listener cooperates in efforts to identify the source of interference and accepts reasonable corrective measures.<sup>33</sup> "On-off" tests may be required on a case-by-case basis to determine whether the translator is the source of the alleged interference.<sup>34</sup> Section 74.1203(a) complaints are often marked by prolonged, contentious proceedings centered around allegations that complainants were not "bona fide," that interference locations were not properly identified, that complainants did not cooperate with remediation attempts, etc.<sup>35</sup> Likewise, the current interference resolution process may promote negative interactions between translator operators and listener complainants. For example, the current process may involve repeated entering of the relevant house or vehicle by representatives of the translator station to adjust or test receiver equipment. There may also be disputes over the reliability of receiver equipment and/or excessively long and burdensome questionnaires for listeners regarding the alleged interference. Disagreements over the reliability and interpretation of engineering data are also not uncommon.<sup>36</sup>

8. If a party submits a valid complaint or complaints of actual interference, the translator licensee must either eliminate the interference through the use of "suitable techniques" or suspend operations.<sup>37</sup> Translator licensees use a variety of techniques to address interference without going off the air, including reducing power, changing channels, modifying the antenna's height or orientation, moving to a new transmitter site, or using a directional antenna.<sup>38</sup> Translator licensees may also attempt to resolve individual interference complaints by replacing, repairing, or adjusting the listener's home or vehicle receiver. If a translator fails to eliminate the interference, however, the Commission will suspend its authority to operate.<sup>39</sup>

9. Of the remedial measures listed above, changing channels is often the preferred solution,

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<sup>30</sup> See *Creation of an LPFM Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15431-32 para. 83 (2012) (*LPFM Sixth Order*).

<sup>31</sup> See *Community Education*, 19 FCC Rcd at 12688, n.37; *Creation of a Low Power Radio Service*, Fifth Report and Order, 27 FCC Rcd 15402, 15441, para. 109 (2012).

<sup>32</sup> *Community Education*, 19 FCC Rcd at 12688; *Living Way Ministries, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 15070, 15077 n.46 (2008).

<sup>33</sup> See *Radio Power, Inc.*, 26 FCC Rcd 14385, 14385-86 (MB 2011).

<sup>34</sup> See, e.g., *Apple 107.1, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 15722, 15723, para. 4 (MB 2013).

<sup>35</sup> See, e.g., *Marissa G. Repp, Esq.*, Letter, 32 FCC Rcd 7538 (MB 2017); *Arohi Media LLC*, Letter, Ref. No. 1800B3-PPD (MB May 9, 2017) (ordering that W252DK, Durham, NC, cease operation under 47 CFR § 74.1203(e)) (*Arohi Media*).

<sup>36</sup> See, e.g., *Arohi Media*.

<sup>37</sup> 47 CFR § 74.1203(b) (Section 74.1203(b)). When it adopted this provision, the Commission expressly rejected its earlier "significant number of complaints" standard. *1990 Translator Order*, 5 FCC Rcd at 7230, para. 131.

<sup>38</sup> NAB Petition at 5.

<sup>39</sup> See, e.g., *Marissa G. Repp, Esq.*, Letter, 32 FCC Rcd 7538 (MB 2017).

because it allows translators to quickly resolve interference at minimal cost and with little or any reduction in service area.<sup>40</sup> However, this option is currently limited by Section 74.1233(a)(1), which restricts translator modifications that can be carried out using a minor change application to: (1) channel changes to first, second, or third adjacent channels, or intermediate frequency (IF) channels; and (2) changes in antenna location where the translator station would continue to provide 60 dB $\mu$  service to some portion of its previously authorized 60 dB $\mu$  service area.<sup>41</sup> Changes that do not qualify as minor may only be submitted during a filing window. Although the FM translator service does not have a “displacement” rule allowing a secondary service licensee to make non-adjacent channel changes by application to avoid interference, as do some other broadcast services,<sup>42</sup> Bureau staff has considered requests for waiver of Section 74.1233(a)(1) under its so-called “displacement policy” when a full-power station commences service with a new or modified facility and interference is predicted to or from an existing translator.<sup>43</sup>

### III. DISCUSSION

10. We conclude that NAB and Aztec have provided in their Petitions sufficient reasons supporting the initiation of a rulemaking proceeding, and deem it desirable to issue notice and receive public comment on the issues outlined herein.<sup>44</sup> We conclude that it is time to update the interference complaint process. We are cognizant of the expense, delay, and uncertainty oftentimes involved under the current procedures and seek comment on ways to improve the process. Accordingly, we seek comment on certain of NAB’s and Aztec’s proposals, as well as possible alternative approaches to clarify and streamline our complaint resolution procedures, as follows.

#### A. Channel Changes

11. We propose to modify Section 74.1233(a)(1) of the Rules to define an FM translator’s change to any available FM channel as a minor change, upon a showing of interference to or from any other broadcast station. As mentioned above, under the current rules, if an existing translator causes actual interference as prohibited by Section 74.1203(a), it is limited to remedial channel changes using a minor change application to first, second, or third adjacent, or IF channels.<sup>45</sup> A change to any other channel is considered a major change, which currently may only be submitted during a filing window. According to NAB, adjacent and IF channels are unavailable in many markets, or would be ineffective in eliminating the interference; thus, translator licensees may be compelled to use “costlier, less efficient remedies that result in reduced service and listenership.”<sup>46</sup> Accordingly, NAB suggests that the Commission modify Section 74.1233 to allow FM translators that cause or receive actual interference to change frequency to any otherwise acceptable FM channel as a minor change. NAB notes that its

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<sup>40</sup> NAB Petition at 5.

<sup>41</sup> 47 CFR § 74.1233(a)(1).

<sup>42</sup> See, e.g., 47 CFR § 74.787(a)(4) (authorizing channel changes using a modification application for low power television stations that are “causing or receiving interference”); 47 CFR § 73.870(a)(1), (e) (authorizing channel changes to any frequency using a modification application for LPFM stations “upon a technical showing of reduced interference”).

<sup>43</sup> See, e.g., *Wilks License Company-Columbus LLC*, Letter, File No. BPFT-20100318AAF, 1800B3-RG (MB Oct. 27, 2010) (waiving Section 74.1233 to allow a translator receiving interference to move to a non-adjacent frequency where no rule-compliant frequency was available); see also *File Nos.* BPFT-20130709AAF; BPFT-20090817ACF; BMPFT-20090519ABU (granting uncontested modification applications that include requests for waiver of Section 74.1233(a)(1) on “displacement” grounds).

<sup>44</sup> 47 CFR § 1.407.

<sup>45</sup> 47 CFR § 74.1233(a)(1) (Section 74.1233(a)(1)).

<sup>46</sup> NAB Petition at 3.

proposal is limited to the channel change provision of Section 74.1233(a)(1) and does not propose any change to other applicable definitions or allocation requirements, including the requirement that a minor change applicant must provide service to some portion of its existing service area.<sup>47</sup> According to NAB, “[t]his additional flexibility will enable more translator licensees to efficiently cure interference by simply changing channels.”<sup>48</sup>

12. This proposed rule change, NAB claims, would be particularly valuable in less populous markets, where the “FM band is more likely to have open frequencies, and where translators may be the only local broadcast radio services.”<sup>49</sup> Moreover, NAB argues, the change would be a “logical extension” of the Commission’s current waiver policy for displaced FM translators (*see supra*, para. 9) and would be consistent with similar channel change policies governing displaced low power FM stations,<sup>50</sup> Class D NCE FM stations,<sup>51</sup> and TV translators,<sup>52</sup> and the exemption from the minor change rule for translator modification applications involving channel changes established as part of the AM Revitalization initiative.<sup>53</sup> NAB concludes that its channel change proposal will provide more certainty to translator licensees and increase the reliability of radio service provided via translators for listeners.<sup>54</sup> This proposal was almost universally supported by commenters.<sup>55</sup>

13. We tentatively agree, and anticipate that such flexibility would facilitate interference resolution, avoid time- and resource-consuming conflicts, and, in some cases, prevent translator stations from being forced to suspend operations. We seek comment on this proposal, and on whether to impose any minimum technical requirements on such showings, e.g., an engineering statement.<sup>56</sup>

14. We propose to limit this flexibility to modification applications seeking channels within the same FM band (i.e., the reserved or non-reserved FM bands). Specifically, we propose to modify

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<sup>47</sup> *See, e.g.*, 47 CFR § 74.1233(a)(1).

<sup>48</sup> NAB Petition at ii.

<sup>49</sup> NAB Petition at 6.

<sup>50</sup> 47 CFR § 73.870(a)(1), (e) (allowing an LPFM licensee to seek a channel change to any frequency using a minor change application “upon a technical showing of reduced interference”).

<sup>51</sup> 47 CFR § 73.512(d) (allowing a Class D NCE licensee to seek a channel change using a minor change application if it would cause “interference to a TV or commercial FM broadcast station after that Class D (secondary) station is authorized”).

<sup>52</sup> 47 CFR § 74.787(a)(4) (“A digital low power television or television translator station which is causing or receiving interference or is predicted to cause or receive interference to or from an authorized TV broadcast station, DTV station or allotment or other protected station or service, may at any time file a displacement relief application for change in channel . . .”).

<sup>53</sup> *AM Revitalization First Report and Order*, 30 FCC Rcd at 12150-51 (permitting AM applicants for FM translators in one of the 2016 modification windows to “specify any rule-compliant non-reserved band FM channel, as a minor modification application”); *see also Media Bureau Initiates AM Revitalization Outreach Efforts; Modification Window Procedures and Requirements Announced*, Public Notice, 30 FCC Rcd 11601, 11602 (2015).

<sup>54</sup> NAB Petition at 8.

<sup>55</sup> *See, e.g.*, Radio Power Comments at 3; National Translator Association (NTA) Comments at 2; Alpha Media, et al Comments at 2; REC Networks Comments at 2; Wilkins Comments at 2; Hubbard Comments at 1-2; Gabrielle Comments at 2-4.

<sup>56</sup> *See* 47 CFR § 73.870(a)(1) (permitting an LPFM station modification to any frequency “upon a technical showing of reduced interference”). As our goal in permitting such channel changes is to provide translators with maximum flexibility to continue operations while protecting other broadcast stations from interference, we do not propose that translator applicants must demonstrate that no adjacent or IF-spaced channels are available as a prerequisite to applying for a non-adjacent, non-IF-spaced channel as a minor change, as NAB suggests. NAB Petition at 6.

Section 74.1233(a)(1) to define any channel change for a translator from a non-reserved band frequency to a reserved band frequency, or vice versa, as a major change. Currently, this prohibition is limited to unbuilt stations.<sup>57</sup> With the increased channel change activity that we anticipate will be generated by our proposal herein, as well as the overall growth of the FM translator service, we believe that this measure is necessary to preserve the integrity of our filing window system. The filing window process is critical to provide equal opportunity to frequencies for translator applicants across the country.<sup>58</sup> “Band-hopping” (that is, moving from the reserved FM band to the non-reserved FM band or from the non-reserved FM band to the reserved FM band) circumvents the need to file in an appropriate window and potentially precludes the use of the relevant frequencies in future FM translator auctions.<sup>59</sup> We seek comment on this proposal.

### **B. Minimum Number of Listener Complaints**

15. We also propose to require a minimum number of listener complaints to be submitted in support of any claim of translator interference. NAB suggests six listener complaints as a “reasonable starting point,” based on consultation with various industry stakeholders.<sup>60</sup> This measure, NAB claims, would help avoid disputes over whether a claim supported by only one or two listeners has been adequately substantiated.<sup>61</sup> NAB’s proposal is apparently intended to apply in both the Section 74.1204(f) (predicted interference) and Section 74.1203(a)(3) (actual interference) contexts. A number of commenters suggested a higher required minimum number of listener complaints, such as ten, or a variable system based on the size of the market or population affected.<sup>62</sup>

16. We seek comment on whether six complaints is a reasonable threshold of listener complaints. We note that in the context of a digital FM signal causing interference to an analog station, a minimum of six listener complaints is required.<sup>63</sup> Should we vary this figure based on the population of the area affected, the total population served by the complaining station, or any other potential denominator, or would a single number work in most situations? Would it be administratively feasible to vary the figure in this way? Should we apply this minimum complaint requirement in both predicted and actual interference contexts? If so, should the same minimum number apply to each rule section? We propose to apply this requirement to both translators and boosters and seek comment on this proposal.

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<sup>57</sup> 47 CFR § 74.1233(a)(1). The Commission adopted this provision in response to its experience with parties filing an application for a new station in a non-reserved (commercial) band window and then, before constructing or operating, filing a modification application for a reserved (noncommercial educational) band channel.

<sup>58</sup> *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, 26 FCC Rcd 2556, 2579, para. 42 (2011) (*Rural Radio Second Report and Order*). We also seek to avoid the inconsistent result, under the existing rule, that band change applications arising from Section 74.1204(f) objections could be prohibited as “unbuilt,” while band change applications filed by operating translator stations in response to actual interference complaints under Section 74.1203(a)(3) would be permitted.

<sup>59</sup> *Rural Radio Second Report and Order*, 26 FCC Rcd at 2579, para. 42.

<sup>60</sup> NAB Petition at 9-10.

<sup>61</sup> NAB Petition at 9.

<sup>62</sup> See, e.g., NTA Comments at 3 (advocating minimum number of 4-8 listener complaints based on total number of listeners within the translator’s protected contour); Radio Power at 3 (advocating minimum number of 1/10<sup>th</sup> of 1 percent of complaining station’s overall audience); Wilkins at 2 (advocating minimum number of ten listener complaints); Emerald Wave at 2 (advocating minimum number of ten listener complaints); *but see* Pueblo Comments at 10 (advocating minimum number of three listener complaints).

<sup>63</sup> *Digital Audio Broadcasting Systems and their Impact on the Terrestrial Radio Broadcast Service*, Order, 25 FCC Rcd 1182, 1193, para. 28 (2010) (“in order to be considered by the Bureau, the complaint must contain at least six reports of ongoing (rather than transitory) objectionable interference.”).

Are there reasons to distinguish between translator and booster stations in this context? Is there a need to establish a maximum time period within which the required number of complaints must be obtained by the affected station and/or received by the Commission? Although most interference claims are submitted by the affected station, we also seek comment on appropriate procedures for handling complaints received directly from listeners. Should the Commission forward such complaints to the affected station licensee? We tentatively conclude that six represents a reasonable minimum of listener complaints that will address the concern that interference complaints may be inadequately substantiated without imposing too heavy an evidentiary burden on the complaining station. Therefore, we propose to amend Sections 74.1204(f) and 74.1203(a)(3) to state that interference will be considered to occur whenever reception of a regularly used signal by six or more listeners, at separate locations using separate receivers, is impaired or is predicted to be impaired by the signals radiated by the FM translator station.<sup>64</sup> We seek comment on this proposal.

17. Although we propose a minimum number of listener complaints, we tentatively conclude that we will not adopt NAB's proposal that the Commission require a showing of interference at a sufficient number of locations within the affected area to demonstrate "a real and consistent interference problem."<sup>65</sup> As NAB acknowledges, this proposal would have us overlook or undervalue multiple listener complaints from the same approximate location, such as an apartment building. We find this proposal to be in tension with our focus on "reception by the public" in Section 74.1203(a)(3) and prevention of interference to "populated areas" in Section 74.1204(f).<sup>66</sup> We seek comment on this conclusion.

### C. Complaint Requirements and Remediation Procedures

18. We propose to codify Section 74.1203(a)(3) and 74.1204(f) listener complaint requirements, as initially established in *Community Education* and subsequent cases. NAB suggests that in addition to name and contact information, listener complaints be required to contain "clear evidence, such as a signed declaration" that the individual is a regular listener and unaffiliated with the station. NAB urges that listener complaints also include an "address or accurate description of the individual's location where he or she is prevented from listening to the full-power station."<sup>67</sup> In this respect, NAB states that it would be useful for the Commission to clarify that a listener is still considered "unaffiliated" even if his or her complaint was solicited by the station and/or presented in a standardized format, such as a form letter or list. NAB also suggests that the Commission should clarify whether signal strength is a factor in determining whether a listener is "regular," as a recent unpublished staff letter would seem to suggest.<sup>68</sup> Some commenters suggested that signal strength outside a certain range should not be

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<sup>64</sup> In keeping with note 66, *supra*, "separate locations" could, under this proposal, include different apartments in the same building.

<sup>65</sup> NAB Petition at 12.

<sup>66</sup> Likewise, regarding NAB's suggestion that we disallow listener complaints based on "occasional trips through the area," the Commission has long held that even mobile receivers, such as vehicular radios, are protected from translator interference. *See, e.g., Community Education*, 19 FCC Rcd at 12688, para. 15. Given the importance of vehicular listening to the radio industry, in particular the morning and evening commuting times, we do not revisit that policy here.

<sup>67</sup> NAB Petition at 10.

<sup>68</sup> *See Katherine Pyeatt*, Letter, Ref. No. 1800B3-RG, File No. BPFT-20100510ABW (MB Dec. 23, 2010) at 2 (rejecting a Section 74.1204(f) claim because "it is highly unlikely that anyone would be able to listen to this station with such a low signal strength [17 dBμ].").

considered “listenable,”<sup>69</sup> while others opposed any geographic limitation on translator interference complaints.<sup>70</sup> Finally, NAB recommends that, to be considered “regular,” listeners must be willing to certify that they listen “at least twice monthly for at least six months” and not just on occasional trips though the area.<sup>71</sup> Although NAB somewhat conflates the two provisions, its proposal is apparently intended to apply in both the Section 74.1204(f) and Section 74.1203(a)(3) contexts.

19. Although we currently require that listener complaints include a name, address, location of interference, and statement that the complainant is a regular listener, it is our experience, confirmed by NAB, that verifying listener information remains contentious and time consuming.<sup>72</sup> We propose to eliminate or reduce such post-complaint disputes by strengthening the upfront requirements for a *bona fide* listener complaint, thus allowing the Commission to ascertain the identity of each complainant, identify the specific location where interference is alleged to occur, confirm that the listener is a regular listener, and verify that the listener is not affiliated with the complaining station. Specifically, we seek comment on mandating that all listener complaints, whether submitted under Section 74.1203(a)(3) or 74.1204(f), must be signed by the listener and contain the following: (1) full name and contact information; (2) a clear, concise, and accurate description of the location where the interference is alleged to occur; (3) to demonstrate that the complainant is a regular listener, a statement that the complainant listens to the desired station at least twice a month; and (4) to demonstrate that the complainant is disinterested, a statement that the complainant has no legal, financial, or familial affiliation with the desired station. In addition, stations submitting a translator interference claim pursuant to either Section 74.1203(a)(3) or 74.1204(f) must include a map plotting specific listener addresses in relation to the relevant station contours. Although, as mentioned in paragraphs 6 and 7, *supra*, it has been a longstanding underlying requirement that any *bona fide* listener be both a regular listener and unaffiliated with the complaining station, we have not previously required that listeners sign a statement to this effect at the complaint stage for their complaint to be considered actionable. We propose to avoid post-complaint disputes over listener *bona fides* by requiring that these two statements be included in any initial listener complaint, which would then receive the presumption proposed at paragraph 20, *infra*. This proposal would not affect the existing Section 74.1204(f) requirement to also provide technical evidence of interference to the reception of the desired station at the listener locations specified, such as through U/D signal strength data.<sup>73</sup>

20. We seek comment on whether these strengthened upfront listener complaint requirements would significantly reduce challenges to a listener’s *bona fides* and hence simplify and streamline translator interference proceedings. We propose to clarify that listener complaints solicited by the station and/or presented in a standardized format, such as a list or form letter, will not be taken as evidence that a listener is impermissibly affiliated with the complaining station. Similarly, we propose to clarify that social media connections, such as friending or following a station or its personnel on Facebook, Twitter, or other social media platforms, between listeners and the complaining station or its personnel will not be taken as evidence that a listener is impermissibly affiliated with the complaining station, because such a connection does not amount to a legal, economic, or familial interest in the station. We seek comment on

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<sup>69</sup> See, e.g., Sam Brown Comments at 2 (suggesting listenability limit of 40 dB $\mu$ ); Pueblo Comments at 29 (suggesting listenability limit of 25-35 dB $\mu$ ); American FM Comments at 2 (suggesting listenability limit of 54 dB $\mu$ ).

<sup>70</sup> See, e.g., Alpha Media, et al Comments at 6 *et seq.*; Media-Com at 1-2; WJFD-FM Comments at 2; Clear Communications Comments at 3.

<sup>71</sup> NAB Petition at 11.

<sup>72</sup> See, e.g., *Community Education*, 19 FCC Rcd at 12687, para. 13; *LPFM Sixth Order*, 27 FCC Rcd at 30, para. 83.

<sup>73</sup> Aside from those that expressed general support for the NAB Petition, few if any commenters specifically addressed the issue of the contents of listener complaints.

these proposals.

21. We also take this opportunity to seek comment on ways to improve the interference resolution process. Specifically, we propose that a listener complaint that meets the above requirements presumptively establishes interference at the relevant location, which must then be promptly eliminated by the translator operator using any suitable technique—including, as appropriate, a modification application to change channels as proposed herein—or, if necessary, suspending operations. We anticipate that the more formal and detailed complaint format proposed herein will reduce the need for staff involvement in disputes over the validity of complaints. Moreover, we believe that the U/D signal ratio test procedure outlined below will minimize the need for staff involvement in the interference resolution process beyond: (1) confirming the sufficiency of listener complaints submitted formally to the Commission; (2) notifying the relevant translator of such complaints and any applicable deadline for resolution; and (3) reviewing any technical showings purporting to establish that all interference has been resolved. We also propose to clarify that a listener whose complaint is sent to a station and then submitted as part of an interference complaint or other request for relief filed by an affected station licensee is not entitled to protection under the *ex parte* rules because the listener has not submitted a filing with the Commission.<sup>74</sup> Therefore, listener complainants are not parties to any proceeding that may be initiated by a complaint or other request for relief filed by a station licensee and are not entitled to protection under the *ex parte* rules.<sup>75</sup> However, as before, a station licensee filing an interference complaint or other request for relief is considered a party to the proceeding and entitled to protection under the *ex parte* rules.<sup>76</sup> We seek comment on these proposals.

22. We also propose to eliminate the current requirement that the complaining listener cooperate with remediation efforts. For example, a listener would not be required to accept equipment or equipment modifications (e.g., a new receiver) as a way of addressing interference. Instead, we seek comment on removing the listener from the complaint resolution process by requiring the translator operator, once interference has been initially established through listener complaints, to submit a technical showing that all interference has been eliminated. We propose to require this technical showing to be based on the same U/D ratio methodology applicable to Section 74.1204(f) complaints, using the standard contour prediction methodology specified in Section 73.313, in addition to on/off tests if appropriate and directed by Commission staff. A translator licensee could use these U/D showings to demonstrate the parameters with which it could operate on its current frequency and not cause interference.<sup>77</sup> We seek comment on this proposal to simplify and expedite interference resolution. Will the U/D showings, in conjunction with the standard contour prediction methodology, be sufficient to make these determinations accurately in the majority of interference scenarios? We note that a number of commenters questioned the reliability of listeners' assessment of interference.<sup>78</sup> Should we rely exclusively on technical U/D showings as proposed, or continue to involve the listener if the listener alleges that he or she subjectively continues to experience interference despite U/D showings to the contrary? If on/off tests are included as part of the remediation process, what technical standards or procedures, if any, should we require

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<sup>74</sup> See 47 CFR § 1.1202(d)(1) (defining a “party” as “any person who files . . . [a] filing seeking affirmative relief”); 47 CFR § 1.1202(d)(2) (defining a “party” as “any person who files a complaint . . . which shows that the complainant has served it on the subject of the complaint”).

<sup>75</sup> In contrast, a listener that submits a complaint or other request for relief directly to the Commission is a party either under 47 CFR § 1.1202(d)(1) (filing seeking affirmative relief) or 47 CFR § 1.1202(d)(2) (complaint served on subject of the complaint), and therefore entitled to protection under the *ex parte* rules.

<sup>76</sup> 47 CFR § 1.1202(d)(1), 47 CFR § 1.1202(d)(2).

<sup>77</sup> These showings would typically be submitted in conjunction with a modification application, either on FCC Form 349 or 350.

<sup>78</sup> See, e.g., Pueblo Comments at 17; Ronald E. Castro Comments at 2; CircuitWerks Comments at 6.

regarding location, timing, receivers, etc.? Should we require the use of specific receivers, or types of receivers, to promote consistent on/off test results? Would this proposal reduce or eliminate unproductive or unpleasant interactions between translator operators and complaining listeners? Finally, we seek comment on establishing an appropriate deadline for translators to resolve all properly substantiated interference complaints and submit an acceptable technical showing or be subject to suspension of operation.<sup>79</sup> In addition to imposing a deadline on translators to resolve interference, are there other measures the Commission could take to expedite the interference resolution process? For example, we seek comment on NAB's suggestion that we establish Commission deadlines for acting on interference complaints.<sup>80</sup> Is this necessary to the extent we adopt deadlines on translators to resolve complaints? How should the Commission balance this work against its other competing priorities affecting radio broadcasters?

#### **D. Limits on Actual Interference Complaints**

23. We seek comment on identifying a signal strength beyond which an FM station may not claim interference to its listeners from an FM translator. In its Petition, Aztec raises the issue that interference claims may be based on complaints from listeners far outside the distant station's own protected service contour and/or community of license. Aztec claims that Sections 74.1203(a)(3) and 74.1204(f) of the Rules encourage full service station licensees to "troll for complaining individuals" so that they can extend their signal out to the "last gasp of his or her radio signal coming through the FM hash."<sup>81</sup> Aztec argues that these types of interference claims threaten FM translators that are rebroadcasting AM stations and HD Radio multicast channels, and constitute a "perversion" of the Commission's intention when it adopted these rules, i.e., to protect local full service stations from encroachment by out-of-market translators.<sup>82</sup>

24. Therefore, Aztec proposes that the Commission amend Section 74.1203(a)(3) to limit the geographic scope of actual interference complaints involving fill-in translators.<sup>83</sup> Specifically, under Aztec's proposal, fill-in translators would be prohibited from causing actual interference *only* within the protected service contour of another authorized station, whereas other area translators would continue to be prohibited from causing actual interference to another authorized station at any location. Aztec proposes likewise limiting the applicability of Section 74.1204(f) to other area translators. These rule changes, according to Aztec, would "protect local radio listeners in the primary station's community of license against a loss of service precipitated by an out-of-market radio station seeking to claim distant

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<sup>79</sup> NAB suggests that translators have 30 days to "respond with a plan to resolve the interference or otherwise dispute the interference claim with a supported technical showing." Some commenters propose, alternatively, that the Commission order immediate suspension of translator operations within 48 hours of receiving the minimum number of valid complaints and resolve interference afterwards. See, e.g., Lakes Media Comments at 1; Pueblo Comments at 10.

<sup>80</sup> NAB Petition at 13-14.

<sup>81</sup> Aztec Petition at 9.

<sup>82</sup> Aztec Petition at 2-3. Aztec urges that the Commission be mindful of its mandate to provide a "fair, efficient, and equitable distribution" of radio services under Section 307(b) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 307(b) as well as Section 5 of LCRA, *Local Community Radio Act of 2010*, Pub. L. No. 111-371, 124 Stat. 4072 (2011), Sec. 5 ("The Federal Communications Commission, when licensing new FM translator stations, FM booster stations, and low-power FM stations [LPFM], shall ensure that—(1) licenses are available to FM translator stations, FM booster stations, and low-power FM stations; (2) such decisions are made based on the needs of the local community; and (3) FM translator stations, FM booster stations, and low-power FM stations remain equal in status and secondary to existing and modified full-service FM stations.").

<sup>83</sup> Aztec Petition at 3-4.

radio listeners far outside its service area.”<sup>84</sup> This proposal generated a great deal of controversy on the record, with many commenters objecting to Aztec’s suggestion that full service stations should only be protected from secondary service interference to their protected contour.<sup>85</sup>

25. We tentatively conclude that it would not be advisable or administratively feasible to distinguish between fill-in and other area translators in this context, because it is a relatively simple matter for a translator licensee to change primary stations and hence change the fill-in status and protection obligations of the translator station. Aztec does not define “local” or “distant” service, and we decline to assume that a fill-in translator presumptively provides “local” service or, conversely, that a complaining station is “distant” based merely on the distance between its transmitter site and certain of its listeners, particularly commuters.<sup>86</sup> Moreover, we note that these terms may refer as much to programming content as to the proximity of the transmitter site. While our translator policy is intended to promote overall program diversity,<sup>87</sup> we do not otherwise assess the value of content—again, taking into consideration the ease with which programming can be changed. For these reasons, we do not seek comment on Aztec’s suggestion to differentiate between fill-in and other area translators for interference protection purposes.

26. Aztec suggests prohibiting translators from causing actual interference with the reception of another station only within the other station’s protected contour, thereby eliminating the potential loss of service to a translator’s core listenership due to interference to a “distant” station. We are concerned that setting an outer limit for listener interference complaints at the affected station’s protected contour would be inconsistent with translators’ role as a secondary service.<sup>88</sup> Relatedly, it 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. On the other hand, it is indisputable that as a result of the vast increase in new and modified translator station licensing and changes in translator service rules, translators have taken on increased importance over the past decade, especially for AM broadcasters.

27. Although we disagree with the specifics of Aztec’s proposal, we believe that it is necessary to consider how best to balance our enduring interest in maintaining the technical integrity of our FM services with our desire to promote greater certainty and stability for translator licensees. Therefore, we seek comment on possible alternative ways to address this underlying issue. We note that the Commission faced similar spectrum policy considerations when creating the LPFM service. In response, it adopted, among other measures, Section 73.809 to limit the locations at which LPFM stations

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<sup>84</sup> Aztec Petition at 3.

<sup>85</sup> See, e.g., Alpha Media, et al Comments at 6 *et seq.*; WJFD-FM Comments at 2-5; AntennaWave Comments at 1-4; Pueblo Comments at 2; Clear Communications Comments at 3. Support for the Aztec proposal includes: Radio Power Comments at 3-4; Emerald Wave Comments at 3; and Ronald E. Castro Comments at 3.

<sup>86</sup> Likewise, we are not considering making a local/distant distinction based on the radio service of the primary station of the relevant translator, such as AM or LPFM.

<sup>87</sup> *1990 Translator Order*, 5 FCC Rcd at 7219, para. 48 (“In view of our commitment to provide FM radio broadcast service in a manner that promotes program diversity while enhancing the incentives for efficient broadcast station development, we believe it is desirable to hold constant the existing relationships between FM broadcast stations and translator service.”).

<sup>88</sup> When it created new classes of FM stations, the Commission concluded that “the provision of new primary service and first and/or second local service is a *higher priority* than the preservation of service beyond the normally protected service area of existing stations.” *1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules*, Second Report and Order, 15 FCC Rcd 21649, 21658, para. 19 (2000). The Commission has never made a similar determination for secondary services; to the contrary, it has consistently held that secondary services may not create any interference to a full service station.

would be responsible for interference remediation to subsequently authorized stations.<sup>89</sup> We seek comment on whether the increase in translator licensing and broadcasters' increased reliance on translators to serve their communities warrant similar geographic restrictions on translator interference complaints. In particular, we seek comment on whether to adopt an alternative outer contour limit for consideration of actual interference complaints, which we believe would provide greater certainty to translator operators and other broadcast services. Specifically, we propose to identify a predicted signal contour within which most of a station's listeners are located and to not require the elimination of interference beyond that contour. This approach is based on the common language of Sections 74.1203(a)(3) and 74.1204(f), which prohibit interference to a "regularly used" broadcast signal, and Section 74.1203(a)(3), which prohibits interference with another station's "reception by the public." We believe that we can restrict stations from making specious interference allegations while preserving translators' status as a secondary service.<sup>90</sup> These provisions assume the existence of a signal capable of being regularly received by the public and therefore should not permit complaints regarding a signal that is not so received. Thus, our proposal is consistent with the secondary nature of translators. In this respect, we note that the 60 dB $\mu$  contour standard is by no means an outer limit of listenability.<sup>91</sup> Rather, it has been principally used as an allocations tool, which "reflects a balance between providing adequate service areas and permitting a sufficient number of FM assignments."<sup>92</sup> The Commission has observed that an allocations scheme based on protecting existing stations' listenable signals would "effectively close the FM spectrum to further assignments; indeed, such a scheme would have prevented the authorization of a large portion of existing FM stations."<sup>93</sup>

28. For these reasons, we propose to modify Section 74.1203(a)(3) to state that no complaint of actual interference will be considered actionable if the alleged interference occurs outside the desired station's 54 dB $\mu$  contour. Would this contour limit achieve our goal of safeguarding the technical integrity of the FM band? Should there be different outer limits for interference complaints for FM stations in different Zones?<sup>94</sup> We tentatively conclude that the greater contour protections afforded to Class B and Class B1 in the non-reserved band are based on allocations concerns regarding populous service areas<sup>95</sup> and thus do not affect our analysis or warrant separate treatment for Class B and Class B1 stations in this respect. We seek comment on this conclusion.

29. Observing that the actual interference provisions of Sections 74.1203(a)(3) and

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<sup>89</sup> See 47 CFR § 73.809; see also *Creation of Low Power FM Service*, Report and Order, 15 FCC Rcd 2205, 2229-32 (2000) (adopting limited interference remediation requirements to promote a "stable and enduring" LPFM service).

<sup>90</sup> *1970 Translator Order*, 20 RR 2d 1538, para. 3; *1990 Translator Order*, 5 FCC Rcd at 7230, para. 130.

<sup>91</sup> *1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, Second Report and Order, 15 FCC Rcd 21649, 21658, para. 19 (2000) ("We recognize that all stations, including Class C stations, may provide useful service beyond their individual protected contours in the absence of interference").

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> Zone I is a large area in the northeastern portion of the United States, containing the District of Columbia, the states of Indiana, Illinois, Pennsylvania, Ohio, West Virginia, Maryland, Delaware, New Jersey, Rhode Island, Massachusetts, Connecticut, and portions of Michigan, Wisconsin, New York, Maine, New Hampshire, Vermont and Virginia. Zone I-A contains Puerto Rico, the U.S. Virgin Islands, and all but the northernmost portion of California. Zone II contains Alaska, Hawaii, and the rest of the continental United States not in Zones I and I-A.

<sup>95</sup> See, e.g., *Harvit Broadcasting Corp.*, Initial Decision, 55 FCC 2d 318, 321, para. 8 ("Class C stations are 'designed to render service to a community, city, or town, and large surrounding area' . . . Class B stations are 'designed to render service to a sizable community, city or town, or to the principal city or cities of an urbanized area, and to the surrounding area'") (internal citations omitted).

74.1203(b) have given rise to some of the most lengthy and contentious proceedings—as well as to allegations of negative interactions between translator operators and complaining listeners—we propose to reduce reliance on actual interference complaints by harmonizing the scope of complaints that can be preemptively brought under Section 74.1204(f) with those that are based on allegations of actual interference. Specifically, we seek comment on amending Section 74.1204(f) to allow an objector to submit evidence of bona fide listeners that are within the complaining station’s predicted 54 dB $\mu$  contour rather than, as currently, the relevant translator’s “predicted 1 mV/v (60 dB $\mu$ ) contour.” By modifying the scope of predicted interference claims under Section 74.1204(f) to more closely reflect post-grant actual interference requirements, we anticipate that more potential conflicts can be resolved before applicants are fully invested in the proposed facility and may have greater flexibility in pursuing remedial steps. We seek comment on whether this proposal would encourage translator applicants and their engineers to propose facilities that are more viable in the long term. We tentatively conclude that the proposal is consistent with Section 5(3) of the Local Community Radio Act of 2010 (LCRA), which states that the Commission must, “when licensing new FM translator stations,” ensure that they remain secondary to existing and modified full service FM stations.<sup>96</sup> As an initial matter, the proposal to modify the existing limitation in Section 74.1204(f) will expand the geographic scope of potential interference complaints against translators by full service stations in most cases. In addition, as discussed above, our proposal is consistent with the secondary nature of translators.<sup>97</sup> We seek comment on this conclusion.

#### **E. Non-substantive Updates**

30. Under the rules, FM translators must not cause either predicted or actual interference to any other broadcast station, which includes previously authorized secondary services.<sup>98</sup> However, the text of Section 74.1204(f) states that the rule applies to any authorized co-channel or adjacent station, “including Class D (secondary) noncommercial educational FM stations.” This language is potentially confusing, because it specifies Class D stations but does not mention any other secondary services. Similarly, the text of Section 73.1203(a)(3) states that the rule applies to “any authorized broadcast station,” including “TV Channel 6 stations, Class D (secondary) noncommercial educational FM stations, and previously authorized and operating FM translators and FM booster stations.” This list is also misleadingly incomplete, because it does not include other secondary services, such as LPFM. To clarify these points and avoid confusion in the future, we propose to delete two clauses enumerating applicable services in Sections 74.1203(a)(3) and 74.1204(f) and state instead that the relevant rules apply to all full service stations and previously authorized secondary service stations. *See* Appendix B.

#### **F. Conclusion**

31. We seek comment on the rule changes proposed above, including the costs and benefits associated with our proposals, as well as any other alternative approaches to addressing the issues raised by the petitioners, including listener complaints at the outer limits of the complaining station’s signal, claims based on a very small number of listeners, and/or disputes over the validity of listener complaints. Finally, we propose to apply any rules that are adopted in this proceeding to applications that we have not yet acted upon and interference complaints that are unresolved at the time any future rules become effective.<sup>99</sup> We seek comment on this approach.

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<sup>96</sup> LCRA, *Local Community Radio Act of 2010*, Pub. L. No. 111-371, 124 Stat. 4072 (2011), Sec. 5.

<sup>97</sup> *See supra*, para. 27.

<sup>98</sup> *See* 47 CFR §§ 74.1203(a)–(d); 74.1204(f).

<sup>99</sup> We note that until we adopt rules as part of this rulemaking, our existing rules and procedures apply.

#### IV. PROCEDURAL MATTERS

##### A. Ex Parte Presentations

32. The proceeding this *NPRM* initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>100</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. Memoranda must contain a summary of the substance of the *ex parte* presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Section 1.1206(b) of the Rules.<sup>101</sup> In proceedings governed by Section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable.pdf).<sup>102</sup> Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

##### B. Initial Regulatory Flexibility Act Analysis.

33. As required by the Regulatory Flexibility Act of 1980 (RFA),<sup>103</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA). The IRFA is attached as Appendix A. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the first page of this document. The Commission will send a copy of this document, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

##### C. Initial Paperwork Reduction Act Analysis.

34. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

35. Comment Filing Procedures. Pursuant to Sections 1.415 and 1.419 of the Commission’s

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<sup>100</sup> 47 CFR §§ 1.1200 *et seq.*

<sup>101</sup> 47 CFR § 1.1206(b).

<sup>102</sup> 47 CFR § 1.49(f).

<sup>103</sup> *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601, *et. seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

rules,<sup>104</sup> interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).<sup>105</sup>

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. Eastern Time. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

36. **People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

37. **Availability of Documents.** Comments and reply comments will be publicly available online via ECFS.<sup>106</sup> These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12<sup>th</sup> Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

38. **Additional Information.** For additional information on this proceeding, contact Christine Goepf, [christine.goepf@fcc.gov](mailto:christine.goepf@fcc.gov), of the Media Bureau, Audio Division, at (202) 418-7834, or James Bradshaw, [james.bradshaw@fcc.gov](mailto:james.bradshaw@fcc.gov) of the Media Bureau, Audio Division, at (202) 418-2739.

## V. ORDERING CLAUSES

39. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in section 1.407 of the Commission's rules, 47 CFR § 1.407, the Petitions for Rulemaking filed by National Association of Broadcasters and Aztec Capital Partners, Inc. **ARE GRANTED** to the extent specified herein.

40. **IT IS FURTHER ORDERED** that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, and 319, this Notice of Proposed Rulemaking **IS ADOPTED**.

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<sup>104</sup> See 47 CFR §§ 1.415, 1419.

<sup>105</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

<sup>106</sup> Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

41. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****Initial Regulatory Flexibility Act Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities of the policies and rules proposed in the *Notice of Proposed Rulemaking (NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rule Changes**

2. In this *NPRM*, the Commission seeks comment on whether to modify certain standards and procedures relating to FM translator interference complaints.<sup>4</sup> Specifically, the Commission seeks comment on the following proposals: (1) allowing translators to resolve interference issues by changing channels to any available FM frequency using a minor modification application; (2) requiring a minimum number of listener complaints to be submitted with any FM translator interference claim; (3) clarifying the information that must be included within a listener complaint; (4) establishing an outer contour limit for the affected station beyond which listener complaints would not be actionable; (5) modifying the scope of interference complaints permitted to be filed by affected stations at the application stage; and (6) streamlining and expediting interference complaint resolution procedure. These proposals could, if implemented, avoid protracted and contentious interference resolution disputes, provide translator licensees additional flexibility to remediate interference, provide translator licensees with additional investment certainty, and allow earlier and expedited resolution of interference complaints by affected stations.

**B. Legal Basis**

3. The proposed action is authorized pursuant to Sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act, 47 U.S.C. §§ 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, and 319.

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>5</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>6</sup> In addition, the term “small business” has the

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See *id.*

<sup>4</sup> These proposals also apply to booster stations, although we note that, as booster stations are limited in operation to the same channel as their primary station, the proposal to allow non-adjacent frequency changes by minor change application will not be available to booster stations.

<sup>5</sup> 5 U.S.C. § 603(b)(3).

<sup>6</sup> 5 U.S.C. § 601(6).

same meaning as the term “small business concern” under the Small Business Act.<sup>7</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>8</sup> Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

5. **Radio Stations.** This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.”<sup>9</sup> The SBA has established a small business size standard for this category as firms having \$38.5 million or less in annual receipts.<sup>10</sup> Economic Census data for 2012 shows that 2,849 radio station firms operated during that year.<sup>11</sup> Of that number, 2,806 operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more.<sup>12</sup> Therefore, based on the SBA’s size standard the majority of such entities are small entities.

6. According to BIA/Kelsey Publications, Inc.’s Media Access Pro Database, on March 30, 2018, 10,859 (or about 99.94 percent) of the then total number of FM radio stations (10,865); 4,629 (or about 99.94 percent) of the then total number of AM radio stations (4,632); and all of the 7,238 total FM translator stations (100 percent) had revenues of \$38.5 million or less for the year ending 2017, and thus qualify as small entities under the SBA definition. We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.<sup>13</sup> This estimate, therefore, likely overstates the number of small entities that might be affected, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

7. As noted above, an element of the definition of “small business” is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also, as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

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<sup>7</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

<sup>8</sup> 15 U.S.C. § 632.

<sup>9</sup> U.S. Census Bureau, 2012 NAICS Definitions, “515112 Radio Stations,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515112&search=2017+NAICS+Search&search=2017>.

<sup>10</sup> 13 CFR § 121.201, NAICS code 515112 Radio Stations.

<sup>11</sup> U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515112 Radio Stations) [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ4/naics~515112|515120](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4/naics~515112|515120).

<sup>12</sup> *Id.*

<sup>13</sup> “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has power to control both.” 13 CFR § 121.103(a)(1).

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

8. The rule changes proposed in the *NPRM* would, if adopted, potentially increase the number of listener complaints that must be included with an interference claim to a minimum of six and increase the amount of information to be included with each listener complaint to include signed listener statements regarding listening regularity and disinterestedness in the complaining station. However, licensees are encouraged to resolve interference complaints privately and the recourse of filing an interference claim with the Commission is purely voluntary. Moreover, the type of information to be filed (i.e., information required to be included with listener complaints) is already familiar to broadcasters, so the additional paperwork burdens would be minimal.<sup>14</sup>

**E. Steps Taken to Minimize Significant Impact on Small Entities and Significant Alternatives Considered**

9. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>15</sup>

10. In the *NPRM*, the Commission seeks comment on its proposal to offer additional flexibility to translator licensees, including small entities, by allowing them to resolve interference issues using the effective and low-cost method of submitting a minor modification application to change frequency to any available FM channel. We also propose to clarify the information that must be contained in each listener interference complaint, thus potentially reducing lengthy and resource-intensive disputes over listener bona fides. The Commission does not anticipate that the proposed certifications would add much, if any, time needed to collect each listener complaint. These requirements could also potentially reduce the need for pleadings to be filed at a later stage to prosecute or defend an interference claim. To discourage the filing of poorly substantiated interference claims, we propose to require that a minimum number of listener complaints be submitted with each FM translator interference and that listener complaints beyond a certain contour would not be considered actionable. Finally, the Commission seeks comment on streamlining the FM translator interference resolution process by relying on technical data rather than requiring listener involvement with the resolution process after *prima facie* interference has been established by a minimum number of properly documented listener complaints. We anticipate that these proposals will facilitate a consistent and fair interference claim resolution process and reduce the number of prolonged and contentious FM translator proceedings. Alternatives considered by the Bureau include retaining the existing process, requiring a greater or lesser number of listener complaints to be submitted with each claim, establishing a greater or lesser contour beyond which listener complaints would not be considered actionable, and alternative forms of technical data, such as field strength tests, to demonstrate resolution of translator interference complaints. The *NPRM* requests comment on the effect of the proposed rule changes on all affected entities. The Commission is open to consideration of alternatives to the proposals under consideration, including but not limited to alternatives that will minimize the burden on FM broadcasters, many of whom are small businesses.

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<sup>14</sup> Listener complaints are currently required to include name, contact information, and location where the interference is alleged or predicted to occur.

<sup>15</sup> 5 U.S.C. § 603(c).

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule**

11. None.

**APPENDIX B****Proposed Rule Changes**

Part 74 of Chapter 5 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336, and 554.

2. Add new paragraph (k) of Section 74.1201 to read as follows:

**§ 74.1201 Definitions.**

\* \* \* \* \*

**(k) Listener complaint. A complaint that is signed by the listener and contains the following information: (1) full name and contact information; (2) a clear, concise, and accurate description of the location where the interference is alleged or predicted to occur; (3) a statement that the complainant listens to the desired station at least twice a month; and (4) a statement that the complainant has no legal, financial, or familial affiliation with the desired station.**

3. Revise paragraph (a)(1) of Section 74.1233 to read as follows:

**§ 74.1233 Processing FM translator and booster station applications.**

(a) Applications for FM translator and booster stations are divided into two groups:

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. For FM translator stations, a major change is **(i)** any change in frequency (output channel) except **(A)** changes to first, second or third adjacent channels, or intermediate frequency channels; **or (B) upon a showing of interference to or from any other broadcast station, remedial changes to any frequency; and/or (ii)** any change in antenna location where the station would not continue to provide 1 mV/m service to some portion of its previously authorized 1 mV/m service area. In addition, any change in frequency relocating an ~~unbuilt~~ station from the non-reserved band to the reserved band, or from the reserved band to the non-reserved band, will be considered major. All other changes will be considered minor. All major changes are subject to the provisions of §§ 73.3580 and 1.1104 of this chapter pertaining to major changes.

4. Revise paragraph (a)(3) of Section 74.1203 to read as follows:

**§ 74.1203 Interference.**

(a) An authorized FM translator or booster station will not be permitted to continue to operate if it causes any actual interference to:

\* \* \* \* \*

(3) The direct reception by the public of the off-the-air signals of any **full service station or previously authorized secondary station including TV Channel 6 stations, Class D (secondary) noncommercial educational FM stations, and previously authorized and operating FM translators and FM booster stations.** Interference will be considered to occur whenever reception of a regularly used signal, **as demonstrated by six or more listener complaints as defined in § 74.1201(k) of the part and a map plotting specific listener addresses in relation to the relevant station contours,** is impaired by the signals radiated by the FM translator or booster station, regardless of the quality of such reception, ~~the strength of the signal so used,~~ or the channel on which the protected signal is

transmitted; **except that no listener complaint will be considered actionable if the alleged interference occurs outside the desired station's 54 dBμ contour.**

5. Revise paragraph (f) of Section 74.1204 to read as follows:

**§ 74.1204 Protection of FM broadcast, FM Translator and LP100 stations.**

\* \* \* \* \*

(f) An application for an FM translator station will not be accepted for filing even though the proposed operation would not involve overlap of field strength contours with any other station, as set forth in paragraph (a) of this section, ~~if the predicted 1 mV/m field strength contour of the FM translator station will overlap a populated area already receiving~~ **grant of the authorization will result in interference to the reception of** a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, **including previously authorized secondary service stations, including Class D (secondary) noncommercial educational FM stations within the 54 dBμ field strength contour of the desired station, as demonstrated** ~~and grant of the authorization will result in interference to the reception of such signal by six or more listener complaints, as defined in § 74.1201(k) of the part, as well as a map plotting specific listener addresses in relation to the relevant station contours.~~

**APPENDIX C**  
**List of Commenters**

**NAB Petition (RM-11787)**

Radio Power, Inc.  
Sam Brown  
National Translator Association  
Pueblo Broadcasting Group LLC  
Wilkins Parent Corporation and its Affiliates  
Gabrielle Broadcasting Licensee Ordinal I, LLC  
Hubbard Radio, LLC  
Alpha Media LLC, Beasley Media Group, LLC, iHeartMedia + Entertainment, Inc., and KMMY, Inc.  
Windy City Broadcasting, LLC  
REC Networks  
National Association of Broadcasters  
Robinson Entertainment LLC  
Minn-Iowa Christian Broadcasting, Inc.  
Urban One, Inc.

**Aztec Petition (RM-11786)**

Randal J. Miller  
Carl Tutera  
REC Networks  
Broadcast Learning Center, Inc.  
Howard C. Toole  
N. Al Sergi  
Emerald Wave Media  
Lakes Media LLC  
Ronald E. Castro  
Media-Com, Inc.  
CircuitWerkes, Inc.  
American FM Associates, Inc.  
HB Media Advisors  
Pueblo Broadcasting Group, LLC  
WJFD-FM, Inc.  
AntennaWave Consulting  
Shelby Broadcast Associates, LLC

Apple 107.1, Inc.

Charles M. Anderson

Clear Communications, Inc.

Wilkins Parent Corporation and its Affiliates

Ben Downs

Genesee Media Corporation

Alpha Media LLC, Beasley Media Group, LLC, Bemidji Radio, Inc., Bonneville International Corporation, Cox Media Group, LLC, Entercom Communications Corp., iHeartMedia + Entertainment, Inc., KMMY, Inc., Perry Broadcasting of Southwest Oklahoma, Inc.

Thomas H. Moffit, Jr., Tennessee Media Associated, Foothills Resource Group, Inc.

SSR Communications, Inc.

Jose Gonsalves

Jerry R. Chapman

Bayard H. Walters

Radio Power Inc.

Steven R. Bartholomew

Mentor Partners, Inc.

Sam Brown

Alpha Media LLC, Beasley Media Group, LLC, iHeartMedia + Entertainment, Inc., and KMMY, Inc.

Joseph Patti

Steven Dinius

Communications Technologies, Inc.

Robinson Entertainment LLC

W&B Broadcasting Co., Inc.

Minn-Iowa Christian Broadcasting, Inc.

Urban One, Inc.

**MB Docket 18-119**

Lawrence M. Miller

**STATEMENT OF  
CHAIRMAN AJIT PAI**

Re: *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, MB  
Docket No. 18-119

Our efforts to revitalize AM radio have been going well. Most notably, we've held four windows through which AM broadcasters have been able to obtain FM translators. These translators help AM stations improve their programming, expand their listenership and stabilize their financial position. Indeed, just last week during my trip along the Gulf Coast, I visited WGCM-AM in Gulfport, Mississippi, where the station owner told me that the translator his station had acquired through our AM radio revitalization initiative had been enormously helpful in reaching new listeners and growing revenue.

But with the success of the translator program has come an uptick in interference complaints from primary FM stations due to the increasing number of translators on the air.

Our current process for resolving such interference complaints can be nasty, brutish, and long (to put a twist on Hobbes). That's why we aim to streamline and expedite it. Among other things, we propose to allow FM translators that are causing interference to or receiving interference from a primary FM station to apply for any other available same-band frequency. We also propose an outer signal contour beyond which we will not take action on interference complaints. These measures would provide more certainty to translator stations and full-service FM stations alike. And in many cases, they would eliminate the need for further remediation measures, resolving interference complaints more quickly.

I'd like to thank the staff who worked on this *Notice*: Jim Bradshaw, Michelle Carey, Christine Goepp, Tom Horan, Holly Saurer, Lisa Scanlan, and Al Shuldiner from the Media Bureau, and Dave Konczal from the Office of General Counsel. And I'd like to give special recognition to Peter Doyle. This is the last item that Peter will present to the Commission. After 23 years at the FCC, including almost 17 years as Chief of the Audio Division, he will be retiring next month. And while I'll reserve most of my remarks about Peter for a later date, the quality and thoroughness of this *Notice* is a fitting capstone to the excellent work he produced throughout his time at the Commission.

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

Re: *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, MB  
Docket No. 18-119

Since launching the AM Revitalization (AMR) proceeding, the number of licensed FM translators has increased from 1,850 in 1990 to more than 7,500 in 2017. This number will only grow, as the Commission has authorized 700 additional translator construction permits and is still reviewing more than 1,000 applications for such permits. Chairman Pai should be lauded for this, as his great work has provided dire aid for many troubled AM radio stations.

At the same time, when the AMR proceeding was launched, I questioned what, if any, unintended consequences of such a proceeding would be. The concern I commonly heard was that there would be an increase in interference and subsequent complaints to the Commission. Today, the Chair brings forth an appropriate solution with a more effective process for handling legitimate complaints. I thank him for doing so. I support such a proceeding and hope to hear from stakeholders on whether or not this will adequately address the rise in interference concerns due to the successful AMR proceeding. I will happily approve the item.

**STATEMENT OF  
COMMISSIONER BRENDAN CARR**

Re: *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, MB Docket No. 18-119

In his 1942 book, *Sound and Fury: An Informal History of Broadcasting*, University of Chicago Professor Francis Chase, Jr described the problems that interference posed to radio in the 1920s. According to his understated description, “Chaos rode the air waves, pandemonium filled every loudspeaker and the twentieth century Tower of Babel was made in the image of the antenna towers of some thousand broadcasters who, like the Kilkenny cats, were about to eat each other up.”

This state of affairs, Professor Chase noted, led Congress to establish the precursor to the FCC, the Federal Radio Commission, for the purpose of preventing harmful interference. Today’s Notice harkens back to this original purpose by taking up the problem of interference caused by FM translators.

As the Notice explains, we have seen an increase in FM translators over the past few years. These are radio stations that rebroadcast the signal of an AM or FM station. Among other things, they help address some of the technical challenges facing the AM band, since in today’s digital world everything from iPhone chargers to LED lights can degrade the audio quality for listeners of AM stations. FM translators are also important for remote and rural areas, as they help to fill in gaps in coverage from full-power stations.

But as more translators fill the airwaves, the risk of interference grows. And broadcasters both large and small agree that our current process for handling translator interference is cumbersome, frustrating, and expensive. Currently, a single interference complaint can lead to lengthy disputes and translators being taken off the air in areas of the country where they are most needed. Commission staff expend significant resources mediating disputes over the legitimacy of complaints, and listeners can get caught up in the back and forth between stations. This system has created incentives for bad actors.

As this item recognizes, there are better ways to handle interference disputes. So I am glad that we are teeing up a range of options—from allowing translators to move to any available frequency to requiring threshold showings from those claiming harmful interference.

I want to thank the Media Bureau for its work on this matter. The Notice has my support.