



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 74**

**[MB Docket No. 18-119, FCC 19-40]**

**FM Translator Interference**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Federal Communications Commission adopts rules to strengthen and streamline the rules relating to FM translator interference with other broadcast stations by allowing FM translators to resolve interference issues by changing channels to any available same-band frequency using a minor modification application; standardizing the information that must be compiled and submitted by any station claiming interference, including establishing a required minimum number of listener complaints; establishing interference complaint resolution procedures; and establishing an outer contour limit for the affected station within which interference complaints will be considered actionable.

**DATES:** Effective [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], except for the amendments to §§ 74.1203(a)(3) and 74.1204(f), which contain new or modified information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), and which will become effective after the Commission publishes a document in the Federal Register announcing such approval and the relevant effective date. The Federal Communications Commission will publish a separate document in the *Federal*

*Register* announcing the effective date of these amendments.

**FOR FURTHER INFORMATION CONTACT:** Christine Goepp, Attorney Advisor, Media Bureau, Audio Division, (202) 418-7834; James Bradshaw, Senior Deputy Chief, Media Bureau, Audio Division, (202) 418-2739; Lisa Scanlan, Deputy Division Chief, Media Bureau, Audio Division, (202) 418-2704. Direct press inquiries to Janice Wise at (202) 418-8165. For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, at (202) 418-2918, or via e-mail [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order (*R&O*), MB Docket No. 18-119; FCC 19-40, adopted on May 9, 2019 and released May 9, 2019. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) website at [http://fjallfoss.fcc.gov/edocs\\_public/](http://fjallfoss.fcc.gov/edocs_public/) or via the FCC's Electronic Comment Filing System (ECFS) website at <http://www.fcc.gov/ecfs>. (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. Alternative formats are available for people with disabilities (braille, large print, electronic files, audio format), by sending an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling

the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

### **Paperwork Reduction Act of 1995**

This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, *see* 44 U.S.C. 3507.

The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document in a separate Federal Register Notice, as required by the PRA. These new or modified information collection will become effective after the Commission publishes a notice in the *Federal Register* announcing such approval and the relevant effective date.

In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

### **Congressional Review Act**

The Commission will send a copy of this *R&O* to Congress and the Government Accountability Office (GAO) pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

### **Synopsis**

1. In this *R&O*, the Commission adopts rules regarding FM translator interference that it proposed in the Notice of Proposed Rulemaking, FCC 18-60, 33 FCC Rcd 4729 (2018) (*NPRM*). Specifically, it adopts the following proposals: (1) allowing

FM translators to resolve interference issues by changing channels to any available same-band frequency using a minor modification application; (2) standardizing the information that must be compiled and submitted by any station claiming interference from an FM translator, including a required minimum number of listener complaints; (3) establishing interference complaint resolution procedures; and (4) establishing an outer contour limit for the affected station within which interference complaints will be considered actionable while providing for a process to waive that limit in special circumstances. These measures are designed to limit or avoid protracted and contentious interference disputes, provide translator licensees additional investment certainty and flexibility to remediate interference, and provide affected stations earlier and expedited resolution of interference complaints.

2. Recent substantial growth in the translator service, as well as 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 for translator operators and avoid protracted and expensive interference resolution disputes. Currently, a translator station may be forced to cease operations due to just one unresolved listener complaint. Stations seeking to mitigate interference by changing channels as a minor change are limited to first-, second-, or third-adjacent (collectively, Adjacent) or intermediate frequency (IF) channels. The interference resolution process is often sidetracked by disputes over the validity of the claimed interference and the objectivity of complaining listeners, or by other intentional or unintentional delays. Finally, as noted in the *NPRM*, the current interference resolution process may promote negative interactions between translator operators and listener

complainants. In the *R&O*, the Commission addresses these issues while taking into account the saturation of the FM spectrum in many markets, the various interests of the services involved, and the technical integrity of the FM band.

### Channel Changes

3. The Commission adopts the *NPRM*'s proposal to allow FM translator stations to remediate interference either caused to or received from another broadcast station by changing channels to any available same-band frequency as a minor change.

Commenters generally support this proposal and confirm that the option to change to non-Adjacent channels would benefit translators by providing a relatively low-cost way to resolve interference with little or no reduction in service area. However, the Commission declines to undermine the filing window and auction processes by allowing translator operators the additional flexibility of cross-band channel changes for interference mitigation purposes. Therefore, it modifies § 74.1233(a)(1) to define as a major change any channel change for a translator seeking to resolve interference from a non-reserved band frequency to a reserved band frequency, or vice versa, as proposed in the *NPRM*. The Commission finds that a simple engineering statement of mitigation of interference at the requested frequency is sufficient as a threshold standard to permit the translator applicant to request a channel change as a minor modification. This showing is in keeping with the standard for LPFM stations and with the Commission's goal of encouraging translators to change channels as a means of avoiding interference.

Moreover, the Commission does not recognize a qualitative difference between FM channels and notes that translator channel change applicants must not only show that interference exists at the current frequency but also that the proposed change will not

cause interference at the new frequency. Applicants for a translator channel change will not be required to show that the change will not preclude LPFM opportunities or to notify potentially affected parties in addition to the notice provided by the existing public notice system.

Required Contents of Translator Interference Claims

4. In the *R&O* , the Commission establishes a minimum number of listener complaints ranging from 6 to 25 depending on the population served by the complaining station. The Commission explains that a proportionate approach, which was supported by several commenters, would be fairer and more effective than a single minimum number for all populations. Specifically, it bases the complaint minimums on an approximate increase of one complaint for every 100,000 people in the station’s service area up to a cap of 25. For administrative feasibility and ease of calculation, the Commission adopts the following table specifying each complaint minimum by population tier:

Population within Protected Service Contour	Minimum Listener Complaints Required for Interference Claim
1-199,999	6
200,000-299,999	7
300,000-399,999	8
400,000-499,999	9
500,000-999,999	10
1,000,000-1,499,999	15

1,500,000-1,999,999	20
2,000,000-2,499,999 or more	25
LPFM stations with fewer than 5,000	3

To accommodate concerns raised by LPFM advocates, the Commission adopts three complaints as the minimum complaint number for LPFM stations with less than 5,000 people within their protected service contour. For all other broadcast services, as well as for LPFM stations with 5,000 or more people within their service areas, the minimum number at the lowest population tier is six complaints.

5. In the *NPRM*, the Commission tentatively concluded that it would 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,” but did propose that translator interference claims by affected stations must be based on “separate receivers at separate locations.” In the *R&O*, the Commission clarifies that “separate receivers at separate locations” means that multiple listener complaints from a single building (e.g., complaints from multiple dwellers of an apartment building or house) or workplace will not count beyond the first complaint toward the six-complaint minimum. The existence of a “real and consistent interference problem” will also be confirmed by the threshold requirement that valid listener complaints be located within an undesired-to-desired (U/D) zone of potential interference.

6. Regarding the contents of each individual listener complaint, the Commission defines a listener complaint as a complaint that is signed and dated by the listener and contains the following information: (1) the complainant's full name, address, and phone number; (2) a clear, concise, and accurate description of the location where the interference is alleged to occur; (3) a statement that the complainant listens to the desired station using an over-the-air signal at least twice a month to demonstrate the complainant is a regular listener; and (4) a statement that the complainant has no legal, employment, financial, or familial affiliation or relationship with the desired station, to demonstrate the complainant is disinterested. Electronic signatures are acceptable for this purpose. The Commission concludes that codifying additional details regarding what constitutes a "regular listener"—for example, setting a minimum time for each listening session—is not necessary in light of the fact that each listener is sufficiently committed to the complaining station to complete and sign a statement with the enhanced requirements set out in the *R&O*.

7. Regarding the requirement that a complainant have no legal, financial, employment, or familial affiliation or relationship with the desired station, the Commission states that it will reject attempts to use the following evidence to claim a listener is connected with the station: (1) social media connections, such as listeners friending or following a station or its personnel on Facebook, Twitter, or other social media platforms; (2) membership in listener clubs or participation in station-run promotions, contests, and events; (3) charitable donations to the station, such as listener contributions to a noncommercial education (NCE) station; and (4) time contributed volunteering at a station or at a station-run event, so long as the volunteer does not hold a

regular position at the station comparable to a station employee. The Commission concludes that these activities do not amount to a legal, financial, employment, or familial stake or interest in the station, but rather constitute an extension of the listener relationship. However, it clarifies that advertisers are deemed to have a financial interest in the station, as are underwriters for NCE stations.

8. The Commission agrees with commenters who argue that complaints should be accepted regardless of how they arise, including those solicited by over-the-air announcements (although such announcements must not include inaccurate or misleading information). The Commission states that it will also accept listener complaints presented in a standardized format, such as a form letter or list that the complaining station supplies to its listeners, as long as all the required elements are present.

9. A complaint that meets all the above requirements will be presumed to be valid. The Commission finds that such a presumption will reduce disputes over listener bona fides and will streamline staff processing of translator interference cases. It rejects the suggestion that the Commission take a more active role in verifying complaints, including “vetting and questioning” listener complainants, holding hearings to establish the veracity of complaints before a translator is ordered off the air, or making complaints subject to criminal penalties under 18 U.S.C. section 1001. However, the Commission agrees that translator operators should be able to verify the basic information contained in each complaint, such as the existence of the complainant and residence at the address provided. Therefore, after review of the contents of a translator interference claim package, the staff will direct the complaining station to serve the translator operator with a non-redacted copy of the relevant listener complaints. The burden of rebutting the

presumption of validity of each complaint, once established, will be on the translator operator.

10. In addition to the required minimum number of valid listener statements, a station submitting a translator interference claim package pursuant to either § 74.1203(a)(3) or § 74.1204(f) must include: (1) a map plotting the specific locations of the alleged interference in relation to the 45 dBu contour of the complaining station; (2) a statement that the complaining station is operating within its licensed parameters; (3) a statement that the complaining station licensee has used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted private resolution; 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 Commission's standard contour prediction methodology.

11. Requirement (1) was proposed in the *NPRM*. It already applies to section 74.1204(f) predicted interference claims and is extended to § 74.1203(a)(3) actual interference claims. Requirement (2) is necessary due to the 45 dBu contour adopted in the *R&O*. The Commission must be notified if a complaining station is operating outside its licensed parameters—including pursuant to special temporary authority (STA) because such operation could affect its actual versus its licensed 45 dBu signal contour and therefore alter the permissible scope of its interference claim. Requirement (3) provides an opportunity for translators and complaining stations to resolve interference issues privately prior to filing a formal interference claim with the Commission. Finally, requirement (4) is already well-established for § 74.1204(f) claims and is extended to §

74.1203(a)(3) in response to many commenters who question the reliability of listeners' assessment of the source of the perceived interference. Although other methods may be used at the remediation stage to determine the source of interference, for the purpose of determining the initial validity of a listener complaint, the Commission finds that a contour-based U/D ratio is an adequate threshold causation test to establish that the complaining listener is within a "zone of potential interference" by the subject translator station to the desired station. In addition to the U/D zone of potential interference test, the 45 dBu contour-based limitation on actionable interference complaints will eliminate many interference complaints that may be actually due to weak, distant signals from the desired station or related issues such as multipath fading, atmospheric ducting, poor reception, or other conditions.

#### Time Limits

12. The Commission declines to impose a time limit on translator interference complaints of one year after the construction of a new or modified translator facility, as suggested by some commenters. Such a limitation, the Commission finds, would be too great an impingement on the general right of full-service stations to protection from interference by translator stations. However, it imposes a time limit within which the minimum number of listener complaints must be dated.

#### Ex Parte and Related Issues

13. In the *R&O*, the Commission adopts the proposal in the *NPRM* that a listener whose complaint is sent to a station and then submitted to the Commission as part of an interference claim package filed by the affected station licensee is not a party under the *ex parte* rules because the listener has not submitted a filing with the Commission.

Likewise, when the Commission forwards a complaint originally filed directly with the Commission by an individual listener to the affected station, the listener does not become a party to any proceeding related to that listener complaint for *ex parte* purposes if the individual did not serve the relevant translator. However, a station licensee that files an interference claim package and, after being directed to do so by Commission staff, serves it on the translator, is considered a party to the resulting proceeding, as is the translator. All parties to a restricted complaint proceeding must be served with written presentations to the Commission and be given advance notice of and an opportunity to be present for oral presentations. Similarly, the Commission requires translator operators to serve the complaining station with any filing or submission, including amendments to applications and STA requests, that relate to the station that is the subject of the interference claim.

#### Remediation Procedures

14. In the *R&O*, the Commission clarifies the appropriate remediation procedures translator operators and complaining stations should follow upon receipt of notice from the Commission that a valid and complete interference claim package has been received. In sum, a translator station may respond to a valid interference claim by changing channels, working with a willing listener to resolve reception issues, or working with the complaining station to resolve station signal interference. Whatever approach(es) it chooses, the translator operator must submit data demonstrating that the interference has been resolved by the relevant deadline or be subject to suspension of operations or reduction of power pursuant to § 74.1203(b).

15. The Commission eliminates the requirement that the listener complainants must cooperate with the translator operator to resolve interference and thus will not

discount complaints if the listener refuses to respond to inquiries from the translator operator. Rather, listener cooperation will be voluntary at the discretion of the listener. This approach is intended to avoid negative interactions between listener and translator operator while preserving translator operators' ability to work collaboratively with willing listeners in appropriate circumstances. If the listener's receiving equipment is determined to be the primary cause of the problem and the listener is willing to cooperate with efforts to remediate the interference, the translator operator may attempt to resolve the interference by adjusting or replacing the listener's equipment.

16. While the Commission has long permitted translator operators to resolve interference complaints by replacing or adjusting listener equipment, such an approach must not be taken to extremes. For example, the Bureau has held that providing listeners with smartphones to allow internet streaming of the desired station is not a "suitable technique" for resolving interference under § 74.1203(b). Similarly, the Bureau has found that offering a cash payment to a complaining listener does not fulfill the translator operator's remedial obligation under § 74.1203(b). The Commission affirms the reasoning in both of these holdings and reiterates that § 74.1203(b) requires a translator station to remediate the complained-of interference, not merely convince a listener to withdraw a complaint by a cash payment or some other means. Moreover, the Commission notes that each complaining listener may represent only a fraction of the listeners who experience interference. Unlike remediation techniques such as reducing power or changing channels, listener-based remediation does not address interference that may be experienced locally by other listeners. Therefore, if a translator operator wishes to establish that interference has been eliminated through receiver adjustment or

replacement, it must document and certify that the desired station can now be heard on the listener's receiver, i.e., that the adjustment or new equipment actually resolved the interference.

17. If the complainant's receiver is *not* the primary cause of the perceived interference, or if the listener chooses not to be involved in the resolution process, then the translator operator and the complaining station must work together to resolve the interference complaint using suitable techniques. In most circumstances, a lack of interference can be demonstrated by on-off tests and/or field strength measurements at the relevant site, provided that they take place in a manner acceptable to both parties. On-off tests also can be used to establish alternate power levels or other technical parameters for the translator station that will eliminate interference. Rather than impose specific technical processes or parameters for such testing, the Commission requires that on-off tests and/or field strength measurements be conducted in a manner acceptable to both parties. Once agreement is reached, the parties must jointly submit the agreed-upon remediation showing to the Commission. If the parties fail to agree upon appropriate methods and technical parameters to be used for interference testing at a particular site or sites, the parties should engage a mutually acceptable third party engineer to observe or carry out the testing. Although the Commission anticipates that the parties will generally share the cost of engaging a neutral third party, it does not mandate the terms of that agreement. Commission staff will make the final determination whether the interference has been resolved based on the information requested and received from the third party engineer. At any point in the process the parties may agree that interference has been resolved using any mutually acceptable means; however, any contested data may not be

unilaterally presented to the Commission as a remediation showing (or to dispute a remediation showing).

18. The Commission establishes a target deadline of 90 days to resolve interference claims and directs the Bureau to establish, upon completion of its review of each interference claim package, an individual timeline within which the translator must resolve all properly substantiated interference complaints and submit an acceptable resolution showing or be subject to suspension of operation. The Bureau will also establish any intermediate deadlines, such as a remediation plan deadline, if appropriate.

#### Contour Limit for Listener Complaints

19. The Commission sets a full power FM, LPFM, FM translator, or FM booster station's 45 dBu signal strength contour as the limit to which it may claim interference to its listeners from an FM translator. Such a limit would provide translator licensees with additional clarity and certainty regarding their investments and protect radio listeners from a loss of service due to a small number of interference complaints on the outer fringes of the complaining station's listenable coverage area. Although the *NPRM* proposed a contour limit of 54 dBu, many commenters provide extensive evidence from markets nationwide to support their contention that full-service stations have substantial listenership outside the 54 dBu signal strength contour—listenership that would be at risk if interference complaints outside this limit were not considered actionable. After reviewing the listenership data provided in the record, the Commission concluded that at and beyond the 45 dBu contour, most stations' signal is not strong enough to reliably attract a significant listening audience. This limit represents a point of diminishing returns when balancing conserving full-service listenership and providing certainty for

translator stations and is consistent with the mid-40 dBu range median of the various contour limits suggested by commenters. While declining to allow terrain-based propagation modeling as an alternative method of determining the extent of a station's 45 dBu contour, the Commission concludes that its adoption of a more generous outer contour limit than the one proposed in the *NPRM*, coupled with a waiver policy for those limited cases where stations provide significant service to communities outside their 45 dBu contour, will adequately protect stations from significant audience loss due to translator interference at the outer edges of their coverage areas.

20. The Commission applies the 45 dBu outer contour limit to both actual interference claims under § 74.1203(a)(3) and predicted interference claims under § 74.1204(f). It also amends § 74.1204(f) to allow a complaining station to submit valid listener complaints from anywhere within its predicted 45 dBu contour rather than, as under the current rules, only from within the relevant translator's predicted 1 mV/v (60 dBu) contour. By modifying the scope of predicted interference claims under § 74.1204(f) to more closely reflect post-construction permit grant actual interference requirements, the Commission anticipates that more potential conflicts can be resolved before applicants are fully invested in the proposed facility and while the translator operator has more options available for resolving the issue.

21. Regarding Adjacent channel protection, the Commission acknowledges that co-channel interference is the most likely to occur and that Adjacent channel interference is less likely. However, it concludes that there is no reason to prohibit complaints of actual Adjacent channel interference or objections to applications based on predicted Adjacent channel interference if an appropriate showing is made that satisfies the

requirements set out in the *R&O*. Likewise, the Commission affirms the tentative conclusion in the *NPRM* 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 that do not affect our analysis regarding actionable translator interference complaints. The listenership information submitted in the record, upon which it bases the 45 dBu contour limit, compiles data from markets located in all Zones. Moreover, the 45 dBu contour limit is well beyond the protected service contour of any station, including Class B and B1 stations. For these reasons, the Commission concludes that it will not further complicate the complaint process by adopting different contour limits for different Zones or station classes.

22. The Commission will consider requests for waiver of the 45 dBu contour limit where the requestor demonstrates the existence of a sizable community of listeners outside the 45 dBu contour limit, recognizing that in certain circumstances a radio station may serve a community outside its 45 dBu contour with programming that by its nature attracts “determined listeners”—listeners who may tolerate poor reception (or purchase a higher quality antenna) to receive the desired station. Although often formats are duplicated in different markets, there is nonetheless evidence on the record that, in some markets, listeners may rely on programming that is not available locally. In keeping with commenters’ suggestions, licensees requesting waiver based on listenership outside the 45 dBu contour must submit at least 20 complaints from listeners outside the 45 dBu contour of the desired station in lieu of—or, optionally, in addition to—the required number of complaints within the 45 dBu contour. Other relevant factors include: (1) whether geographic features or power/directionality enhance reception at the relevant

listener locations (supported if possible by field strength testing); and (2) how established the listener expectation of service is—i.e., how long the desired station has served the relevant communit(ies). As with all waivers, each request will be considered on a case-by-case basis and must demonstrate special circumstances.

23. The Commission emphasizes that nothing in the *R&O* alters the secondary status of translator stations or the long-standing norms that secondary service stations are not entitled to protection from full-service stations and that full-service stations are entitled to protection from predicted and actual interference by secondary services. As always, no translator will have a protected, guaranteed coverage area. Rather, if a primary station chooses to relocate, or modifies its facilities in a way that causes interference to or receives interference from an existing translator station, the translator operator must either accept the interference or, if necessary, modify its facilities or go off air to avoid causing or receiving interference. The new rules will help to better define what constitutes an actionable interference claim and the process for resolving claims, protecting translators from specious interference claims while preserving their fundamental characteristic as a secondary service. These actions are consistent with Commission precedent setting clear limitations and boundaries on secondary service interference claims. Under the LPFM service rules, for example, a full power station is only protected from LPFM interference to its 70 dBu contour. This limitation is designed to promote a “stable and enduring” LPFM service. For the same reason, the measures taken in the *R&O* provide certainty and clarity for translator stations without eliminating the right of primary stations to be protected from harmful interference to their core listenership.

24. Likewise, the Commission explains that establishment of an outer contour limit does not conflict with LCRA section 5(3), which requires that when licensing new translator stations, the Commission must ensure that translator, booster, and LPFM stations “remain equal in status and secondary to existing and modified full-service FM stations.” It is well established that the LCRA does not require identical regulation of each secondary service, and in any case, because the LPFM service rules contain a similar contour-based restriction on interference complaints, the establishment of an outer contour limit on translator interference complaints brings the translator rules into closer harmony with the LPFM rules.

25. Applications or complaints that have not been acted upon as of the effective date of the rules adopted in this *R&O* will be decided based on the new rules. If necessary, parties will be given an opportunity to submit supplemental materials to address the revised rules adopted herein.

26. Finally, as a non-substantive clarification, the Commission deletes the two clauses partially enumerating services in §§ 74.1203(a)(3) and 74.1204(f) of the Rules, and states instead that the relevant rules apply to all full-service stations and previously authorized secondary service stations.

### **Final Regulatory Flexibility Act Analysis**

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM*. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. Because the Commission amended the rules in this *R&O*, it included this Final Regulatory Flexibility Analysis (FRFA) which conforms to the RFA.

### Need for and Objectives of the R&O

In the *R&O*, the Commission adopted rules to clarify and streamline the FM translator interference claim and remediation process. The Commission notes that the current process can be time-consuming, contentious, and expensive for the parties involved. Therefore, as proposed in the *NPRM*, the Commission adopts the following measures:

- Allowing translator operators to remediate interference either caused to or received from another broadcast station by changing channels to any available same-band frequency as a minor change. The required showing for such a minor change application is an engineering statement of mitigation of interference at the requested frequency.
- Establishing the required contents for a translator interference claim submitted by the affected station, including: (1) a minimum number of listener complaints ranging from 6 to a cap of 25 depending on the population within the complaining station's protected contour; (2) a map plotting the specific locations of the alleged interference in relation to the 45 dBu contour of the complaining station; (3) a statement that the complaining station is operating within its licensed parameters; (4) a statement that the complaining station licensee has used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted private resolution; and (5) data demonstrating that the undesired to desired (U/D) signal strength at each listener location exceeds certain ratios.

- Eliminating the requirement that listener complainants must cooperate with the translator operator to resolve interference. If a listener-based solution is not possible or desired by the listener, the translator and complaining station must work together to achieve a technical solution to the interference within the time frame set by Commission staff.
- Establishing a full power FM, LPFM, FM translator, or FM booster station's 45 dBu signal strength contour as the limit to which it may claim interference to its listeners from an FM translator. This outer contour limit applies to both actual and predicted interference claims.
- Establishing criteria for evaluating requests for waiver of the 45 dBu contour limit.

#### Summary of Significant Issues Raised by Public Comments in Response to the IRFA

No formal comments were filed on the IRFA but some commenters raised issues concerning the impact of the various proposals in this proceeding on small entities. These comments were considered in the *R&O* and in the FRFA.

#### Response to comments by the Chief Counsel for Advocacy of the Small Business

##### Administration

No comments were filed on the IRFAs by the Small Business Administration.

#### Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

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 rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the

terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. 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.

Radio Stations. This economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public.” The SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts. Census data for 2012 shows that 2,849 firms in this category operated in that year. Of this number, 2,806 firms had annual receipts of less than \$25,000,000, and 43 firms had annual receipts of \$25,000,000 or more. Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$38.5 million in that year, the Commission concludes that the majority of radio broadcast stations were small under the applicable SBA size standard.

Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,619 stations and the number of commercial FM radio stations to be 6,754, for a total number of 11,373. Of this total, 9,898 stations had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) in October 2014. In addition, the Commission has estimated the number of noncommercial educational (NCE) FM radio stations to be 4,135. NCE stations are non-profit, and therefore considered to be small entities. Therefore, the Commission estimates that the

majority of radio broadcast stations are small entities.

Low Power FM Stations. The same SBA definition that applies to radio stations would apply to low power FM stations. As noted above, the SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts. The Commission has estimated the number of licensed low power FM stations to be 2,172. In addition, as of December 31, 2018, there were a total of 7,952 FM translator and FM booster stations. Given that low power FM stations and FM translators and boosters are too small and limited in their operations to have annual receipts anywhere near the SBA size standard of \$38.5 million, we will presume that these licensees qualify as small entities under the SBA definition.

The Commission notes again, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations must be included. Because the Commission does not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, its estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of “small business” is that an 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 broadcast station is dominant in its field of operation. Accordingly, its estimate of small radio stations potentially affected by the proposed rules includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

Description of Projected Reporting, Recordkeeping and other Compliance Requirements

The *R&O* adopts the following revised reporting or recordkeeping requirements. FM translator operators seeking to remediate interference by changing channels to any available same-band frequency as a minor change will be required to submit an FCC Form 349, “Application for Authority to Construct or Make Changes in an FM Translator, or FM Booster Station,” including an engineering statement of mitigation of interference at the requested frequency.

Any broadcasting station complaining of interference to or from an FM translator station pursuant to either § 74.1203(a)(3) or § 74.1204(f) must submit to the Commission: (1) a minimum number of listener complaints ranging from 6 to 25 depending on the population covered by the complaining station’s protected contour; (2) a map plotting the specific locations of the alleged interference in relation to the 45 dBu contour of the complaining station; (3) a statement that the complaining station is operating within its licensed parameters; (4) a statement that the complaining station licensee has used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted private resolution; and (5) 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 Commission’s standard contour prediction methodology.

A listener complaint is defined as a complaint that is signed and dated by the listener and contains the following information: (1) the complainant’s full name, address, and phone number; (2) a clear, concise, and accurate description of the location where the interference is alleged to occur; (3) a statement that the complainant listens to the desired

station using an over-the-air signal at least twice a month, to demonstrate the complainant is a regular listener; and (4) a statement that the complainant has no legal, employment, financial, or familial affiliation or relationship with the desired station, to demonstrate the complainant is disinterested.

Translator operators that choose to remediate interference by adjusting or replacing listener equipment, with the consent of the listener, must document and submit to the Commission that the adjustment or new equipment resolved the interference.

Alternatively, for each listener complaint, the translator operator and complaining station must work together to reach a technically-based resolution to the interference and jointly report such resolution to the Commission. In some cases, the Commission may require submission of a remediation plan at the outset of the interference resolution process.

Translator operators seeking waiver of the 45 dBu contour limit on listener complaints must submit a showing of special circumstances and that such waiver is in the public interest, including a minimum of 20 listener complaints from outside the 45 dBu contour and other relevant factors.

These new reporting requirements will not differently affect small entities.

#### Steps Taken to Minimize Significant Impact on Small Entities, and Significant

#### Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its 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.”

The new rules regarding FM translator interference are designed to allow all entities, including small entity broadcasters, to resolve translator interference in a manner that is streamlined and the least burdensome. These measures are intended to provide clarity and certainty in a way that will benefit all broadcasters. In addition, the minimum number of listener complaints required to establish FM translator interference is scaled to reflect the population within the complaining station’s protected contour. In many cases, therefore, a smaller station will be required to submit fewer listener complaints. Finally, LPFM stations, which tend to be smaller operators, have the lowest listener complaint minimum, at three listener complaints.

### **Report to Congress**

The Commission will send a copy of this *R&O*, including this FRFA, in a report to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *R&O*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *R&O* and FRFA (or summaries thereof) will also be published in the *Federal Register*

### **List of Subjects in 47 CFR Part 74**

FM radio broadcast services, Communications equipment, Education, Reporting,  
Federal Communications Commission.

FEDERAL COMMUNICATIONS COMMISSION.

Katura Jackson,  
Federal Register Liaison Officer.

## **Final Rules**

For the reasons set forth in the preamble, the Federal Communications Commission amends part 74 of title 47 of the Code of Federal Regulations as follows:

### **PART 74— EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES**

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

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

2. Amend § 74.1201 by adding paragraph (k) to read as follows:

#### **§ 74.1201 Definitions.**

\* \* \* \* \*

(k) *Listener complaint.* A statement that is signed and dated by the listener and contains the following information:

- (1) The complainant's full name, address, and phone number;
- (2) A clear, concise, and accurate description of the location where interference is alleged or predicted to occur;
- (3) A statement that the complainant listens over-the-air to the desired station at least twice a month; and
- (4) A statement that the complainant has no legal, financial, employment, or familial affiliation or relationship with the desired station.

3. Amend § 74.1203 by revising paragraphs (a)(3) and (b) to read as follows:

**§ 74.1203 Interference.**

(a) \* \* \*

(3) The direct reception by the public of the off-the-air signals of any full-service station or previously authorized secondary station. Interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the FM translator or booster station, regardless of 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 45 dBu contour. Interference is demonstrated by:

- (i) The required minimum number of valid listener complaints as determined using Table 1 of this section and defined in § 74.1201(k) of the part;
- (ii) A map plotting the specific location of the alleged interference in relation to the complaining station's 45 dBu contour;
- (iii) A statement that the complaining station is operating within its licensed parameters;
- (iv) A statement that the complaining station licensee has used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted private resolution; and
- (v) U/D data demonstrating that at each listener location the 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 Commission's standard contour prediction methodology set out in § 73.313.

Table 1 to § 74.1203(a)(3).

Population within Protected Contour	Minimum Listener Complaints
-------------------------------------	-----------------------------

	Required for Interference Claim
1-199,999	6
200,000-299,999	7
300,000-399,999	8
400,000-499,999	9
500,000-999,999	10
1,000,000-1,499,999	15
1,500,000-1,999,999	20
2,000,000 or more	25
LPFM stations with fewer than 5,000	3

(b) If interference cannot be properly eliminated by the application of suitable techniques, operation of the offending FM translator or booster station shall be suspended and shall not be resumed until the interference has been eliminated. Short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

\* \* \* \* \*

4. Amend § 74.1204 by revising paragraph (f) 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 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 within the 45 dBu field strength contour of the desired station. Interference is demonstrated by:

- (1) The required minimum number of valid listener complaints as determined using Table 1 to § 74.1203(a)(3) and defined in § 74.1201(k) of the part;
- (2) A map plotting the specific location of the alleged interference in relation to the complaining station's 45 dBu contour;
- (3) A statement that the complaining station is operating within its licensed parameters;
- (4) A statement that the complaining station licensee has used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted private resolution; and
- (5) U/D data demonstrating that at each listener location the 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 Commission's standard contour prediction methodology set out in § 73.313.

\* \* \* \* \*

5. Amend § 74.1233 by revising paragraph (a)(1) to read as follows:

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

(a) \* \* \*

(1)(i) 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:

(A) Any change in frequency (output channel) except—

(1) Changes to first, second or third adjacent channels, or intermediate frequency channels; or

(2) Upon a showing of interference to or from any other broadcast station, remedial changes to any same-band frequency; or

(B) 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.

(ii) All major changes are subject to the provisions of §§ 73.3580 and 1.1104 of this chapter pertaining to major changes.

\* \* \* \* \*

[FR Doc. 2019-12127 Filed: 6/13/2019 8:45 am; Publication Date: 6/14/2019]