



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

August 6, 2018

In Reply Refer to: 1800B3-KV

Phyllis Graham, President
Spreading Cheer
106 Calhoun Avenue
Pendleton, SC 29670

John C. Trent, Esq.
200 South Church Street
Woodstock, VA 22664

In re: W282CL, Easley, SC
File No. BLFT-20180327ABB
Facility ID No. 200035

**Petition for Reconsideration-Interference
Complaint**

Dear Ms. Graham and Mr. Trent:

This letter refers to the May 9, 2018, Petition for Reconsideration-Interference Complaint (Petition-Complaint) filed by Spreading Cheer (Spreading Cheer or Petitioner), licensee of LPFM Station WZFN-LP, Sandy Springs, South Carolina, alleging interference from FM Translator Station W282CL, Easley, South Carolina (W282CL or Station), licensed to Upstate Radio, Inc. (Upstate or Licensee). In response, on May 30, 2018, Upstate filed a Request to Hold Action in Abeyance (Abeyance Request). For the reasons set forth below, we dismiss the Petition-Complaint and the Abeyance Request.

Background. On March 27, 2018, the Station, which is a translator for the co-owned primary station WELP(AM) Easley, South Carolina, filed the referenced application for a license to cover (License Application) a construction permit to operate on Channel 282 at Easley, South Carolina.¹ On April 10, 2018, the Media Bureau announced the April 5, 2018, grant of the uncontested License Application.²

On May 9, 2018, Petitioner filed the Petition-Complaint arguing that the Station is causing actual interference to WZFN-LP. In support, Spreading Cheer submitted three nearly identical, signed

¹ The License Application implements construction permit, File No. BNPFT-201712101ACL, granted on January 4, 2018.

² See *Broadcast Actions*, Public Notice, Report No. 49211 (dated Apr. 10, 2018).

declarations from listeners Brian Wright (Wright), Faye Bartlett (Bartlett), and Doug Scott (Scott), stating, in pertinent part:

1. My name is . . .
2. I have regularly listened to 104.3 FM since . . .
3. Starting in early April of 2018, I began experiencing interference while listening to WZFN LP.
4. The interference occurs along [references location] . . .
5. I have not experienced this interference prior to April 1, 2018.
6. I am not associated . . . with WZFN LP, or the licensee . . .³

Petitioner also submitted emails from 8 listeners, which it characterized as “informal complaints,” describing interference issues.⁴ It further submitted an engineering statement from Michelle Bradley which included engineering maps showing, *inter alia*, the Station’s interfering contour and WZFN-LP 60 dBu, 54 dBu, and 50 dBu contours and purporting to show the locations where the listeners experienced interference and “interference observations made by Jim and Phyllis Graham on May 2, 2018, . . .”⁵

On May 25, 2018, Upstate filed a request for a Special Temporary Authority (STA) to reduce the Station’s effective radiated power from .095 kw to .048 kw.⁶ Upstate stated that it is seeking the temporary power reduction until the interference “issues are disproved or resolved; or alternate parameters are requested under a future form 349 construction permit application.”⁷ The STA Application is currently pending.

On May 30, 2018, Upstate filed the Abeyance Request asking the Commission to withhold action on the Petition-Complaint until the Commission acts on the FM Translator Interference Notice of Proposed Rulemaking⁸ (*Translator NPRM*).⁹

Discussion. Procedural. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission’s original order or raises additional facts not known or existing at the time of the petitioner’s last opportunity to present such matters.¹⁰ If the petitioner is not a party to the proceeding, it must state with particularity the manner in which its interests are adversely affected and show good reason why it was not possible to participate in the earlier stages of

³ Petition-Complaint, Appendix B.

⁴ *Id.* Specifically, Spreading Cheer included emails from the following listeners: John M. Docker (Doker); Lindalee C. Cleveland (Cleveland); Ken Allison (Allison); Faye Bartlett (Bartlett); Heather Wright (Wright); James McCall (McCall); Rick Wilson (Wilson); and Michelle Turner (Turner).

⁵ *Id.*, Appendix A-B.

⁶ See File No. BSTA-20180525AAZ (STA Application).

⁷ *Id.* at Exh. 12.

⁸ See *Amendment of Part 74 of the Commission Rules regarding FM Translator Interference*, Notice of Proposed Rulemaking, MB Docket No. 18-119, FCC 18-60, (May 10, 2018).

⁹ Upstate states that the Commission will adopt a policy requiring a minimum number of listener complaints and will likely impose an outer distance 54 dBu contour limit beyond which interference complaints would not be actionable. Abeyance Request at 1-2.

¹⁰ See 47 CFR §1.106(c)-(d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2. (1964).

the proceeding.¹¹ Section 1.106(e)¹² of the Rules further stipulates that any petition for reconsideration based on a claim of electrical interference must be accompanied by an affidavit of a qualified engineer.

We find that although Spreading Cheer did not participate in this proceeding prior to the grant of the License Application the Petition-Complaint qualifies as a petition for reconsideration. Here, the License Application was granted 9 days after its filing. Within 30 days of the public notice announcing said grant,¹³ Spreading Cheer filed its Petition-Complaint alleging actual interference from the Station. In addition, the Petition-Complaint is supported by an engineering affidavit¹⁴ concerning the alleged interference.

Substantive. 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”¹⁵ The rule places no geographic or temporal limitation on complaints, and we have long held that mobile receivers, such as automobile radios, should not be subject to interference resulting from the operation of an FM translator or booster station.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

Actual interference is based on a complaint from one or more *bona fide* listeners indicating that the signal they regularly receive is being impaired by the signal radiated by the FM translator station. 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 Commission has opined that “the staff has routinely required a complainant to provide his or her 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.”²² Moreover, as is the case with other types of interference complaints,²³ the staff has considered only those complaints of FM translator interference

¹¹ 47 CFR § 1.106(b)(1).

¹² 47 CFR § 1.1.06(e).

¹³ See, *supra*, note 2.

¹⁴ Petition-Complaint, Appendix A, “Statement of Michelle Bradley” (dated May 9, 2018).

¹⁵ 47 CFR § 74.1203(a).

¹⁶ See, e.g., *Forus FM Broad. of New York, Inc.*, Memorandum Opinion and Order, 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).

¹⁷ 47 CFR § 74.1203(b).

¹⁸ See *Ass’n for Cmty. Educ., Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12688, para. 16 (2004) (*Ass’n 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 *Ass’n for Cmty. Educ.*, 19 FCC Rcd at 12688 n.37.

²² See *Translator NPRM*, FCC 18-60, at para. 7 (2018) (*citing Creation of an LPFM Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15431-31 para. 83 (2012)).

²³ 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).

where the complainant cooperates in efforts to identify the source of interference and accepts reasonable corrective measures.²⁴ Accordingly, when the Commission concludes that a *bona fide* listener has made an actionable complaint²⁵ of uncorrected interference from an FM translator, it will notify the station that “interference is being caused” and direct the station to discontinue operations.²⁶

Here, we find that the Petition-Complaint has failed to provide the information required to submit a valid interference complaint. Specifically, listeners Wright, Bartlett, and Scott did not list a contact address in their listener declarations.²⁷ In addition, none of the listener emails include all required information.²⁸ Without the required listener information Upstate is unable to remediate the listeners’ complaints.

We conclude that Spreading Cheer has not submitted the required evidence to support its claim that the Station is causing actual interference to station WZFN-LP. We, therefore, will dismiss the Petition-Complaint.²⁹ Because we are dismissing the Petition-Complaint, we will also dismiss Upstate’s Abeyance Request as moot. Notwithstanding our dismissal of the Petition-Complaint, we note that, pursuant to Section 74.1203, Upstate has an ongoing obligation to eliminate any actual interference the Station causes should Spreading Cheer file a proper interference complaint in the future.

Conclusion. Based on the above, IT IS ORDERED, that the Petition for Reconsideration-Interference Complaint filed by Spreading Cheer on May 9, 2018, IS DISMISSED.

²⁴ See *Radio Power, Inc.*, Letter, 26 FCC Rcd 14385, 14385-86 (MB 2011) (*Radio Power*) (listing grounds that translator licensee claimed 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).

²⁵ Because only a complaint from a *bona fide* listener of the desired station can force a translator station to suspend operation, Spreading Cheer’s engineering showings and interference observations of Spreading Cheer’s President Phyllis Graham, submitted in Appendix A-B to the Petition-Complaint, do not meet that criterion. See, e.g., *Ass’n 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.*, Memorandum Opinion and Order, 7 FCC Rcd 4317, 4316, 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). Likewise, the referenced engineering showings and interference observations presented by Spreading Cheer are not probative because Section 74.1203(b) does not allow us to rely on such information.

²⁶ 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); *Ass’n for Cmty. Educ.*, 19 FCC Rcd at 12688, para. 15.

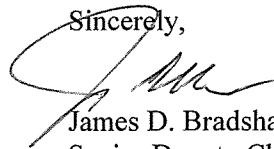
²⁷ Petition-Complaint, Appendix B.

²⁸ Specifically, Doker, Allison, and Wright failed to include a contact address, interference location, and a statement that they are WZFN LP listeners; Cleveland and Wilson failed to include a contact address, and an interference location; Bartlett and Turner failed to include a contact address; and McCall failed to include an interference location and a statement that he is a WZFN listener. *Id.* at Appendix B.

²⁹ 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).

IT IS FURTHER ORDERED that the Request to Hold Action in Abeyance filed by Upstate Radio, Inc. on May 30, 2018, IS DISMISSED AS MOOT.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Bradshaw', written over the word 'Sincerely,'.

James D. Bradshaw
Senior Deputy Chief
Audio Division
Media Bureau