

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

In the Matter of)	
)	
Petition for Rulemaking by)	
SSR Communications, Inc.)	RM-11643
)	
Amendment of Section 73.215 of the)	
Commission's Rules Related to)	
Contour Protection for Short Spaced)	
FM Assignments)	

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (“NAB”)¹ respectfully provides these comments concerning the above-captioned Petition for Rulemaking.² NAB respectfully opposes the petition of SSR Communications, Inc. to overturn the FCC's longstanding rules for minimum distance separation for non-reserved FM radio facilities.³ Those rules created a practical and flexible licensing system that has served the public and the radio industry well. Replacing these rules with contour protection standards similar to those used for non-commercial services in the reserved FM band (NCE-FM), as Petitioner proposes, would increase congestion in the FM frequency band and would prevent upgrades, power increases, transmitter relocations, and other station improvements.

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² Amendment of Section 73.215 of the Commission's Rules related to Contour Protection for Short Spaced FM Assignments, *Petition for Rulemaking*, SSR Communications, Inc., RM-11643 (filed August 8, 2011) (Petition).

³ Petition at 1; 47 C.F.R. § 73.215 (channel spacing rules for non-reserved band FM facilities); 47 C.F.R. § 73.509 (contour protections for reserved band NCE-FM facilities).

Perhaps, most importantly, the proposals would potentially impede the ongoing development of HD Radio.

I. Enacting the Petition’s Proposed Rule Changes Will Lead to Increased Congestion in the Non-Reserved FM Band

Petitioner argues that contour protection standards are more flexible than minimum distance separation (also known as “channel spacing”) standards because they provide a wider range of opportunities for stations seeking to achieve a larger contour footprint. Petitioner also describes as “purposeless” the obligation under the channel spacing method to protect fully-spaced neighboring facilities as if they operate at maximum antenna height and power levels, instead of the actual contours of such facilities. Petition at 5.⁴ Petitioner speculates that no FM stations should be harmed by the proposed rule changes because the channel spacing rules have been in place for almost 25 years, and any FM stations planning to build out their facilities to maximum operations already would have done so. *Id.* at 6-7.

NAB believes that the proposed rule changes could significantly hamper the FM band. The Communications Act tasks the Commission with distributing broadcast licenses in a fair, efficient, and equitable manner. 47 U.S.C. § 307(b). To implement that provision for the reserved band, the Commission’s rules require that NCE-FM stations in that band must perform calculations to ensure that their contours do not overlap with the protected contours of co-channel and adjacent channel stations. 47 C.F.R. § 73.509. In contrast, commercial FM stations may only seek vacant channel

⁴ Specifically, Petitioner asks the Commission to eliminate the obligation to indicate “hypothetical” fully-spaced allotment/assignment coordinates for minor modification applications for FM stations in the non-reserved band, and amend Section 73.215 of the rules to require contour protection from interference to actual existing facilities rather than maximum class facilities, for non-reserved FM band stations. Petition at 5.

allotments in the non-reserved band for a particular community, as indicated on the FM Table of Allotments (or, if necessary, submit a petition to add a community to the Table). 47 C.F.R. § 73.202(b). FM stations in the non-reserved band must comply with the minimum distance channel separation standards contained in 47 C.F.R. § 73.207, which assume the maximum power and antenna height above average terrain for each of the commercial station classes.⁵

Thus, as a general matter, reserved band allotments are based on demand, so long as proposed new or modified facilities protect existing stations from interference, while station assignments in the non-reserved band are based on a table of vacant frequencies that builds-in channel spacing requirements to ensure interference-free contours for stations in various classes of service and geographic areas.⁶ FM stations in the non-reserved portion of the FM band have been well served by the latter approach. The channel spacing standards have enabled the commercial FM service to expand in a manner that effectively preserved the technical integrity of the FM non-reserved band.

In contrast, in many cities, the reserved band is congested and NCE-FM stations are subject to undesired interference.⁷ The Commission has also long recognized that

⁵ Amendment of Part 73 of the Commission's Rules to Permit Short-spaced FM Station Assignments by Using Directional Antennas, *Notice of Proposed Rulemaking*, 3 FCC Rcd 1820 (1988) (Directional Antennas Notice). In 2006, the Commission amended the Table of Allotments to remove all currently authorized and awarded FM facilities. The table now reflects only vacant allotments. Revision of Procedures Governing Amendments To FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, *Report and Order*, 21 FCC Rcd 14212, 14222 (2006).

⁶ Directional Antennas Notice, 3 FCC Rcd at n.18.

⁷ Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, *Report and Order*, 21 FCC Rcd 14212, 14221 (2006); 1998 Biennial Regulatory Review – Streamlining of

the AM band suffers from congestion and interference, due in part to the assignment of frequencies based on a system of prescribed, protected contours,⁸ and actions to relax AM radio interference rules and introduce more stations to the band.⁹ Although the Commission in recent years has taken several steps to help alleviate these problems and aid AM broadcasters,¹⁰ interference on the band persists, thereby reducing sound quality and AM stations' ability to compete with other audio alternatives.¹¹

The Commission should maintain its long-established channel spacing rules for the non-reserved FM band to allow the listening public to continue receiving FM service with minimal interference.¹² A shift to a contour protection-based scheme would allow additional facilities to be "shoehorned" into often already crowded communities, thereby

Radio Regulatory Rules in Parts 73 and 74 of the Commission's Rules, *Notice of Proposed Rulemaking and Order*, 13 FCC Rcd 14849, 14851 (1998).

⁸ See, e.g., Review of Technical Assignment Criteria for the AM Broadcast Service, *Notice of Inquiry*, MM Docket No. 87-267, 2 FCC Rcd 5014 (1987); 47 C.F.R. § 73.182.

⁹ Review of the Technical Assignment Criteria for the AM Broadcast Service, *Report and Order*, 6 FCC Rcd 6273, 6275 (1991).

¹⁰ See, e.g., Amendment of the Commission's Rules to Improve the Quality of the AM Broadcast Service by Reducing Adjacent Channel Interference and by Eliminating Restrictions Pertaining to the Protected Daytime Contour, *First Report and Order*, 4 FCC Rcd 3835 (1989) (adopting new emission limitations); Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, *Report and Order*, 24 FCC Rcd (2009) (permitting AM stations to use FM translators).

¹¹ Robert G. Picard, *Radio Stations Face Significant Strategic Challenges*, The Media Business (Sept. 3, 2009), available at <http://themediabusiness.blogspot.com/2009/09/radio-stations-face-significant.html>.

¹² During various proceedings to improve its FM allotment processes, the Commission has repeatedly reinforced its commitment to channel spacing standards. See, e.g., Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, *Notice of Proposed Rulemaking*, 13 FCC Rcd 14849, 14860 (1998) (Commission finding that "strict enforcement of the mileage separation rules is of paramount importance to the integrity of the entire FM assignment plan."); Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Application, *Report and Order*, 8 FCC Rcd 4735, 4737 (1993) (Commission finding that preserving the minimum distance separations system serves the public interest).

compromising the technical integrity of the FM non-reserved band.¹³ As Petitioner argues, the use of contour protections rather than minimum distance separation standards would permit certain FM stations to move closer together, and potentially allow some stations to migrate to more populous areas.¹⁴ But, it is important to understand that, although contour protections will provide a certain degree of protection from interference from neighboring operations, actual radio listening extends well beyond the protected contour.¹⁵ The contour is not a “brick wall” that completely blocks listening beyond that boundary.¹⁶ Contrary to the Petitioner’s claims regarding the use of directional antennas and other safeguards, physics dictates that more stations located in the same finite band will mean more unwanted interference.¹⁷

II. Replacing Minimum Distance Separations with Contour-Protection Standards Will Prevent the Enhancement of FM Stations

A shift to contour protection standards would also ultimately create a situation where every FM station in the non-reserved band is effectively “locked-in” to their

¹³ *Id.* at 4737 (Commission found that the preservation of the existing allotment standards “is necessary to prevent overcrowding and to promote a more even distribution of stations.”).

¹⁴ Petition at 7. NAB notes, however, that the Commission has recently adopted rules that limit the ability of stations to move from rural to more populous areas. Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, *Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, 26 FCC Rcd 2556 (2011). The Petitioner’s proposal seems clearly intended to circumvent this Commission decision. Petition at 7.

¹⁵ Revision of FM Broadcast Rules, Particularly as to Allocation and Technical Standards, *First Report and Order*, 40 F.C.C. 662 at ¶¶ 28-29 (1962) (FM Revisions First R&O) (Commission explained that any new station allocations creates interference beyond the extent of its service area).

¹⁶ Comments of the National Associations of Broadcasters, MM Docket No. 98-93, at 28 (filed Oct. 29, 1998).

¹⁷ Indeed, for some stations, protection from neighboring services is part of their identity as the strongest or clearest signal in the area. 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 (2000).

current facilities, unable to upgrade, implement a power level increase, or even move their transmitter in any direction. The Commission itself recognized this almost 50 years ago, finding that an interference scheme based solely on contour protections would not serve the public interest because “existing stations (both those now in existence, and those which might be authorized from now on under such a system) would be forever limited to their existing facilities. . . .” FM Revisions First R&O, 40 F.C.C. at ¶ 20.

The proposed rule changes would impair the ability of broadcasters to modify their facilities in response to the changing needs of their audiences and communities.¹⁸ For instance, it is common that a station’s audience may grow or expand geographically, perhaps through extended migration to suburban areas from a core city center. A radio station must attempt to follow that audience with its signal, and in many cases, the most efficient option is to modify or move its transmitter.¹⁹ However, under the Petitioner’s proposals, all stations in the non-reserved FM band would be hemmed-in, unable to change antenna site. The channel spacing rules, on the other hand, provide some flexibility. For example, assume there are two communities that are located 139 kilometers apart, with co-channel Class A facilities allocated to each. In such a case, either of the Class A stations would be able to relocate its transmitter within its community to better serve areas where audience growth has occurred, without impacting the other station.

¹⁸ The Commission has recognized the value of such station improvements, stating in 1993 that “[U]pgrades generally provide enhanced service to the public.” Amendment of the Commission’s Rules to Permit FM Channel and Class Modifications by Application, *Report and Order*, 8 FCC Rcd 4735, 4736 (1993).

¹⁹ Stations may also seek to use a translator, but given the existing congestion of the FM band, especially in larger markets, and the secondary nature of translators, as well as competition for frequencies from low power FM services, the successful use of translators has become more difficult in recent years.

No less damaging would be the hindrance to moving an antenna if a broadcaster should lose its site for some reason. It is common for antenna site owners to change the nature of use of their properties for financial or other reasons, requiring a broadcast station to relocate. It is also common for a newly constructed building or structure to present a better opportunity for a station to broadcast its signal, perhaps because the new structure is taller or more economical. The Petitioner's proposals would ultimately block broadcasters from such changes.

The Petitioner's proposals would also effectively lock FM stations into their current power levels.²⁰ Petitioner assumes that stations operating at sub-maximum power for their class would have fully built-out their facilities to their maximum operations by now, since the non-reserved band has been governed by channel spacing for 25 years. The Petitioner offers no evidence for this invalid assumption. There is a myriad of reasonable explanations for why some stations have not yet built out their facilities to maximum operations for their class, as set forth in the Commission's rules.

Indeed, it is quite common for a broadcaster to launch service with sub-maximum operations while it endeavors to generate listenership, with the goal of gradually garnering audience share and increased advertising revenues that can ultimately be

²⁰ The Commission has found that allowing Class A stations to operate with increased power would "serve the public interest by enabling Class A stations to provide better service to their listeners and by expanding the potential audience for Class A stations." Amendment of Part 73 of the Rules to Provide for an Additional FM Station Class (Class C3) and to Increase the Maximum Transmitting Power for Class A FM Stations, *Second Report and Order*, 4 FCC Rcd 6375 (1989).

directed toward physical plant improvements.²¹ Given the ever-increasing competitive landscape of the media marketplace, as well as recent economic obstacles to stations' financing improvements, this would seem to be a perfectly logical, conservative path to station viability and stability. Other reasons for operating at sub-maximum levels could include zoning restrictions by the Federal Aviation Administration or other agency, sparse populations, or lack of available tower space.²² Petitioner also wholly ignores the many stations that have recently received permission to change class definitions, or recently obtained their non-reserved FM band licenses at auction. Given the current challenging economic climate, it is reasonable that some of these new licensees may delay investing in maximum facilities for the time being. Unfortunately, the Petitioner's proposals would block these legitimate business plans, to the detriment of both the industry and the listening public.

III. Petitioner's Proposals Could Irreparably Hinder HD Radio Service and Harm Analog FM Service to the Detriment of Both Broadcasters and the American Public

Granting Petitioner's suggestions could also harm the roll out of HD Radio digital broadcasting at a critical juncture in the ongoing development and expansion of this still relatively new service. Currently, there are more than 2,000 radio stations broadcasting in digital, with approximately 1,000 of these stations offering new multicast channels.²³ Nevertheless, there is still much work to do, as broadcasters explore additional formats, data broadcasting services and new receiver technologies for HD Radio. It is essential

²¹ It is also quite possible that stations with sub-maximum operations may seek to increase their power, after generating sufficient revenues, to overcome obstacles such as terrain shielding, obstruction shadowing, temperature inversions, and building penetration difficulty. *Id.*

²² 1998 Biennial Second R&O, 15 FCC Rcd at 21658.

²³ See http://www.ibiquity.com/press_room/fast_facts/; <http://www.hdradio.com/what-is-hd-radio>.

that HD Radio digital broadcasting be allowed to develop in an environment that is as free of interference as possible. Many broadcasters are still considering the most economical way to deploy digital or expand radio services, and any concerns over increased interference from newly allocated or modified FM stations pursuant to contour protections standards, as proposed in the Petition, could significantly compromise those plans.

Most seriously, the recent authorization for an increase in digital power, allowing for a blanket increase of 6 dB and in some cases as much as a 10 dB increase, would be compromised by the proposals in the Petition.²⁴ This action was based in part upon the results of a test program which concluded that a 10 dB increase would dramatically improve digital signal coverage without creating a significant risk of harmful interference.²⁵ The ability of stations to implement the full 10 dB increase depends upon the proximity of nearby 1st-adjacent channel stations, and a contour protection scheme, if implemented, will likely result in more closely spaced 1st adjacent channel stations, thereby limiting this power increase and hampering the ability of listeners to receive new digital radio services.

FM listeners must have the ability to receive interference-free, undistorted audio from the radios, or they will turn elsewhere. At a time when free, over-the-air FM radio service is facing ever-increasing competition from Internet radio services, smartphone mobile broadband-based streaming audio applications, and satellite radio, among other

²⁴ In the Matter of Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service, *Order*, 25 FCC Rcd 1182 (2009).

²⁵ *Id.* at 4.

alternatives for listeners' attention,²⁶ the Commission should not consider a proposal that could jeopardize FM sound quality and harm FM stations' service to the public. Indeed, the technical quality of FM radio service has never been more important, if FM stations are to retain listeners in today's competitive audio marketplace and thus maintain their economic viability.

IV. Conclusion

For the reasons stated herein, NAB opposes the rule changes proposed in the Petition, and respectfully requests that the Commission dismiss the Petition.

Respectfully submitted,



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Date: October 28, 2011

²⁶ See, e.g., David Goldman, *Pandora Rises Out of the Streaming Radio Rubble*, CNNMoney, Feb. 19, 2010, available at <http://money.cnn.com/2010/02/18/technology/pandora/>; Trefis, *Rising Auto Sales Drive Sirius XM Subscriber Growth*, AOL Daily Finance, June 6, 2011, available at <http://www.dailyfinance.com/2011/06/06/rising-auto-sales-drive-sirius-xm-subscriber-growth>.

CERTIFICATE OF SERVICE

I, Patricia Jones of the National Association of Broadcasters, hereby certify that a copy of the foregoing has been sent via first class mail, postage prepaid, this 28th day of October, 2011, to the following:

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/s/
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