

## FM Translator for HD-2 Signal Shut Down By FCC After Interference Complaints - Can't Remedy Complaint By Giving Phones With Internet App to Complaining Listeners

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The FCC this week ordered an FM translator in Detroit to shut down as it caused interference to the reception of a full-power FM station from Toledo. The translator had been rebroadcasting the HD2 signal of another area station, in effect introducing a new analog station in the Detroit area, to bring back a smooth jazz format that had left the city a few years ago. But the translator caused interference to the reception of the Toledo station in areas where the Toledo station was regularly used and, in the eyes of the FCC, the translator's operator was able to provide no relief to the complaining listeners. Thus, it was ordered off the air. Translators are required to shut down if they create interference to the regularly used signal of a full-power station, even outside of that station's protected contour. This happens somewhat regularly, so that part of the FCC decision is not particularly unique. What is unique was that the FCC rejected attempts to resolve the interference by giving the complaining listeners mobile phones capable of picking up the Toledo station's programming through a mobile "app" on the phone. The case also chastised the translator licensee for posting the names of the complaining listeners on its website.

As we wrote in a recent post, **Section 74.1203 of the FCC rules** requires that a translator cease operations if it interferes with the regularly used signal of a full-power FM station. Objectors need to show that there are specific listeners who regularly listen to a full-power station, and that the translator creates interference to the reception of that signal in areas where these listeners had heard the station before the translator started to operate. In the past, to get rid of these objections, translator operators have purchased the listeners who complain filters for their radios, or even new radios or other devices to overcome the interference objections. In this case, the translator licensee went further when such traditional methods did not resolve the interference. The translator operator bought the objectors mobile phones with an iHeartRadio mobile app that could receive the primary station (a Clear Channel station). The FCC rejected that solution, finding that a non-broadcast solution to broadcast interference imperiled broadcast service - "a free over-the-air system that is and must remain a vital source of news, information and programming for *all* Americans" (emphasis in the original). Thus, the translator was required to sign off unless and until it could resolve all interference claims. Given that the Toledo station had only provided objections from those who complained about interference inside of the station's protected contour, the FCC said that it would anticipate that many more objections would be submitted if it accepted the mobile app solution, and that it was likely that it would

have to look at all sorts of different solutions to those future objections. The Commission ordered the translator station off the air, and suggested that it might be difficult for it to restart operations on its current channel, which was co-channel with the Toledo station.

The other interesting aspect of the case was the admonition issued to the translator operator for posting the names of the individuals who complained about the interference on their website, for fear that these individuals would face intimidation for objecting to the translator's operations, discouraging future objections. This is certainly a concern for many petitioners in FCC proceedings. But note that the names of these individuals are available in the public FCC files, as they are all set out in the pleadings in this matter. Should the FCC provide more confidentiality to complaining witnesses in such cases?

The overriding lesson from this case is one that all broadcasters contemplating the use of FM translators - whether they be for rebroadcast of an AM, HD or FM signal - need to contemplate before investing too heavily in such a facility. These stations are secondary services that can be forced off the air if they cause interference to any full-power station. So, when changing the location or power of a translator in order to rebroadcast some new signal, be careful to make sure that the facility will be a long-term operation before investing too significantly as, just like the investment of the translator operator in this recent case, your operation could end up in limbo if a couple of listener complaints arise that cannot be resolved through over-the-air means as this FCC order suggests.

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