



Federal Communications Commission  
Washington, D.C. 20554

**July 24, 2020**

*In Reply Refer to:*  
1800B3-KV

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In re: W221DG, Exton, PA  
Broadcast Sciences, LLC  
Facility ID No. 142298  
File No. BLFT-20170106ACP

**Interference Complaint -- Response Required**

Dear Counsel:

This letter refers to Clear Communications, Inc.'s (CCI or Complaining Station)<sup>1</sup> "Interference Complaint and Request to Order Immediate Suspension of Operations" (Complaint) filed on May 12, 2020, alleging interference caused by FM Translator W221DG, Exton, Pennsylvania (W221DG or Translator).<sup>2</sup>

In the *Translator Interference Order*,<sup>3</sup> the Commission adopted certain changes to the translator

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<sup>1</sup> CCI is the licensee of Station WVLT(FM), Vineland, New Jersey (WVLT(FM)).

<sup>2</sup> W221DG is licensed to Broadcast Sciences, LLC (BSL or Licensee).

<sup>3</sup> *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, MB Docket NO. 18-119, Report and Order, 34 FCC Rcd 3457 (2019) (*Translator Interference Order*). 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).

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 of rule-compliant listener complaints.<sup>4</sup>

Pursuant to Table 1 of 47 CFR § 74.1203(a)(3) of the Rules,<sup>5</sup> CCI is required to submit a minimum of eight rule-compliant listener complaints.<sup>6</sup> CCI has submitted 29 listener complaints which it claims comply with the Rules.<sup>7</sup> Six of those listener complaints allege interference at multiple locations inside and outside the 45 dBu contour of WVLTV(FM), and CCI requests a waiver of the 45 dBu contour limit for the reported locations outside of that contour. In addition, CCI has submitted 22 other listener complaints for which it similarly requests a waiver because the reported interference areas are located outside of the 45 dBu contour limit.<sup>8</sup> In support of the waiver request, CCI contends that it has submitted more than the required minimum number of 20 complaints located outside the 45 dBu contour and that WVLTV has served these areas since October 2002.<sup>9</sup>

Based on our review of the Complaint, we conclude that CCI has submitted a valid interference claim package. In particular, we find that CCI has exceeded its required showing of eight rule-compliant listener complaints with the following 27 rule-compliant Group 1 Complainants, along with the required engineering showings:<sup>10</sup> Alberio (home and work); Evans (home); Baker (home); Frick (home and

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<sup>4</sup> 47 CFR §§ 74.1203(a)(3), 74.1204(f); *Translator Interference Order*, 34 FCC Rcd at 3463-3468, 3469-3470.

<sup>5</sup> 47 CFR § 74.1203.

<sup>6</sup> Although CCI states that the population within W221DG's 60 dBu contour is 330,583 persons, *see* Complaint at 3, our independent engineering review found 350,385 persons are located within the Translator's 60 dBu contour. For populations of 300,000 – 399,999, a minimum of eight rule-compliant listener complaints are required; thus, the discrepancy is of no material significance. *See* Table 1 of 47 CFR § 74.1203(a)(3).

<sup>7</sup> Specifically, CCI has submitted complaints from the following listeners: Frank Alberio (Alberio); Debbie Evans (Evans); Phyllis Baker (Baker); Martin R. Frick (Frick); Mary Ann OBoyle (OBoyle); Tom O'Hara (O'Hara); Lisa A. Liko (Liko); Eleanor Giesler (Giesler); Joe Kania (Kania); Jane S. Marston (Marston); Joseph J. McCool, Jr (McCool); George Rhodes, Jr. (Rhodes); Kandiae Salvatore (Salvatore); James F. Hindley (Hindley); Jim Burner (Burner); Doris J. Chan (Chan); Joseph Large (Large); Gary Percival Davis, Sr. (Davis); Dennis Pomante (Pomante); Robert G. Dengel (Dengel); Jim Finley (Finley); Patrick Flannery (Flannery); Anthony Knisely (Knisely); Keith David Ormsoy (Ormsoy); Michael Paoella (Paoella); Joyce Williams Potts (Potts); Laura Rowles (Rowles); Jack Scavicchio (Scavicchio); and Edward J. Swarter (Swarter). Complaint, Attach. 1, Engineering Statement, Appx. 1, Complaints Located within the Interference Zone. Collectively, these listener complainants will be referred to as Group 1 Complainants.

<sup>8</sup> Specifically, CCI states the following Group 1 Complainants reported multiple interference areas which include locations inside and outside of the 45 dBu contour limit: Evans; O'Hara; Kania; Burner; Flannery; and Rowles. In addition, CCI states the following listeners reported interference areas which are only located outside of the 45dBu contour limit: Alexander S. Wysocki (Wysocki); Barbara S. Lade (Lade); Bill Baker (Baker); C. Deryl Benson (Benson); Catherine J. Mink (Mink); Cathy Moor (Moor); David R. McKinney (McKinney); Diane M. Isabella (D. Isabella); Gregory J. Isabella (G. Isabella); Donald Moore (Moore); Gerry Jones (Jones); Jay V. Gillette (Gillette); John Schiavone, Jr. (Schiavone); Joseph Giacchino (Giacchino); Louise A. Fiori (Fiori); Mary P. Grimes (Grimes); Rita A. Tauono (Tauono); Robert J. Fabii (Fabii); Robert J. Lion (Lion); Robert Sachs (Sachs); Robert W. Crowe (Crowe) and Thomas Reynolds (Reynolds). *Id.*, Attach. 1, Engineering Statement, Appx. 2, Complaints Not Located within Interference Zone. Collectively, apart from the above-referenced Group 1 Complainants, these additional listener complainants will be referred to as Group 2 Complainants.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> Several of the Group 1 Complainants listeners reported multiple interference locations such as home, work and driving. In listing the rule-complaint complaints, we have listed in a parenthetical the acceptable interference location(s).

driving); OBoyle (home); O'Hara (driving); Liko (home); Giesler (home); Kania (driving); Marston (home); McCool (home); Rhodes (home); Salvatore (home); Hindley (home and driving); Chan (home); Large (home and driving); Davis (home and driving); Pomante (home); Dengel (driving); Finley (home); Flannery (home); Knisely (home and driving); Ormsoy (home and driving); Paoella (home); Potts (home and driving); Rowles (home and driving); and Scavicchio (home and driving). Regarding the remaining Group 1 Complainants Swarter and Burner, we find their complaints to be unacceptable for the following reasons. Swarter failed to provide a clear, concise, and accurate description of the purported interference location(s) as required by section 74.1201(k) of the Rules.<sup>11</sup> Burner reported interference only in areas outside of the 45 dBu contour limit, and as discussed below, we decline to consider the listener complaints that do not comply with the contour limit.

We decline to grant CCI's request for waiver of the 45 dBu contour limit. The Commission's Rules may be waived only for good cause shown.<sup>12</sup> A request for waiver "faces a high hurdle even at the starting gate"<sup>13</sup> and must be supported by a compelling showing.<sup>14</sup> Waiver is appropriate only if the requestor demonstrates that (1) special circumstances exist which warrant a deviation from the general rule, and (2) such deviation better serves the public interest.<sup>15</sup> Here, we find that CCI has failed to meet its burden. In the *Translator Interference Order*, the Commission stated that requests for waiver of the 45 dBu contour limit would be considered, on a case-by-case basis, if the request includes a minimum of 20 complaints from listeners outside the 45 dBu contour limit and demonstrates special circumstances.<sup>16</sup> The Commission opined that in weighing said waiver requests, the Commission "will also take into account other relevant factors such as: (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)."<sup>17</sup> Apart from claiming WVLT(FM)'s longstanding service to the area, CCI fails to provide any support for grant of a waiver. Thus, CCI has failed to demonstrate that special circumstances exist here which warrant a waiver of the 45 dBu contour limit for FM translator interference complaints.

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<sup>11</sup> 47 CFR § 74.1201(k).

<sup>12</sup> 47 CFR § 1.3.

<sup>13</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (subsequent history omitted).

<sup>14</sup> See *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974))

<sup>15</sup> See *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); and *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>16</sup> *Translator Interference Order*, 34 FCC Rcd at 3479-3480, para 44.

<sup>17</sup> *Id.* at 3480.

Accordingly, BSL is required to remediate the interference, within the 45dBu contour of WVLT(FM), as set forth in the timeline below:<sup>18</sup>

**1. Within thirty days of this letter, BSL must file:**

- a plan to resolve the interference;<sup>19</sup> or
- evidence that CCI's Complaint is not a valid and complete interference claim package.<sup>20</sup>

**2. Within sixty days of submitting a remediation plan, if one has been submitted, BSL 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 BSL's remediation with the 27 referenced listeners<sup>21</sup> if said listeners elect to participate in the remediation process. No unilateral testing results will be considered.<sup>22</sup> Upon receipt, we will review said information to determine if the interference has been resolved.**

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<sup>18</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 CCI serve the listener complaints on BSL, however, CCI has already served BSL with the Complaint, thus rendering it unnecessary to impose that condition.

<sup>19</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 its 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>20</sup> BSL has “the burden of rebutting the presumption of validity of each complaint.” *Id.* at 3468-3469, para. 21. In addition, 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>21</sup> Specifically, as noted above, the 27 referenced listeners are the following Group 1 Complainants: Alberio (home and work); Evans (home); Baker (home); Frick (home and driving); O’Boyle (home); O’Hara (driving); Liko (home); Giesler (home); Kania (driving); Marston (home); McCool (home); Rhodes (home); Salvatore (home); Hindley (home and driving); Chan (home); Large (home and driving); Davis (home and driving); Pomante (home); Dengel (driving); Finley (home); Flannery (home); Knisely (home and driving); Ormsoy (home and driving); Paoella (home); Potts (home and driving); Rowles (home and driving); and Scavicchio (home and driving). *See supra* pages 2-3.

<sup>22</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 parties' filings during the interference remediation timeline as set forth above. Failure to comply with the remediation timeline may result in W221DG being ordered to cease operations.

Sincerely,

James D. Bradshaw  
Senior Deputy Chief  
Audio Division  
Media Bureau