



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

FCC Releases Draft Order to Revise FM Translator Interference Rules and Procedures; FCC Expected to Consider at May 9, 2019, Open Meeting

The rules and resolution processes regarding FM translator interference complaints may soon receive a long-awaited overhaul. According to a [draft Report and Order](#) (the “Draft Order”) released last week by the FCC, significant interference proposals are set to be considered—and almost certainly adopted—at the FCC’s May 9, 2019 open meeting. The recent proliferation of FM translator operations (especially for AM stations) has increased interference, interference complaints, and the need to bring greater structure to the interference resolution process.

The Draft Order responds to comments received regarding a 2018 Notice of Proposed Rulemaking (the “2018 Notice”), which proposed to “streamline” the rules relating to FM translator interference vis-à-vis full power FM stations and to “expedite” the complaint resolution process. Under the FCC’s current rules, FM translators are a secondary service and, as such, must not cause predicted or actual interference to any authorized broadcast station—at any time or anywhere. Currently, it only takes one listener complaint of interference to get the Media Bureau Staff involved; the Staff may ultimately send an “interference remediation” letter to the FM translator licensee requiring that (i) the interference to the full power FM station be eliminated, (ii) listener complaints be resolved, and (iii) a detailed interference resolution report be filed. This process sometimes takes a few months, but often it can take multiple years.

In fact, the Draft Order, which largely echoes the same concerns that the FCC set forth in its 2018 Notice, explains that the complaint resolution process is often delayed over questions regarding the validity of the interference and the impartiality of complaining listeners. In order to remedy the corresponding uncertainty and often contentious nature of the resolution process, the Draft Order would alter the process in the following significant ways:

- **Channel Changes:** The Draft Order would allow FM translators to remediate interference by changing their channel to any available, same-band frequency and would classify such a

channel change as a “minor change.” (Normally, significant frequency changes constitute “major changes” that may only be filed during a designated filing window.)

- Listener Complaints Claiming Translator Interference:
 - *Minimum number of listener complaints.* The Draft Order would increase the number of listener complaints required to trigger remedial processes (beyond the current minimum threshold of one complaint). This “more tailored” approach would create a range regarding the requisite minimum number complaints of from 6 to 65 complaints, based on the population served by the complaining station. Essentially, the formula would establish a minimum of one complaint for every 100,000 people in the station’s service area, with a baseline minimum of 6 complaints (or 3, in the special case of LPFM stations serving fewer than 5,000 people). For a complaint to “count,” it would have to be based on a unique receiver located at a unique location (i.e., multiple listener complaints from a single building or workplace would not count as more than one complaint toward the six-complaint minimum). Additionally, the minimum number must be satisfied by listener complaints dated within one year of each other, with none dated more than 12 months before the date on which a claim is submitted to the FCC.
 - *Contents of complaint.* For a complaint to “count,” it must be signed and dated by the listener (electronically or in writing) and contain (1) the listener’s full name, address, and telephone number, (2) the location of the alleged interference, (3) a statement by the listener that he/she listens to the purportedly affected station using an over-the-air signal at least twice a month, and (4) a statement by the listener that he/she has no legal, employment, financial, or familial affiliation or relationship with the complaining station. The current rules/process do not require this amount of detail in a listener complaint.
 - *Additional requirements.* Further, if a station is the entity submitting an FM translator interference claim, the claim package must also include: (1) a map plotting the specific locations of the alleged interference in relation to the 45 dBu contour of the complaining station (more information on the new contour limit is below); (2) a statement that the complaining station is operating within its licensed parameters; (3) a statement that the licensee of the complaining station has used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and has attempted private resolution thereof; and (4) U/D data demonstrating that at each listener location the ratio of undesired to desired signal strength exceeds -20 dB for co-channel situations, -6 dB for first-adjacent channel situations, or 40 dB for second- or third-adjacent channel situations, calculated using the FCC’s standard contour prediction methodology.
- Remediation Procedures and Timeline: If a channel change cannot resolve the alleged interference, the FM translator station must follow additional remediation procedures. In establishing these procedures, the Draft Order strikes a balance between commenters’ (a) desire for listeners to continue to play a part in the resolution process and (b) concern that required cooperation with FM translator stations may promote negative interactions

between translator operators and listener complainants. Accordingly, the Draft Order removes the current requirement that listeners cooperate with FM translator operators and instead permits interference resolution between FM translator operators and “willing listener complainants.” For “willing listener complainants,” this Draft Order notes that this approach may help remediate interference while “minimizing aggressive tactics that are designed to discourage the complainant rather than resolve the interference.” And, if the listener declines to be involved in the resolution process (or if the complainant’s receiver is not the primary cause of the perceived interference), then the FM translator operator must instead resolve the interference by working with the complaining station. Finally, although the Draft Order declines to adopt a universal resolution deadline, it establishes a “target” deadline of 90 days to resolve complaints.

- Contour Limit on Complaints: One of the most hotly contested elements of the 2018 Notice has been whether and to what extent the FCC should limit the geographic protection for full power FM stations vis-à-vis FM translators. The 2018 Notice had proposed a 54 dBu contour limit (the current rules/procedures have no limit); it appears that the Draft Order acknowledges a compromise that a complaining full power FM station’s 45 dBu signal strength contour should be the limit for interference complaints. According to the Draft Order, complaints outside of the full power station’s 45 dBu contour will not be considered actionable (except on a waiver basis, as noted below).
 - *Terrain-based propagation modeling*. The Draft Order rejects Longley-Rice and other terrain-based propagation modeling systems in favor of the Commission’s standard contour prediction methodology for defining the 45 dBu contour area.
 - *Waiver requests*. The FCC will consider complaints beyond the 45 dBu contour on a case-by-case, waiver basis. Such a waiver will be granted only if the full power FM station requesting such a waiver can demonstrate special circumstances, which would include at least 20 complaints outside of the geographic area covered by the 45 dBu contour. The FCC will also take into account other relevant factors, such as geographic features, power/directionality, and listener expectation of service in considering a waiver request.

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We expect the FCC to adopt the Draft Order largely in its current form. It appears to represent a compromise on the most significant changes to the FM translator interference rules and procedures. If adopted more or less “as-is,” the Draft Order will, hopefully, result in a little more certainty to the interference resolution process.

If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

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