



Federal Communications Commission  
Washington, D.C. 20554

May 11, 2023

In Reply Refer To:  
1800B3-KV

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In re: W266BW, Winder, GA  
Davis Broadcasting of Atlanta, L.L.C.  
Facility ID No. 147273  
Application File No. 0000186272

**Interference Complaint -- Response Required**

Dear Counsel:

This letter refers to Tri-State Communications, Inc. (Tri-State)'s<sup>1</sup> Interference Claim (Complaint)<sup>2</sup> filed on June 27, 2022. The Complaint alleges interference from FM translator station W266BW, Winder, Georgia (W266BW)<sup>3</sup> to the direct reception by the public of the off-the-air signal of WLJA-FM. For the reasons stated below, we find that Tri-State has submitted a valid and complete interference claim package, and we order Davis to either remediate the interference caused to WLJA-FM,

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<sup>1</sup> Tri-State is the licensee of Station WLJA-FM, Ellijay, Georgia, Facility ID No. 36892 (WLJA-FM).

<sup>2</sup> See Complaint of Tri-State, Pleading File No. 0000194058 (filed Jun. 27, 2022). Although Tri-State filed the Complaint in the Media Bureau's Licensing and Management System (LMS) with "petition for reconsideration" as the pleading type, Tri-State titled the pleading "Interference Complaint" and the arguments set forth therein are limited to the alleged interference. Accordingly, we refer to Tri-State's filing as a "Complaint" and review it as an interference claim. We decline to consider Tri-State's email submission to Commission staff arguing the merits of its interference claim and the purported interference tests attached to the email, because the filing of pleadings by email is not allowed. See "Email from Mark Denbo, Esq." (rec'd Apr. 26, 2023 6:15PM EDT). See also 47 CFR § 0.401(a)(1)(i)-(iii); see also *Texas Grace Communications*, Memorandum Opinion and Order, 30 FCC Rcd 10545, n.4 (2015) ("Filing of pleadings by electronic mail to Commission staff is not permitted.").

<sup>3</sup> W266BW is licensed to Davis Broadcasting of Atlanta, L.L.C. (Davis).

as detailed *infra*, or submit evidence that the Complaint is not a valid and complete interference claim package.

In the *Translator Interference Order*,<sup>4</sup> the Commission adopted certain changes to the translator interference complaint resolution process. Among other things, the Commission revised the relevant rules to require that stations complaining of interference must submit a complete interference claim package consisting of specified technical showings along with a required minimum number of rule-compliant listener complaints.<sup>5</sup>

Pursuant to Table 1 of section 74.1203(a)(3) of the Commission’s rules (Rules),<sup>6</sup> Tri-State is required to submit a minimum of seven rule-compliant listener complaints.<sup>7</sup> Here, Tri-State has submitted 11 listener complaints, which Tri-State states are all rule-compliant.<sup>8</sup> Tri-State further states that prior to filing the Complaint, Tri-State gave Davis a map of the reported interference locations and “ample opportunity to resolve the interference” but Davis “failed to do so.”<sup>9</sup>

Based on our review of the Complaint, we conclude that Tri-State has submitted a complete interference claim package. In particular, we find that Tri-State has exceeded its required showing of seven rule-compliant listener complaints with the ten rule-compliant Complainants, along with the required engineering showings.<sup>10</sup>

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<sup>4</sup> *Amendment of Part 74 of the Commission’s Rules Regarding FM Translator Interference*, Report and Order, 34 FCC Rcd 3457 (2019) (*Translator Interference Order*), recon denied, Order on Reconsideration, 35 FCC 11561 (2020). The *Translator Interference Order* became effective on August 13, 2019. *Effective Date of Amended Rules for FM Translator Interference*, MB Docket No. 18-119, Public Notice, 34 FCC Rcd 7004 (2019).

<sup>5</sup> 47 CFR §§ 74.1203(a)(3), 74.1204(f); *Translator Interference Order*, 34 FCC Rcd at 3463-3466, 3469-3470, paras. 12-15; 23-24.

<sup>6</sup> Table 1 of 47 CFR § 74.1203(a)(3).

<sup>7</sup> Our independent engineering review found that per the 2020 United States Census the population within WLJA-FM’s protected service contour is 251,735 persons. For populations of 200,000 – 299,999, a minimum of seven rule-compliant listener complaints are required. See Table 1 of 47 CFR § 74.1203(a)(3). However, according to Tri-State there is a population of 304,576 persons within WLJA-FM’s protected service contour and therefore a minimum of eight-rule compliant complaints is required under the rule. Complaint at 8. Even if Tri-State is correct, the ten rule-compliant complaints, discussed *infra*, that Tri-State submitted would still exceed the minimum number of eight listener complaints that the rule would require if WLJA-FM has a population of 300,000 – 399,999 within its protected service contour.

<sup>8</sup> Specifically, Tri-State submitted complaints from the following listeners: Phyllis A. Loner (Loner); Todd Redmann (Redmann); Peggy Hill (Hill); Jack and Elaine Kitchens (the Kitchens); Betty P. Vaughn (Vaughn); Steve Rakestraw (Rakestraw); Larry Caldwell (Caldwell); Elaine Smith (Smith); Don Williams (Williams); Herbert Goss (Goss); and James R. Garmon (Garmon). Collectively, these listener complainants will be referred to as the Complainants.

<sup>9</sup> Complaint at 5. As an aside Tri-State states that on June 23, 2022, Davis purportedly reduced W266BW’s effective radiated power to an unspecified level, but Tri-State noted that the interference “remained present in certain areas . . .” *Id.*

<sup>10</sup> In particular, we find that Tri-State has submitted valid listener complaints from the following Complainants: Loner (Home, Driving); Redmann (Driving); Hill (Driving); the Kitchens (Driving); Vaughn (Home, Driving); Rakestraw (Home, Driving); Caldwell (Home, Driving); Smith (Home); Williams (Driving); and Goss (Home, Driving). We find that the listener complaint from Garmon is not rule-compliant because the interference reported at his home occurred outside of the protected interference area and he failed to identify clear, concise locations where he says he experienced interference while driving.

Accordingly, Davis is required to address Tri-State's Complaint as set forth in the timeline below:<sup>11</sup>

1. **Within thirty days of this letter**, Davis must file:
  - a plan to resolve the interference;<sup>12</sup> or
  - evidence that Tri-State's Complaint is not a valid and complete interference claim package.<sup>13</sup>
2. **Within sixty days of submitting a remediation plan**, if one has been submitted, Davis must file either (i) the **jointly** agreed upon interference testing results; (ii) the testing results of the parties' mutually agreed upon independent engineer; or (iii) the results from Davis's remediation with the ten referenced Complainants<sup>14</sup> if said Complainants elect to participate in the remediation process. No unilateral testing results will be considered.<sup>15</sup> Upon receipt, we will review said information to determine if the interference has been resolved.

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<sup>11</sup> *Translator Interference Order*, 34 FCC Rcd at 3468-3469, para 21 (“[T]he staff will direct the complainant station to serve the translator operator with a non-redacted copy of the relevant listener complaints so that the translator operator can verify the basic elements of the complaint, such as the existence of the complainant, current residence at the given address, etc.”). Normally we would impose a requirement that Tri-State serve the listener complaints on Davis; however, Tri-State has already served Davis with the Complaint, thus rendering it unnecessary to impose that condition.

<sup>12</sup> In the *Translator Interference Order*, the Commission declared that acceptable plans include the following: 1) relocating to an available same-band FM channel; 2) working with willing listener complainants; or 3) working with the complaining station. Regarding direct listener remediation, if the listener agrees to allow the translator station to adjust or replace his/her receiver equipment to address interference, the translator station “must document and certify that the desired station can now be heard on the listener’s receiver.” *Translator Interference Order*, 34 FCC Rcd at 3472, para. 30. If, however, the listener’s equipment is not the cause, or the listener declines to participate in the remediation process, then “the translator operator and the complaining station must work together to resolve the interference complaint using suitable techniques.” *Id.* at 3473, para. 32. The “lack of interference can be demonstrated by on-off tests and/or field strength measurements at the relevant site, provided they take place in a manner *acceptable to both parties*.” *Id.* at 3474, para. 33 (emphasis added). If, however, “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.” *Id.*

<sup>13</sup> Davis has “the burden of rebutting the presumption of validity of each complaint.” *Id.* at 3468-3469, para. 21. We note that the Commission has stated that the following activities are not evidence of an invalid listener complaint: “(1) social media connections [with the station] . . . ; (2) membership in listener clubs or participation in station-run promotions, contests, and events; (3) charitable donations to the 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.” *Id.* at 3467, para. 19 (footnotes omitted). However, “advertisers are deemed to have a financial interest in the station, as are underwriters.” *Id.*

<sup>14</sup> *See supra* page 2 and note 10.

<sup>15</sup> The Commission opined that “[a]t any point in the process the parties may also agree that interference has been resolved using any mutually acceptable means; however, any contested data may not be unilaterally presented . . . as a remediation showing (or to dispute a remediation showing).” *Translator Interference Order*, 34 FCC Rcd at 3474, para. 33.

We will withhold further action on the Complaint during the interference remediation timeline set forth above. Failure to comply with the remediation timeline may result in W266BW being ordered to cease operations.

Sincerely,

James D. Bradshaw  
Senior Deputy Chief  
Audio Division  
Media Bureau