

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	Facility ID No. 147273
	)	
W266BW, Winder, Georgia	)	Application File No. 0000186272
	)	

To: Chief, Audio Division

**MOTION TO STRIKE**

Davis Broadcasting of Atlanta, L.L.C. (“Davis”) moves to strike the “Comments” filed by Tri-State Communications, Inc. in the above-captioned proceeding. The “Comments” are an unauthorized pleading and should be given no consideration.

On May 11, 2023, the Commission sent a letter (the “Letter”) to Davis regarding Tri-State’s complaint of translator interference. The Letter invited Davis to “submit evidence that the Complaint is not a valid and complete interference claim package.” Letter at 2. The Letter gave no direction to Tri-State to respond to the Letter or to Davis. Davis provided the requested evidence on June 9, 2023.

Tri-State then filed its “Comments.” The “Comments” are a twenty-one-page pleading. At one point, Tri-State revealed the true nature of the “Comments” by referring to them as a “Reply.” “Comments” at 4.

The Commission’s Letter did not grant Tri-State a right of “reply,” nor did it invite “comments” or initiate a “set of pleadings.” “Comments” at 9. Moreover, the Commission’s translator interference rules – which were revamped in 2019 to avoid evidentiary squabbles such as the one Tri-State is inviting – do not grant Tri-State a right of “comment” or “reply.” Under

the streamlined procedures, the complaining licensee submits its complaint, the Bureau reviews it and seeks information from the translator licensee if necessary, the translator licensee responds with the requested evidence, and the Bureau makes its decision. There are no “replies,” “comments,” “pleadings,” or second chances for complaining licensees to attempt to correct deficiencies in their complaints identified by translator licensees.

Accordingly, the “Comments” are an unauthorized pleading and should be stricken from the record.

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If the Commission chooses to overlook what should be the fatal procedural defects of the “Comments,” it should recognize the following.

- **Tri-State did not comply with the Commission’s U/D data requirements.** Rather than submit U/D data for actual listener locations, Tri-State “summarized” locations “for the ease of reporting” because it “believed” this approach was “accurate[ ].” “Comments” at 2. Stated clearly: Tri-State submitted U/D data for nonexistent “listener locations.” Section 74.1203(3)(v) is clear: complaints of translator interference must include “U/D data demonstrating that *at each listener location* the undesired to desired signal strength exceeds –20 dB for co-channel situations....” A “summary” based on a “belief” is insufficient. Tri-State’s belated attempt to supply compliant U/D data through an unauthorized pleading should be summarily rejected.
- **Tri-State did not comply with the Commission’s mapping requirements.** Assuming it employed the same “summariz[ation] . . . of the locations” in mapping that it did for U/D data, Tri-State has not submitted a rule-compliant map plotting the specific locations of the alleged interference.
- **Tri-State did not provide the minimum required number of listener complaints.** The Commission’s Letter dismissed one of Tri-State’s eleven complaints, leaving ten. Tri-State and Davis agreed there was no interference at three of the remaining locations. Tri-State submitted inaccurate U/D data for another location. Altogether, Tri-State provided, at most, six valid listener complaints.<sup>1</sup> It was required to provide eight, according to Tri-State and Davis’s calculations, and seven, according to the Commission’s calculation, which Davis has asked the Commission to reexamine. Under either standard, Tri-State has not provided the minimum required number of valid listener complaints.

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<sup>1</sup> Davis believes these complaints should also be rejected because the U/D ratios at those locations do not meet the -20 dB standard.

- The Undesired/Desired ratio at the locations identified by Tri-State does not exceed -20 dB with the measured composite antenna pattern.

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The “Comments” are an unauthorized pleading and should be stricken. The “Comments” were not invited by the Commission, permitted under the translator interference rules, or sanctioned by the *2019 Translator Interference Order*. If, however, the Commission chooses to overlook these defects, it should recognize that Tri-State did not submit accurate and rule-compliant U/D data, did not submit a rule-compliant map, and did not provide the minimum number of valid listener complaints. These defects are fatal to its Complaint.

Respectfully submitted,

**DAVIS BROADCASTING OF ATLANTA,  
L.L.C.**

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June 23, 2023

*Its Attorneys*

## **CERTIFICATE OF SERVICE**

I, F. Scott Pippin, hereby certify that on this 23rd day of June, 2023, I caused a true and correct copy of the foregoing Motion to Strike to be served on the following by electronic mail and U.S. mail:

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/s/F. Scott Pippin  
F. Scott Pippin