



**Federal Communications Commission
Washington, D.C. 20554**

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In Reply Refer to:
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In re: W229CM, Martinsburg, WV
File No. BLFT-20160725ABW
Facility ID No. 154324

Interference Complaint

Dear Mr. Jazzo and Mr. Burkholder:

This refers to the interference complaint filed by Greencastle-Antrim Education Foundation (Greencastle) on June 6, 2017 (Complaint), and related responsive pleadings.¹ For the reasons set forth below, we dismiss the Complaint.

Background. In its Complaint, Greencastle alleges that W229CM, licensed to WVRCA, is interfering with the reception of WRGG-LP, Greencastle, Pennsylvania. The Complaint includes a list of 20 complainants that are unable to listen to WRGG-LP in either their homes or in the nearby areas while driving.² On July 6, 2017, staff required WVRCA to resolve all the complaints of interference and stated that the failure to resolve the complaints could result in the suspension of W229CM's operations.³

¹ West Virginia Radio Corporation of the Alleghenies (WVRCA) submitted an Opposition to Interference Complaint (Opposition) on June 13, 2017; Greencastle submitted a letter in response to the Opposition on June 30, 2017; and WVRCA submitted a letter on August 21, 2017, responding to the listener complaints submitted in the Complaint (WVRCA Letter).

² Complaint at 2-4.

³ Letter from James D. Bradshaw, Senior Deputy Chief, Audio Division, FCC Media Bureau, to West Virginia Radio Corporation of the Alleghenies at 2 (July 6, 2017) (*Staff Letter*). See also, 47 CFR § 74.1203(b) (if interference cannot be properly eliminated by suitable techniques, the operation of the translator shall be suspended).

In response to the *Staff Letter*, WVRCA detailed its efforts in addressing the complaints.⁴ WVRCA stated that the complainants were not *bona fide* listeners because the complainants either failed to cooperate in remediation efforts,⁵ failed to provide adequate contact information,⁶ did not listen to WRGG-LP,⁷ or alleged interference to WRGG-LP outside of the station's listening area.⁸ WVRCA also states that W229CM is not the source of the interference.⁹

Staff informed WVRCA that there are no geographic limits on interference complaints filed under Section 74.1203(a)(3) of the Commission's Rules, thus it was required to resolve complaints from listeners outside of WRGG-LP's predicted coverage area.¹⁰ Staff directed the stations to coordinate on-off testing at Earl's Market, which is located outside of WRGG-LP's predicted coverage area and the only location of alleged interference that WVRCA did not attempt to remediate.¹¹ On November 17, 2017, Greencastle reported on the results of the on-off testing and stated that neither WRGG-LP nor W229CM "could be heard inside Earl's Market at any time during the monitoring."¹² Similarly, WVRCA concluded that "either signal [of WRGG-LP or W229CM] could not be distinguished at this location...."¹³

Discussion. Section 74.1203(a) provides, in pertinent part, that an FM translator station "will not be permitted to continue to operate if it causes any actual interference to...the direct reception by the public of off-the-air signals of any authorized broadcast station...."¹⁴ The rule is interpreted very broadly in that it places no geographic or temporal limitation on complaints and it has long held that even mobile receivers, such as automobile radios, should not be subject to interference resulting from the operation of an FM

⁴ WVRCA Letter at Attach. A.

⁵ *Id.* at 2.

⁶ *Id.*

⁷ *Id.* at 3.

⁸ *Id.* at 2-3. *See also*, Opposition at 2.

⁹ WVRCA Letter at 3 and Attach. B (technical analysis concluding that W229CM is not the source of interference to WRGG-LP).

¹⁰ E-mail from James D. Bradshaw, Senior Deputy Chief, Audio Division, FCC Media Bureau, to Frank R. Jazzo, Counsel, West Virginia Radio Corporation of the Alleghenies and Wade G. Burkholder, Development Director, WRGG-LP at 1 (Oct. 17, 2017), *citing Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15431-32, para. 83 (2012) ("[Section 74.1203] places no geographic or temporal limitation on complaints.").

¹¹ *Id.* at 1. Staff also provided the following parameters regarding the testing:

The testing must be performed with W229CM operating with the 250 watts effective radiated power (ERP), as licensed, and with W229CM off air. The standard table radio at EARL'S MARKET must be used for the testing, along with any other agreed upon receiver(s).

We will require that a representative of WRGG-LP is present at the W229CM transmitter site to confirm the operational status and ERP during the various stages of testing. We also recommend that a representative of W229CM be present at the WRGG-LP transmitter site. Finally, we require both stations to have representatives present at Earl's Market to determine the results of the various operating states.

Id.

¹² Letter from C. Gregory Hoover, Director of Operations, WRGG-LP to James D. Bradshaw, Senior Deputy Chief, Audio Division, FCC Media Bureau at 1 (Nov. 17, 2017).

¹³ Summary and Results of Interference Testing Between W229CM and WRGG-LP at 3 (Nov. 29, 2017).

¹⁴ 47 CFR § 74.1203(a).

translator or booster station.¹⁵ The rule also specifies that signal strength is not a relevant factor.¹⁶ The FM translator rules strictly prohibit interference by these secondary service stations, and an interfering FM translator station must remedy the interference or suspend operation.¹⁷

The Commission has interpreted “direct reception by the public” to limit actionable complaints to those that are made by *bona fide* listeners.¹⁸ Thus, it has declined to credit claims of interference¹⁹ or lack of interference²⁰ from station personnel involved in an interference dispute. More generally, the Commission requires that a complainant “be ‘disinterested,’ e.g., a person or entity without a legal stake in the outcome of the translator station licensing proceeding.”²¹ The staff has routinely required a complainant to provide his name, address, location(s) at which FM translator interference occurs, and a statement that the complainant is, in fact, a listener of the affected station. Moreover, as is the case with other types of interference complaints,²² the staff has considered only those complaints of FM translator interference where the complainant cooperates in efforts to identify the source of interference and accepts reasonable corrective measures.²³ Accordingly, when the Commission concludes that a *bona fide* listener has made an actionable complaint²⁴ of uncorrected interference from an FM translator, it will notify the station that “interference is being caused” and direct the station to discontinue operations.²⁵

The issue before us is whether W229CM has failed to eliminate actual interference to WRGG-LP. Here, WVRCA has contacted or attempted to contact the complainants. However, the complainants either failed to cooperate in remediation efforts, failed to provide adequate contact information, or stated

¹⁵ See, e.g., *Forum FM Broad. of New York, Inc.*, 7 FCC Rcd 7880, 7882, para. 16 (MB 1992) (because of the secondary nature of FM booster stations, and the resulting requirement that they provide interference-free service, such stations will not be permitted to cause interference to mobile receivers).

¹⁶ 47 CFR § 74.1203(a)(3) (specifying that interference occurs “whenever reception of a regularly used signal is impaired ... regardless of the ... the strength of the signal so used”).

¹⁷ 47 CFR § 74.1203(b).

¹⁸ See *Association for Cmty. Educ., Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12688, para. 16 (2004) (*Association for Cmty. Educ.*).

¹⁹ See *id.*

²⁰ See *Living Way Ministries, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 15070, 15077, n.46 (2008).

²¹ *Association for Cmty. Educ.*, 19 FCC Rcd at 12688 n.37.

²² See, e.g., *Jay Ayer and Dan J. Alpert*, Letter, 23 FCC Rcd 1879, 1883 (MB 2008) (requiring complainants to cooperate fully with the station’s efforts to resolve interference and cautioning that the failure to do so could lead to a finding that the station has fulfilled its interference remediation obligations).

²³ See *Radio Power, Inc.*, Letter, 26 FCC Rcd 14385, 14385-86 (MB 2011) (listing grounds that are sufficient to conclude that complainant has failed to reasonably cooperate and finding that a listener may reasonably reject a non-broadcast technology to resolve interference claim).

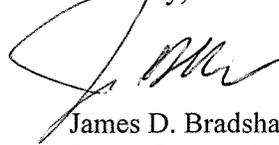
²⁴ Only a complaint from a *bona fide* listener of the desired station can force a translator station to suspend operation. See, e.g., *Association for Cmty. Educ.*, 19 FCC Rcd at 12688, para. 16 (station’s engineer locating the points on a map where the translator had interfered with the stations’ signal as he drove around the full-service station’s coverage area listening to the car radio did not meet that criterion) and *Valley Broad., Inc.*, 7 FCC Rcd 4317, 4319, para. 26 (MB 1992) (tests for booster interference were conducted under Special Field Test Authority by a neutral party, using a mobile receiver and a stationary receiver. The application was granted with the *caveat* that if the booster station resulted in listener interference complaints, the permittee would be required to discontinue its operation until all complaints had been resolved). Thus, the technical analysis presented by WVRCA (note 9 *supra*) is not probative because Section 74.1203(b) does not allow us to rely on such studies.

²⁵ See 47 CFR § 74.1203(e); see also *Amendment of Part 74 of the Commission’s Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7230, para. 131 (1990), *modified*, 6 FCC Rcd 2334 (1991), *recon. denied*, 8 FCC Rcd 5093 (1993); *Association for Cmty. Educ.*, 19 FCC Rcd at 12688, para. 15.

they did not listen to WRGG-LP. Moreover, testing at one of the locations of alleged interference demonstrated that neither WRGG-LP nor W229CM could be heard at that location. Thus, we have determined that WVRCA has fulfilled its interference remediation obligations and dismiss Greencastle's Complaint.²⁶

Conclusion. Based on the above, IT IS ORDERED, that Greencastle-Antrim Education Foundation's June 6, 2017, Complaint is DISMISSED.

Sincerely,



James D. Bradshaw
Senior Deputy Chief
Audio Division
Media Bureau

²⁶ See *Joseph C. Chautin, III, Esq.*, Letter, 22 FCC Rcd 5364, 5364 (MB 2007) (actual translator interference is based on listener complaints indicating that the signal that the complainant regularly receives is being impaired by the signal radiated by the FM translator station).