

WILKINSON) BARKER) KNAUER) LLP

2300 N STREET, NW
SUITE 700
WASHINGTON, DC 20037
TEL 202.783.4141
FAX 202.783.5851
WWW.WBKLaw.COM
DAVID A. O'CONNOR
MICHAEL D. SULLIVAN

December 19, 2013

BY HAND

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, S.W.
Washington, D.C. 20554
Attention: Audio Division, Media Bureau

Re: Reply to "Response to Interference Complaint" and Request to Rescind
Special Temporary Authority Grant
W232CB, Frederick, MD, Facility ID No. 31140
File Nos. BLFT-20130805ACZ, BPFT-20130807AAB,
BSTA-20131216CYV

Dear Ms. Dortch:

Red Zebra Broadcasting Licensee, LLC ("Red Zebra") hereby replies to the response ("Response") filed December 16, 2013 by AMFM Radio Licenses, LLC ("AMFM") to Red Zebra's September 16, 2013 interference complaint ("Complaint").¹ AMFM's response is clearly deficient, and the Commission should order the immediate suspension of all operations by FM Translator W232CB.

Red Zebra's Complaint included e-mails from 26 listeners regarding interference to Red Zebra's co-channel WWXX(FM) signal from W232CB. These listeners cited interference occurring at a variety of specific locations in Northern Virginia, Maryland, and the District of Columbia. On November 15, 2013, the Audio Division of the Media Bureau sent AMFM a letter (the "FCC Letter") directing AMFM to "eliminate any actual interference it causes," and ordering it to submit a detailed report addressing "each of the complaints individually." *Id.* at 1 (emphasis in original). The FCC Letter warned that "[f]ailure to correct all complaints within

¹ Although the interference complaint was filed jointly with an informal objection to AMFM's pending application for a new location and power increase for its translator (see File No. BPFT-20130807AAB), AMFM has been entirely silent in response to the informal objection.

Marlene H. Dortch, Secretary
December 19, 2013
Page 2

[30 days] may require W232CB to suspend operation pursuant to 47 C.F.R. §§ 74.1203(e) and 74.1232(h).” *Id.* at 2 (emphasis in original).

AMFM has not complied with *any* of the specific requirements set forth in the FCC Letter. Rather than file the detailed report demanded by Commission staff, AMFM instead filed a two-page letter. The letter does not address each of the complaints individually. It does not include identifying information about the complainants, information about the specific devices receiving interference, or details of any assistance provided by AMFM to any particular complainant.

It is also unclear whether AMFM has even engaged in good-faith efforts to resolve all of the complainants’ interference issues. Its response suggests that AMFM contacted each complainant. It generally describes measures AMFM undertook with some unidentified group of Northern Virginia listeners. This kind of half-hearted effort falls far short of the requirements set forth in the FCC Letter, and it falls far short of the requirements that secondary services are required to undertake in order to mitigate all interference to full-power stations.

Indeed, AMFM appears not to have undertaken *any* interference measurements or mitigation activities with respect to complainants located in Maryland or the District of Columbia—the letter states that “due to holiday schedules, AMFM has not had the opportunity to meet individually with the remaining complainants,” and will “proceed with further investigations after the holiday season.” In other words, AMFM has taken no concrete steps to verify or mitigate interference at these listeners’ locations—despite being on notice about the interference for more than three months. AMFM, in short, has failed to “address all complaints as required by Section 74.1203” as specifically requested by Commission staff.²

AMFM does not get to decide on its own when and how it will investigate interference by its translator to reception of a full-power FM station. It was directed by Commission staff to complete its investigation and file a detailed report by December 16 regarding the complete elimination of interference. It did not do so. Pursuant to Section 74.1203(b), the Commission should order AMFM to discontinue operation of W232CB immediately. *Radio Power, Inc.*, 26 FCC Rcd 14385, 14386 (MB 2011).

² See E-mail from James Bradshaw to Marissa Repp, Counsel for AMFM (Nov. 15, 2013). Red Zebra notes that it has continued to receive additional complaints from listeners about the interference caused by AMFM’s translator. It has hesitated to file these with the FCC out of a concern that this could have the perverse effect of affording AMFM more time to delay an FCC order to cease operation of the translator. WWXX(FM)’s signal has been seriously impaired in the Metro Washington area, and Red Zebra does not wish to create the opportunity for another three months or more of inaction on the part of AMFM by submitting more complaints.

Marlene H. Dortch, Secretary
December 19, 2013
Page 3

AMFM attempts to avoid responsibility for interference by stating that it has reduced the power of the translator “in an abundance of caution,” pending further tests. The FCC Letter did not ask AMFM to take cautionary measures and keep broadcasting. The FCC Letter ordered AMFM to “eliminate any actual interference it causes” and report back by December 16. By that date, AMFM had not even completed its investigation, much less eliminated actual interference. It submits no evidence that its purely voluntary reduction in power for a temporary period will eliminate actual interference.³

AMFM’s letter also notes that another Red Zebra station with the same programming as WWXX(FM) has excellent reception in the areas in Northern Virginia where interference was reported. However, listener reception of another source for the same programming is simply irrelevant to the interference issue at hand. The Commission has explicitly held that the availability of a station’s programming from another source does not negate a translator’s obligation to eliminate interference: “The plain meaning of Section 74.1203(a) is clear and unambiguous. The prohibition on ‘actual interference to . . . [t]he *direct* reception by the *public* of the *off-the-air signals* of any broadcast station’ means exactly that.” *Radio Power, Inc.*, 26 FCC Rcd at 14386 (emphasis in original).

In addition to failing to respond fully to the FCC Letter, AMFM has effectively conceded that its pending application to relocate W232CB from Germantown to the Gaithersburg area and increase its power cannot be granted. As shown in the maps included with Red Zebra’s Complaint and informal objection, the proposed Gaithersburg operation, if granted, would push the translator’s contour further down toward Northern Virginia, thus aggravating the interference WWXX(FM)’s listeners receive in that area. AMFM filed no response to the informal objection, thus failing to contest the fact that WWXX(FM) listeners will encounter increased interference if the translator’s power is increased. AMFM’s newly perceived need for a power *reduction* amply justifies rejection of its application for a power *increase*.

Accordingly, the Commission should order AMFM to cease operation of W232CB immediately.⁴ In addition, the Commission should promptly dismiss or deny the pending

³ On the same day it filed its Response, AMFM filed an application for Special Temporary Authority (“STA”) to continue operating W232CB at 25% of authorized power. See File No. BSTA-20131216CYV. The STA was granted on December 18, 2013. See Letter from Dale Bickel, Senior Engineer, Audio Division, Media Bureau to Troy Langham (Dec. 18, 2013). For the reasons set forth herein, Red Zebra objects to the STA grant and submits that AMFM has not demonstrated that the public interest would be served by allowing a translator station to continue causing interference to a full-power FM station. Accordingly, the STA should be rescinded immediately.

⁴ Red Zebra would interpose no objection to the operations of W232CB with the station’s previously licensed facilities in Frederick, Maryland, which did not appear to cause any interference to WWXX(FM).

WILKINSON) BARKER) KNAUER) LLP

Marlene H. Dortch, Secretary

December 19, 2013

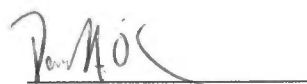
Page 4

application to relocate W232CB and increase its power. Red Zebra also requests that the Commission rescind the STA issued to W232CB on December 18, 2013.

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP

By:



David A. O'Connor

Michael D. Sullivan

*Counsel for Red Zebra Broadcasting
Licensee, LLC*

cc: Marissa G. Repp, Esq., Counsel for AMFM (via email)
James D. Bradshaw, Deputy Chief, Audio Division, Media Bureau (via email)
Robert Gates, Audio Division, Media Bureau (via email)
Dale Bickel, Audio Division, Media Bureau (via email)