

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In re )  
 )  
**INDIANA COMMUNITY RADIO** ) FCC File No. BLFT-20151120AGX  
**CORPORATION** ) FCC Facility ID No. 143744  
 )  
License of W275BD, Greenfield, Indiana )  
 )

To: Office of the Secretary  
Attn: The Commission

**APPLICATION FOR REVIEW**

**RADIO ONE OF INDIANA, LLC**

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November 14, 2016

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## SUMMARY

On December 15, 2015, the FCC's Audio Division sent to Indiana Community Radio Corporation a letter regarding certain alleged complaints of interference to WXCH(FM), Columbus, Indiana allegedly proffered to the Commission by its licensee.

In response to that December 15, 2015 FCC Letter, through the efforts of Radio One of Indiana, LLC, the licensee of the W275BD primary station, a detailed report was submitted on January 14, 2016 as required by the December 15, 2015 FCC Letter. That detailed report fully and completely addressed each of the complaints individually with verified factual information. The report showed that interference remediation was not required as none of the purported subject WXCH listeners were: *bona fide* disinterested listeners; listeners who responded to an offer of interference remediation; or listeners who desired interference remediation. The licensee of WXCH had an opportunity to refute the detailed report's factual findings with its own filing with the FCC but failed to do so.

On February 11, 2016, Radio One of Indiana, LLC submitted a Request for Dismissal of Complaints, asking that not only the complaints contained in the December 15, 2015 letter, but also several additional complaints, be dismissed. The Request for Dismissal of Complaints showed that Section 74.1203(a)(3) of the Commission's rules, relied upon by the December 15, 2015 FCC Letter, contains a protected signal limitation which, if ordinary rules of statutory construction are used, means that cognizable interference complaints are limited to those within the protected 60 dB $\mu$  contour of WXCH. "Protected" cannot mean one thing in Section 74.1203(a)(3), and have another meaning in every other FCC rule section (including the very next rule Section 74.1204)

in which it is used. As the WXCH complaints all arise outside of its protected signal, they should be dismissed.

In addition, the Request for Dismissal of Complaints showed that the Local Community Radio Act of 2010 requires that decisions licensing new translator and LPFM stations be based upon the needs of the local community, and that LPFM and FM translators remain equal in status, so therefore certain interference standards that are imposed upon LPFM stations should apply equally to translators. Nor, as mandated by the Act, did the December 15, 2015 FCC Letter nor the complaints consider the needs of the local community. Further, the Act appears, by statute, to have changed the manner in which Section 74.1203(a)(3) is to be applied – if FM translators and LPFMs are to remain equal in status then certain co-channel interference and adjacent channel interference is not cognizable and is not to be remediated under Section 74.1203 of the Commission’s rules.

On October 14, 2016, the Audio Division sent an email to Indiana Community Radio Corporation containing a single, unexplained legal determination adverse to the contentions contained in the Request for Dismissal of Complaints that one of the purported WXCH listeners was not a disinterested listener. On October 18, 2016, the FCC’s Audio Division sent to Indiana Community Radio Corporation another letter that made no mention of the Request for Dismissal nor any of the contentions presented therein, but rather threatened to force W275BD off the air and thereby deprive its listeners of that source of local information upon which they have come to depend.

These Audio Division *Decision Documents* on the subject matters addressed in the detailed report and in the Request for Dismissal of Complaints are now ripe for full

Commission review. The matters raised by Radio One of Indiana, LLC in this Application for Review involve fundamental policy matters for the full Commission to address.

Pursuant to Section 1.115(a) of the Commission's rules, its delegated authority "has been afforded an opportunity to pass" on the questions of fact and law presented in the detailed report and the Request for Dismissal of Complaints. Commission review of the legal and policy questions presented below is respectfully requested.

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**APPLICATION FOR REVIEW**

Radio One of Indiana, LLC, the licensee of WNOW-FM, Speedway, Indiana which is the primary station of W275BD, Greenfield, Indiana, by its attorneys, pursuant to Section 1.115 of the Commission’s rules, hereby respectfully applies for review of the decisions of the Audio Division to Radio One of Indiana, LLC’s February 11, 2016 Request for Dismissal of Complaints (the “Request for Dismissal of Complaints”)<sup>1</sup>. The Request for Dismissal of Complaints was summarily decided by: (1) the October 14, 2016 email from Robert Gates, writing for the Audio Division (the “Gates Email”)<sup>2</sup>; and (2) the October 18, 2016 Letter from James D. Bradshaw (the “2<sup>nd</sup> FCC Letter”)<sup>3</sup> (together, the “*Decision Documents*”). In support of this Request for Dismissal, the following is submitted<sup>4</sup>:

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<sup>1</sup> The licensee of W275BD, Indiana Community Radio Corporation, requested that Radio One of Indiana, LLC, the licensee of the primary station WNOW-FM, assist with this proceeding. See January 14, 2016 Letter to James D. Bradshaw, Deputy Chief, Audio Division (the “Detailed Report”) regarding the request of Indiana Community Radio Corporation for assistance. As licensee of the primary station, Radio One of Indiana, LLC will be substantially aggrieved by a suspension of W275BD operations.

<sup>2</sup> See Attachment 1.

<sup>3</sup> See Attachment 2.

<sup>4</sup> This Application for Review is being filed within thirty days of the Gates Email pursuant to Section 1.115(d) of the Commission’s rules.

## I. INTRODUCTION AND BACKGROUND

1. On December 15, 2015, James D. Bradshaw, Deputy Chief, Audio Division issued a letter to Indiana Community Radio Corporation (the “1<sup>st</sup> FCC Letter”) regarding eleven allegations of interference apparently submitted by Reising Radio Partners, Inc., the licensee of WXCH(FM), Columbus Indiana.<sup>5</sup> On January 14, 2016, Radio One of Indiana, LLC submitted its detailed report on behalf of Indiana Community Radio Corporation (the “Detailed Report”) addressing each of the eleven complaints individually with detailed verified factual information as requested by the 1<sup>st</sup> FCC Letter.

2. Subsequent to the filing of the Detailed Report, WXCH had an opportunity to submit a filing with the FCC’s Secretary refuting the factual findings in the Detailed Report but failed to do so.<sup>6</sup> For this reason alone, a dismissal of the complaints was warranted as the verified facts now on file in the Detailed Report regarding the complaints remain unrebutted by any formal WXCH filing.<sup>7</sup>

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<sup>5</sup> Strangely, the alleged complaints attached to the 1<sup>st</sup> FCC Letter were bereft of any indication whatsoever of any formal or informal FCC filing. Rather, they were attached to the 1<sup>st</sup> FCC Letter without explanation of their origin. The form of the alleged complaints does not indicate that they were submitted to the Commission by the complainants themselves. If WXCH as an FCC licensee filed the complaints, they should have been served on the W275BD licensee but were not. *See* Section 1.1204(a)(8) of the Commission’s rules stating that “a written presentation made by a listener or viewer of a broadcast station who is not a party ...” is an exempt *ex parte* presentation. Generally, if a written presentation is made by the licensee itself, such a presentation does not fall within the exception stated in Section 1.1204(a)(8) of the Commission’s rules.

<sup>6</sup> Indeed, while it is believed based upon informal correspondence and calls that specific communications counsel is assisting WXCH, such counsel has yet to enter a formal appearance on behalf of the WXCH licensee. Nonetheless, this Application for Review is being served upon such counsel.

<sup>7</sup> WXCH is trying to remove an operating radio station from the air. WXCH is a Class A FM radio station licensed to a small rural community some 50 miles south of Indianapolis. The owner of WXCH and its personnel undoubtedly occasionally travel to Indianapolis and try to listen to WXCH until the WXCH signal is simply static, far beyond its regularly used signal. Apparently, that owner is now distressed that he cannot listen well beyond his regularly used signal to that static (i.e. a signal contour referred to in the broadcasting industry as the “Owner’s Contour” which is a signal contour far outside of the station’s market at which the last gasp of intelligible information can be heard through the hash and static as the station’s owner or manager drives his or her signal toward another radio market).

3. Specifically, the Detailed Report showed that of the 11 alleged WXCH listeners whose complaints were under consideration at the time, six did not respond to Radio One of Indiana, LLC's request for relevant information needed to evaluate the legitimacy and nature of their purported problem, attempted delivery of requests to two more at their stated addresses was unsuccessful, two more responded but declined offers of remediation, and the final one had a Facebook "friend" relationship with both the General Manager and a DJ at WXCH. (Several of the other complainants also had Facebook relationships with station management or other employees.) Consequently, Radio One of Indiana, LLC reasonably contended that it had no obligation to proceed further with respect to these 11 individuals. WXCH never attempted in any formal, verified filing to refute the factual findings in the Detailed Report.

4. Radio One of Indiana, LLC thereafter submitted its February 11, 2016 Request for Dismissal of Complaints asking that not only the complaints contained in the December 15, 2015 letter, but also several additional complaints, be dismissed. The Request for Dismissal of Complaints showed that Section 74.1203(a)(3) of the Commission's rules, relied upon by the December 15, 2015 FCC Letter, contains a protected signal limitation which, if ordinary rules of statutory construction are used, means that cognizable interference complaints are limited to those within the protected 60 dB $\mu$  contour of WXCH. "Protected" cannot mean one thing in Section 74.1203(a)(3), and have another meaning in every other FCC rule section (including the very next rule Section 74.1204) in which it is used.

5. In addition, the Request for Dismissal of Complaints showed that the Local Community Radio Act of 2010 (the "LCRA")<sup>8</sup> requires that decisions licensing new translator and LPFM stations be based upon the needs of the local community, and that LPFM and FM

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<sup>8</sup> 111<sup>th</sup> Congress Public Law 371 (Pub.L. 111-371)

translators remain equal in status, so therefore certain interference standards that are imposed upon LPFM stations should apply equally to translators. Further, the LCRA appears, by statute, to have changed the manner in which Section 74.1203(a)(3) is to be applied – if FM translators and LPFMs are to remain equal in status then certain co-channel interference and adjacent channel interference is not cognizable and is not to be remediated under Section 74.1203 of the Commission’s rules.

6. WXCH likewise failed to submit any formal opposition, response or reply to the Request for Dismissal of Complaints. Then, as further shown in the Request for Dismissal of Complaints, WXCH burdened the Commission with additional alleged complainants that: (1) have no stated address; (2) have no last name; (3) do not even state that they are experiencing interference; (4) do not provide information on where the alleged interference is occurring; and (5) most importantly, do not verify that the complainant is a disinterested *bona fide* listener.

7. There is no requirement to remediate interference for alleged listeners who do not respond to an offer of remediation. That category comprises the majority of the purported complainants contained in the 1<sup>st</sup> FCC Letter. In the absence of a response requesting interference remediation from such alleged listeners, Indiana Community Radio Corporation is absolved from further responsibility for their complaints pursuant to Section 74.1203(b) of the Commission’s rules.

8. There is also no requirement to remediate interference for alleged listeners who are not disinterested and *bona fide*. Purported listeners Jeff Christian and Kaylyn Shinolt, as well as a number of the alleged listeners who did not respond to the offer of remediation, were factually shown in the Detailed Report not to be disinterested *bona fide* listeners. The Request for Dismissal of Complaints noted this and also noted that Don Hart is part of the category of

non-disinterested, non-*bona-fide* listeners. Because there is no requirement that interference remediation be offered to non-disinterested, non-*bona fide* listeners, the Request for Dismissal of Complaints asked for a dismissal of these complaints on this basis.

9. On October 14, 2016, the Gates Email was sent. The Gates Email delivered the following legal determination on behalf of the Audio Division of the Media Bureau without further elucidation<sup>9</sup>:

Concerning the interference complaint against W275BD, there is only one unresolved complaint. Please follow up with Kaylyn Shinolt. You claim that Kaylyn Shinolt is not a disinterested listener because she is a Facebook friends of the GM and a DJ of WXCH. We disagree. Facebook friends do not discount her complaint. Please resolve her complaint immediately.

10. Then, immediately following the Gates Email, on October 18, 2016 the Audio Division of the Media Bureau delivered the factual and legal determinations in the 2<sup>nd</sup> FCC Letter without further discussion as to any of the listed alleged complainants including Jeff Christian, Kaylyn Shinolt and Don Hart, all of which were before the Audio Division when the Request for Dismissal of Complaints was filed:

[Regarding the purported complaints that are the subject of the Request for Dismissal of Complaints] [l]istener complaints can be filed at any time ... it is necessary for W275BD to submit a detailed report on the attached complaint (sic) even if the complainant might have been addressed in a previous proceeding. ... Within thirty days of this letter, W275BD must take appropriate actions required by the provisions of 47 C.F.R. §74.1203 to resolve all complaints of interference to fulfill its obligations. ... Failure to correct all complaints within this time may require W275BD to suspend operation pursuant to 47 C.F.R. §§74.1203(e) and 74.1232(h).

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<sup>9</sup> See Attachment 1.

11. At a fundamental level regarding the FCC rule citations in the 2<sup>nd</sup> FCC Letter, it is wholly unclear what either Section 74.1203(e) or Section 74.1232(h) has to do with the subject of the letter. Section 74.1203(h) specifically and only refers to “any condition of interference which results from the radiation of radio frequency energy by its equipment on any frequency outside the assigned channel (emphasis added).” There is no allegation here that W275BD is emanating RF emissions outside of its assigned Channel 275. Likewise, Section 74.1232(h) appears equally inapplicable as it specifically and only refers to “[a]ny authorization for an FM translator station issued to an applicant described in paragraphs (d) and (e) of this section ... (emphasis added)”.

12. The referred to Subsections 74.1232(d) & (e) address only FM translators whose coverage contour goes or extends beyond the protected contour of the commercial primary station. The W275BD coverage contour does not extend beyond the protected contour of its primary station. Consequently, the 2<sup>nd</sup> FCC Letter provides no authority or other cognizable basis for its threat to impose a death sentence upon W275BD without mention, much less due consideration, of the important defenses raised by Radio One of Indiana, LLC in the Request for Dismissal of Complaints.

13. In any event, the Gates Email and the 2<sup>nd</sup> FCC Letter, together comprising the Audio Division’s *Decision Documents*, issued subsequent to and in response to the Request for Dismissal of Complaints, are adverse decisions to the factual and legal arguments made in the Request for Dismissal of Complaints. The *Decision Documents* are utterly bereft of the most rudimentary factual and legal bases to reach the conclusions reached in each given the underlying Request for Dismissal of Complaints. Therefore, Radio One of Indiana, LLC

respectfully seeks full Commission review of the *Decision Documents* with the questions presented below.

## II. QUESTIONS PRESENTED FOR REVIEW

14. Radio One of Indiana, LLC presents the following questions for review by the Commission:

1. Whether a purported interference complainant's direct relationship with individuals who are principals in the management and operations of the subject existing station as Facebook friends, renders that complainant not disinterested and non-*bona-fide*, and therefore under existing Commission policy not entitled to interference remediation.
2. Whether the "protected signal" limitation for complaints in Section 74.1203(a)(3) of the Commission's rules excludes interference complaints outside the protected 60 dB $\mu$  of the existing station.
3. Whether, as a public interest matter and consistent with the Local Community Radio Act of 2010 in which the needs of the local community for FM translators must be considered, the Audio Division can order an FM translator to remedy interference claims from a station located in a wholly different community and service area without considering the needs of each local community.
4. Whether the provisions of the Local Community Radio Act of 2010 ordering that FM translators be treated as equal in status to Low-Power FM Stations requires the Audio Division to apply the same criteria to assessing alleged interference from FM translators to existing FM stations.

15. Radio One of Indiana, LLC raised each of the above before the Audio Division in its Request for Dismissal of Complaints<sup>10</sup>. Each of these questions involves issues of policy that have not previously been resolved by the Commission.

16. Yet rather than address these questions, the Audio Division issued the *Decision Documents*, finding only that the relationship of a single complainant with WXCH principals did

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<sup>10</sup> The issue in Question #2 above was first presented with factual evidence of the complainant's locations to the Audio Division in a January 20, 2016 letter to James D. Bradshaw from counsel for Radio One of Indiana, LLC which resulted in the response of Mr. Bradshaw described below. In addition, there are multiple other emails to and from the Audio Division informally discussing the alleged interference complaints variously with the WXCH owner and WXCH general manager, along with emails from undersigned counsel to the Audio Division. To the extent these emails are not already part of the record in this proceeding, they will be provided upon request.

not negate her entitlement to interference remediation, and without mentioning, much less discussing, any of the outstanding, unresolved legal questions, but rather instructing Radio One of Indiana, LLC to resolve all subject interference claims under pain of threatening its listeners to lose the local service provided by W275BD. As demonstrated herein, it is incumbent upon the Commission to resolve these questions prior to destroying Radio One of Indiana, LLC's ability to continue to serve its listeners with the diverse programming provided by W275BD. This Application for Review is further intended to satisfy the provisions of Section 1.115(k) of the Commission's rules which requires that the filing of an application for review shall be a condition precedent to judicial review of any action taken pursuant to delegated authority.<sup>11</sup>

### **III. CHANGES REQUESTED TO ACTIONS TAKEN BY THE DELEGATED AUTHORITY**

17. Radio One of Indiana, LLC requests that the Commission instruct the Audio Division to rescind the *Decision Documents* and permit Radio One of Indiana, LLC to continue broadcasting over FM translator W275BD pending due consideration and resolution of the legal and policy issues presented herein, or in the alternative, to affirmatively resolve the issues presented herein in the favor of Radio One of Indiana, LLC and terminate this proceeding.

### **IV. THE *DECISION DOCUMENTS* ARE RIPE FOR REVIEW BY THE COMMISSION**

18. In its issuance of the *Decision Documents*, the Audio Division had before it the Radio One of Indiana, LLC Request for Dismissal of Complaints. The Audio Division,

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<sup>11</sup> It is further noted that a reviewing court is likely to question the procedure by which the Audio Division has threatened to terminate the operating authority of W275BD without holding the hearing required by Section 312 of the Communications Act of 1934, as amended. It must also be noted that in no way is Radio One of Indiana, LLC admitting or acknowledging that there is any interference caused by W275BD to a regularly-used signal entitled to Section 74.1204(b) interference remediation. Here, WXCH, in its pleadings simply presents in many instances a putative complainant by nothing more than a name and phone number with no verification as to the truth and veracity of the complaint, and no indication of location, receive equipment or other information reasonably needed to assess the legitimacy, cause, nature or severity of the ostensible problem.

however, failed to address any of the legal and policy arguments made by Radio One of Indiana, LLC in its Request for Dismissal of Complaints. Radio One of Indiana, LLC fairly and fully presented its arguments to the Audio Division for consideration. The Audio Division had full opportunity to address its arguments but failed to do so.

19. After failing to address any of the legal and policy arguments made by Radio One of Indiana, LLC in the Request for Dismissal of Complaints, the *Decision Documents* nonetheless found as a factual matter that being a Facebook friend with WXCH principals did not contravene settled Commission policy that a complainant alleging interference from a translator station be “disinterested” to be entitled to interference remediation<sup>12</sup>, and failed to address any of the other questions presented.

20. Despite the legal and policy bases set forth justifying a dismissal of all WXCH complaints in the Request for a Dismissal of Complaints, the Audio Division ordered the W275BD licensee to resolve the complaints and further threatened that a failure to resolve all complaints within thirty days “may require W275BD to suspend operation.” An order that a licensee must take certain substantive actions upon a threat that W275BD may be required to cease broadcasting unless it does so makes Radio One of Indiana, LLC clearly aggrieved by the *Decision Documents*. Accordingly, the *Decision Documents* are ripe for review by the full Commission.<sup>13</sup>

**V. QUESTION #1 PRESENTED FOR REVIEW – WHETHER A PURPORTED INTERFERENCE COMPLAINANT’S DIRECT RELATIONSHIP WITH INDIVIDUALS WHO ARE PRINCIPALS IN THE MANAGEMENT AND OPERATIONS OF THE SUBJECT EXISTING STATION AS FACEBOOK FRIENDS, RENDERS THAT COMPLAINANT NOT DISINTERESTED AND**

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<sup>12</sup> See *The Association for Community Education, Inc.*, 19 FCC Rcd 12682 at footnote 37 (2004).

<sup>13</sup> Section 1.115 of the Commission’s rules provides that “any person aggrieved by any action taken pursuant to delegated authority may file an application requesting review of that action by the Commission.”

**NON-BONA-FIDE, AND THEREFORE UNDER EXISTING COMMISSION  
POLICY NOT ENTITLED TO INTERFERENCE REMEDIATION**

21. Kaylyn Shinolt's direct Facebook relationship with the WXCM General Manager and a WXCH DJ raises distinct questions about her status as a disinterested *bona-fide* complainant and highlights the need for an expanded review of how the Audio Bureau should treat complainants who are found to be connected on a personal level with station principals. When reviewing an interference complaint, the Audio Bureau is tasked with the job of determining whether such complaint is from a *bona fide* listener, meaning that the complaint stemmed from a true frustrated station listener who is genuinely concerned about reception issues. Where ulterior motives exist for a complainant to raise complaints about a radio signal, such complaint should be dismissed. Ms. Shinolt's direct connection to principals of WXCH raise the suspicion of ulterior motives and should render her a non-disinterested complainant.

22. Ms. Shinolt is Facebook friends with an individual in a high level of WXCH management and a WXCH DJ. This is to be contrasted with a general practice in today's social networking environment for a radio station listener to "like" a radio station's Facebook page in order to stay connected to activities of the station. Ms. Shinolt's connection with the individual in high management of the radio station and with an on-air personality, however, represents a personal connection between individuals rather than a general connection as a listener to the radio station. Ms. Shinolt's direct connection to station management and employees is sufficient to question her status as a disinterested *bona-fide* complainant.

23. The Commission has never provided guidance on the extent of relationship necessary for a complainant to be considered non-disinterested. Yet now, as the market is poised to face an extreme uptick in interference complaints in a growing field of translator stations, the

Commission's guidance on what constitutes a *bona fide* complainant is critical to ensuring that the Audio Bureau only addresses legitimate claims of listener concerns.

24. In prior decisions, the Commission has generally approved of staff practice finding that a complainant is not disinterested when they have a legal stake in the outcome of the translator station licensing proceeding.<sup>14</sup> However, a complainant's legal interest in a station is not the only factor that could influence the complainant to file an unnecessary complaint. Personal and family relationships are equally as likely to influence a complainant's decision to file a complaint. Ms. Shinolt's personal relationship with principals of the radio station should render her a non-disinterested complainant. She has a *personal* stake in the outcome of the proceeding – she risks her personal relationship with principals of the station. The full Commission should take this opportunity to find that complainants with a personal or family relationship to the station should rise to the level of disinterested parties.

**VI. QUESTION #2 PRESENTED FOR REVIEW – WHETHER THE “PROTECTED SIGNAL” LIMITATION FOR COMPLAINTS IN SECTION 74.1203(a)(3) OF THE COMMISSION’S RULES EXCLUDES INTERFERENCE COMPLAINTS OUTSIDE THE PROTECTED 60 dBμ OF THE EXISTING STATION.**

25. The WXCH complainants are located in areas well beyond the predicted 60 dBμ WXCH contour. They are therefore outside of the “protected signal” limitation for complaints in Section 74.1203(a)(3) of the Commission's rules.

26. On January 20, 2016, Radio One of Indiana, LLC, by letter to James D. Bradshaw, Deputy Chief, Audio Division, Media Bureau, submitted a request for dismissal of the interference complaints, stating that under the clear definition of “protected” contained in Section 74.1204 of the Commission's rules (the very next rule section), the limitation of Section

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<sup>14</sup> See .e.g., *In re Applications of Apple 107.1, Inc.*, 28 FCC Rcd 15722, 15728 at n. 55 (2013); *Association for Community Education, Inc.*, 19 FCC Rcd 12682, 12688 at n. 37 (2004).

74.1203(a)(3) to complaints arising within the WXCH 60 dB $\mu$  contour protected signal excluded the WXCH complaints from interference remediation.

27. On January 21, 2016, Mr. Bradshaw wrote an email message to undersigned counsel stating:

I am writing to you, and representatives of WXCH, to informally let you know that the Audio Division disagrees with your novel interpretation of Section 74.1203. Under well settled precedent and as set forth unambiguously in the rules, the listeners of WXCH are entitled to relief from any interference that is caused by operation of W275BD, regardless of the location of those listeners.

28. Radio One of Indiana, LLC noted in its Request for Dismissal of Complaints that if this January 21, 2016 email message from Mr. Bradshaw was itself a decision document regarding the January 20, 2016 letter, then the Request for Dismissal should be regarded as a petition for reconsideration pursuant to Section 1.106(b)(1) of the Commission's rules. If this January 21, 2016 email message from Mr. Bradshaw was not a decision document, then the Request for Dismissal of Complaints formally put this issue before the Media Bureau. Now, with the *Decision Documents* being issued, this issue is squarely before the full Commission.

29. Section 74.1203(a)(3) of the Commission's rules, in referring to FM signals entitled to interference remediation, states as follows:

The direct reception by the public of the off-the-air signals of any authorized broadcast station including TV Channel 6 stations, Class D (secondary) noncommercial educational FM stations, and previously authorized and operating FM translators and FM booster stations. Interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the FM translator or booster station, regardless of the quality of such reception, the strength of the signal so used, or the channel on which the protected signal is transmitted (emphasis added).

30. The word “protected” with respect to FM signal contours is specifically defined in Section 74.1204 of the Commission’s rules. Section 74.1204(a) defines the “protected” contour for all classes of FM stations.<sup>15</sup> For WXCH, a Class A FM station, Section 74.1204(a)(3) specifically defines the “protected” contour for WXCH as its 1 mV/m contour (60 dBμ contour).<sup>16</sup>

31. By common rules of statutory construction, the word “protected” with respect to FM signal contours simply cannot mean one thing in Section 74.1204(a), and another thing in Section 74.1203(a)(3). The United States Court of Appeals for the District of Columbia Circuit has found that it is a “common-sense assumption that, in the absence of some showing to the contrary, a term used in one aspect of the rules governing a particular subject should have a similar meaning if used in another aspect of those same rules.” See *Transactive Corp. v. United States*, 91 F.3d 232, 238 (D.C. Cir. 1996).<sup>17</sup> By definition in Section 74.1204, for WXCH the protected signal referred to in Section 74.1203(a)(3) of the Commission’s rules is its 60 dBμ signal. Since the area of complaints in this proceeding fall outside the protected signal limitation in Section 74.1203(a)(3), WXCH is seeking interference remediation for ineligible complainants. For this reason, each of the WXCH purported complaints should be summarily dismissed.

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<sup>15</sup> The Commission uses the terms “protected signal” and “protected contour” interchangeably. In *Neal A. Jackson, Esq., Petition for Reconsideration*, DA 10-1006, n.3 (MB 2010), the Media Bureau noted: “Under the U/D signal strength ratio methodology accepted by the staff in this and similar cases, interference is predicted to occur between two stations operating on second-adjacent channels in areas where the ‘undesired’ (or ‘interfering’) signal is at least 40 dB greater than the ‘desired’ (or ‘protected’) signal. See 47 C.F.R. §74.1204(a)(3) (emphasis added)”. Importantly, the Audio Division cited to Section 74.1204(a)(3) for the definition of “protected signal”, equating “protected signal” with “protected contour”.

<sup>16</sup> Section 74.1204(a)(3) states: “All Other Classes of FM Stations (Protected Contour: 1 mV/m)”. See also Section 73.215(a) of the Commission’s rules which similarly defines the “protected” signal for Class A FM stations as the 1 mV/m (60 dBμ) contour.

<sup>17</sup> See also, *Roberto v. Dep’t of the Navy*, 440 F.3d 1341, 1350 (Fed. Cir. 2006) (“The rules of statutory construction apply when interpreting an agency regulation.”)

32. Neither the Commission nor the Media Bureau has ever taken up the issue of the meaning of what is the protected signal that is an essential stated limitation within Section 74.1203(a)(3) of the Commission's rules. The last sentence containing the limitation refers back to the entire subsection of Section 74.1203(a)(3).

33. In past decisions regarding Section 74.1203(a)(3), the Media Bureau has repeatedly cited the sentences that appear above the protected signal limitation in proclaiming, as did Mr. Bradshaw in his email, that the sentences are "clear and unambiguous".<sup>18</sup> The claim that Section 74.1203(a)(3) as a whole is clear and unambiguous is inconsistent with common notions of statutory construction. How can the word "protected" when referring to the FM signal at issue in Section 74.1203(a)(3) mean anything different than what the word "protected" is defined as in the very next rule section, Section 74.1204?

34. Radio One of Indiana, LLC acknowledges that past Media Bureau policy and delegated authority decision making has not addressed the protected signal limitation on complaints contained in Section 74.1203(a)(3). Just because the Media Bureau has not been challenged on its interpretation of the rule, however, does not mean that the Media Bureau's rule interpretation ignoring the "protected signal" limitation is correct.

35. Notably, the Commission itself has never taken up the protected signal limitation in Section 74.1203(a)(3) of the Commission's rules. Past Media Bureau decisions on delegated authority likewise have never addressed the protected signal limitation in Section 74.1203(a)(3). Rather, past Media Bureau decisions have merely perfunctorily recited a snippet from Section

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<sup>18</sup> See e.g. *Radio Power, Inc.*, 26 FCC Rcd 14385, 14386 (MB 2011).

74.1203(a)(3) but not addressed whether the subject complaints were subject to the protected signal limitation.<sup>19</sup>

36. In addition to the *Radio Power, Inc.* case cited above, more recently in *Richard R. Zaragoza, Esq.*, 29 FCC Rcd 4903 (MB 2014), the Media Bureau stated that “[a]n FM translator, as a secondary service, is required to suspend operations if it is causing interference to a full service FM station”, citing Section 74.1203, but did not address the protected signal limitation. In *Richard J. Bodorff, Esq.*, 27 FCC Rcd 4870 (MB 2012), the Media Bureau in *dicta* stated that “should the translator commence operation and cause actual interference ... the translator will be required to eliminate the interference or cease operation”, likewise citing Section 74.1203, but not the protected signal limitation. In *John Wells King, Esq.*, 25 FCC Rcd 12812 (MB 2010), the Media Bureau inserts a portion of Section 74.1203(a)(3) at footnote 13 but omits the protected signal limitation for support of its *dicta* in stating that the subject station would have been required “to cease Station operations only if the Station caused actual interference to the Cimarron station”. In short, neither the Media Bureau nor the full Commission has spoken to the issue of the protected signal limitation contained in Section 74.1203(a)(3) of the Commission’s rules.

37. It is not just the FM translator rules that use the definition of “protected” when referring to specific signal contours. “Protected” is a defined term referring to specific contours for claims of electrical interference as used in Section 1.106(e) of the Commission’s rules. “Protected” is a defined term based upon the stated contour of digital and analog TV services for white spaces devices in Section 15.712(a)(1), Section 15.712(a)(2)(iv), Section 15.712(b)(1) & (b)(2), Section 15.713(c), and Section 15.713(j)(7)(iii) of the Commission’s rules. “Protected” is

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<sup>19</sup> See e.g. *Radio Power, Inc.*, 26 FCC Rcd 14385, 14386 (MB 2011).

a defined term referring to a specific contour for broadcast television stations throughout Section 27.1310 of the Commission's rules. "Protected" is a defined term for FM contour protection within Section 73.215(a) of the Commission's rules. "Protected" is a defined term referring to specific contours for TV broadcast stations throughout Section 73.613 and in Section 73.623 of the Commission's rules. "Protected" is a defined term referring to specific contours for full power, FM translator and FM booster stations in Section 73.810(b)(1)(iv) & (v) of the Commission's rules. "Protected" is a defined term referring to a specific contour for television application processing procedures in Section 73.3572 of the Commission's rules. "Protected" is a defined term referring to a specific contour for the television Channel Reassignment Public Notice in Section 73.3700(b)(1)(ii)(B) and Section 73.3700(i) of the Commission's rules. "Protected" is a defined term referring to specific contours for competitive bidding in Section 73.5007(b)(3) of the Commission's rules. "Protected" is a defined term referring to a specific contour for Class A TV stations throughout Section 73.6010 of the Commission's rules. "Protected" is a defined term referring to specific contours for a television booster's primary station, for interference, for protection standards, defining major and minor changes, and defining digital LPTV interference in Section 74.701(i), Section 74.703(a), Section 74.705, Section 74.707, Section 74.709, 74.710, Section 74.787(b)(1)(ii) and Section 74.792 of the Commission's rules. "Protected" is a defined term referring to specific contours for low power auxiliary stations in Section 74.802(b) of the Commission's rules. "Protected" is a defined term referring to specific contours for primary FM stations and FM translator stations in Section 74.1201(g), (h) & (i) of the Commission's rules. "Protected" is a defined term referring to specific contours for FM translator protection standards used extensively throughout Section 74.1204 of the Commission's rules. "Protected" is a defined term referring to specific contours

for FM translator ownership and carriage throughout Section 74.1232(d), (e) & (f), Section 74.1233(e)(1) and Section 74.1237(d) of the Commission's rules. "Protected" is a defined term referring to specific contours in the television must-carry rules in Section 76.66(a)(3)(iii)(note).

38. In the Communications Act of 1934, as amended, "protected" is a defined term referring to specific contours in Section 336(f)(1)(E), Section 336(f)(7)(B) and Section 336(f)(7)(C). In the Local Community Radio Act of 2010 (the "LCRA"), Pub.L. 111-371, Jan. 4, 2011, 124 Stat. 4072, at Section 7(6), "protected" is a defined term referring to a specific contour and in particular, modifies Section 73.1203 of the Commission's rules as follows (a more complete discussion of the effect of the LCRA on Section 74.1203 of the Commission's rules is below):

"(6) The Federal Communications Commission shall for full-service FM stations that are licensed in significantly populated States with more than 3,000,000 population and a population density greater than 1,000 people per one square mile land area, require all low-power FM stations licensed after the date of enactment of this Act and located on third-adjacent, second-adjacent, first- adjacent, or co-channels to such full-service FM stations, to provide the same interference remediation requirements to complaints of interference, without regard to whether such complaints of interference occur within or outside of the previous protected contour of such stations, under the same interference complaint and remediation procedures that FM translator stations and FM booster stations are required to provide to full-service stations as set forth in section 74.1203 of its rules (47 CFR 74.1203) as in effect on the date of enactment of this Act. Notwithstanding the provisions of section 74.1203, no interference that arises outside the relevant distance for the full-service station class specified in the first column titled "required" for "Co-channel minimum separation (km)" in the table listed in section 73.807(a)(1) of the Commission's rules (47 CFR 73.807(a)(1)) shall require remediation. (emphasis added)

39. If Section 74.1203(a)(3) did not have the protected signal limitation, there would be no need for the emphasized words in the LCRA above. Rather, for the purposes of the LCRA

and LPFM stations in the regions covered by the statute above, the LCRA expands Section 74.1203 to cover “complaints of interference, without regard to whether such complaints of interference occur within or outside of the previous protected contour of such stations”. This language makes clear the application of Section 74.1203(a)(3) carries with it the limitation that interference complaints must be within the protected signal of the subject station which is clearly defined in Section 74.1204 of the Commission’s rules as the 60 dB $\mu$  contour.

40. Possibly, up until now with just several exceptions the Audio Division has not had the need to impose the protected signal limitation on complaints, knowing that FM translators had a multitude of other channels upon which to continue operations. Had the Audio Division or the FCC been challenged on the protected signal limitation, however, as shown in the Request for Dismissal it would have been hard-pressed to support a decision that the “protected” limitation means one thing with regard to signal contour in Section 74.1203(a)(3) and an entirely different thing with regard to signal contour in Section 74.1204 and the plethora of other FCC rule sections.

41. Moreover, the full Commission has never taken up this protected signal limitation of Section 74.1203(a)(3). The Commission’s translator interference rules and policies were adopted back in the time when FM translators largely re-transmitted distant stations. Today, however, many FM translators provide an in-contour lifeline for AM broadcasters or serve thousands with diverse programming from in-contour HD sub-channels which otherwise could not be received by a majority of radio listeners. Many more FM translators will be coming into service to enhance the coverage of AM stations in the coming months. It is no longer easy or efficient for an FM translator that is carrying diverse programming to simply change channels.

42. Therefore, the Commission should now clarify Section 74.1203(a)(3) of the Commission's rules as shown above to prevent its abuse by abiding by the definition of protected signal contained in Section 74.1204 of the Commission's rules and applying that stated limitation to complaints arising only within the Section 74.1203(a)(3) protected signal limitation. In today's FM radio environment with radio listeners being served in almost every area with a multitude of FM signals, there is no reason to give exceptional protection to FM stations beyond their protected signals with respect to FM translators. Indeed, it is not required and is specifically limited by the protected signal limitation contained in Section 74.1203(a)(3) as "protected" is defined in Section 74.1204(a) of the Commission's rules.

**VII. QUESTION #3 PRESENTED FOR REVIEW: WHETHER, AS A PUBLIC INTEREST MATTER AND CONSISTENT WITH THE LOCAL COMMUNITY RADIO ACT OF 2010 IN WHICH THE NEEDS OF THE LOCAL COMMUNITY FOR FM TRANSLATORS MUST BE CONSIDERED, THE AUDIO DIVISION CAN ORDER AN FM TRANSLATOR TO REMEDY INTERFERENCE CLAIMS FROM A STATION LOCATED IN A WHOLLY DIFFERENT COMMUNITY AND SERVICE AREA WITHOUT CONSIDERING THE NEEDS OF EACH LOCAL COMMUNITY**

43. The Local Community Radio Act of 2010 may very well have overridden the parts of Section 74.1203 of the Commission's rules relied upon by the Audio Division in the 2<sup>nd</sup> FCC Letter. The LCRA at Section 5 directed that the FCC "when licensing new FM translator stations ...shall insure that ... such decisions are made based upon the needs of the local community."

44. Here, neither the Audio Division nor any of the complaints allege that the needs of Columbus, Indiana, the WXCH community of license, are impacted by a failure of WXCH listeners to receive the station some 40 miles distant and well beyond its 60 dB $\mu$  protected contour. On the contrary, the radio listeners in Greenfield, Indiana, the W275BD community of

license, will be greatly affected if the diverse programming provided by W275BD is removed from the air.

**VIII. QUESTION #4 PRESENTED FOR REVIEW: WHETHER THE PROVISIONS OF THE LOCAL COMMUNITY RADIO ACT OF 2010 ORDERING THAT FM TRANSLATORS BE TREATED AS EQUAL IN STATUS TO LOW-POWER FM STATIONS REQUIRES THE AUDIO DIVISION TO APPLY THE SAME CRITERIA TO ASSESSING ALLEGED INTERFERENCE FROM FM TRANSLATORS TO EXISTING FM STATIONS**

45. The LCRA states in Section 5 that “FM translator stations ... and low-power FM stations remain equal in status and secondary to existing and modified full-service FM stations (emphasis added)”. Low-power FM stations under Section 73.809(a) of the Commission’s rules are not required to remediate co-channel interference except in the case of interference to subsequently-filed full service facilities: (1) within the 70 dB $\mu$  contour of the full-service FM station; (2) the community of license of the full-service FM station; or (3) any area of the community of license that is predicted to receive at least a 60 dB $\mu$  signal.<sup>20</sup>

46. For FM translators to be treated “equal in status” under the LCRA, WXCH would have to make a showing of interference within its 70 dB $\mu$  contour, its community of license, or any area of its community of license that is predicted to receive at least a 60 dB $\mu$  signal. WXCH has not made such a showing.

47. Finally, as noted above, in Section 7(6), the LCRA specifically affords co-channel interference protection to full-service FM stations under Section 74.1203 of the Commission’s rules only in “significantly populated States with more than 3,000,000 population and a population density greater than 1,000 people per one square mile land area ....”. While Indiana

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<sup>20</sup> As noted above, Section 7(6) of the LCRA modifies this for certain states. Indiana is not one of those states.

does have a population of greater than three million, its population density is but 184.8 persons per square mile.<sup>21</sup>

48. Therefore, as Section 7(6) is inapplicable to Indiana, the LCRA explicitly removes Section 74.1203 interference provisions for co-channel interference allegations by full-service stations (such as WXCH) against low-power FM stations in Indiana. Since under the LCRA the FCC is required to treat FM translator stations and low-power FM stations as “equal in status”, the same rule that applies to low-power FM stations must apply to FM translator stations. If Section 7(6) of the LCRA dictates that co-channel interference is not to be remediated under Section 74.1203 for low-power FM stations in Indiana, co-channel interference of the kind alleged by WXCH is also not cognizable and is not to be remediated in order for FM translator stations in Indiana to be “equal in status” to low-power FM stations under the LCRA.

## **IX. CONCLUSION**

49. Indiana Community Radio Corporation, through the efforts of the licensee of its primary station, Radio One Licenses, LLC, submitted the February 16, 2016 Request for Dismissal of Complaints. The licensee of WXCH had an opportunity to oppose the Request for Dismissal of Complaints but failed to do so. As a result, the thorough rebuttal presented in the Request for Dismissal stands unopposed. For this reason alone, the balance of evidence requires that the purported complaints should be dismissed.

50. Someone who is Facebook friends with principals in the complaining station’s licensee is not a disinterested *bona fide* listener. Generally, friends and family of a station owner asserting interference complaints so that the owner can hear the last gasps of his station’s signal

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<sup>21</sup> See 2010 U.S. Census.

as it approaches the “Owner’s Contour” should not be entitled to interference remediation under Commission policy.

51. Section 74.1203(a)(3) of the Commission’s rules, relied upon by both the 1<sup>st</sup> FCC Letter and the 2<sup>nd</sup> FCC Letter, contains a protected signal limitation which, if ordinary rules of statutory construction are used, means that cognizable interference complaints are limited to those within the protected 60 dB $\mu$  contour of WXCH. “Protected” cannot mean one thing in Section 74.1203(a)(3), and have another meaning in every other FCC rule section in which it is used. As the purported complaints arise outside of the WXCH protected signal, the purported complaints should be dismissed.

52. The Commission’s translator interference rules were adopted back in the time when FM translators largely re-transmitted distant stations. Today, many FM translators provide an in-contour lifeline for AM broadcasters or serve thousands with diverse programming from in-contour HD sub-channels which are otherwise un-receivable by a majority of radio listeners.

53. Given the passage of the LCRA and the changed nature of the broadcasting landscape in the past decade, the Commission should now clarify in response to this Application for Review that Section 74.1203(a)(3) of the Commission’s rules is modified by the LCRA to require an evaluation of the needs of the community and the special circumstances under which an FM translator may have been granted a license, and to treat FM translators as equal in status in the application of the FCC’s rules to LPFM stations for interference remediation issues. In today’s FM radio environment with radio listeners being served in almost every area with a multitude of FM signals, as a public interest matter there is no reason to give exceptional protection to far-distant FM stations.

54. The LCRA requires that decisions licensing new translators and LPFM stations be based upon the needs of the local community, that LPFM and FM translators remain equal in status, and that certain interference standards are imposed upon LPFM stations. Neither the 2<sup>nd</sup> FCC Letter nor the complaints themselves considered the needs of the local community.

55. Further, the LCRA appears to have, by statute, changed the application of Section 74.1203(a)(3). If FM translators and LPFMs are to remain equal in status, certain co-channel interference and adjacent channel interference is not cognizable and is not to be remediated under Section 74.1203 of the Commission's rules.

WHEREFORE, for the reasons above, the interference remediation order to Radio One of Indiana, LLC contained in the *Decision Documents* should be reversed or rescinded.

Respectfully submitted,

**RADIO ONE OF INDIANA, LLC**

By \_\_\_\_\_

  
John F. Garziglia  
Rebecca Jacobs  
Its Attorneys

Womble Carlyle Sandridge & Rice, LLP  
1200 19<sup>th</sup> Street, N.W. Suite 500  
Washington, DC 20036  
(202) 857-4455

November 14, 2016

## **Attachment 1**

**October 14, 2014 Email from Robert Gates**

## Garziglia, John

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**From:** Robert Gates <Robert.Gates@fcc.gov>  
**Sent:** Friday, October 14, 2016 11:16 AM  
**To:** Garziglia, John; lindajerome812@aol.com  
**Cc:** KREISING@QMIX.COM; James Bradshaw  
**Subject:** RE: W275BD, Greenfield, IN, BLFT-20151120AGX

John,

Concerning the interference complaint against W275BD, there is only one unresolved complaint. Please follow up with Kaylyn Shinolt. You claim that Kaylyn Shinolt is not a disinterested listener because she is a Facebook friends of the GM and a DJ of WXCH. We disagree. Facebook friends do not discount her complaint. Please resolve her complaint immediately.

Rob Gates  
Electronics Engineer  
Media Bureau / Audio Division  
202-418-0986

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**From:** Robert Gates  
**Sent:** Friday, October 07, 2016 10:21 AM  
**To:** Garziglia, John ([JGarziglia@wcsr.com](mailto:JGarziglia@wcsr.com)) <[JGarziglia@wcsr.com](mailto:JGarziglia@wcsr.com)>; [lindajerome812@aol.com](mailto:lindajerome812@aol.com)  
**Cc:** 'KREISING@QMIX.COM' <[KREISING@QMIX.COM](mailto:KREISING@QMIX.COM)>  
**Subject:** W275BD, Greenfield, IN, BLFT-20151120AGX

John,

Concerning interference to WXCH(FM) from W275BD, you filed a Request for Dismissal of Complaints on February 11, 2016. You state in paragraph 11 that several complainants are not disinterested and bona fide. There is no supporting documentation to this statement.

Please provide me with supporting documents discrediting these listeners within 2 weeks or I will have to act accordingly.

Rob Gates  
Electronics Engineer  
Media Bureau / Audio Division  
202-418-0986

**Attachment 2**

**October 14, 2016 Letter from James D. Bradshaw  
(Attachments Omitted)**

**FEDERAL COMMUNICATIONS COMMISSION**  
**445 12<sup>th</sup> Street, SW**  
**Washington, DC 20554**

**MEDIA BUREAU**  
**AUDIO DIVISION**  
**TECHNICAL PROCESSING GROUP**  
**APPLICATION STATUS: (202) 418-2730**

OCT 18 2016

**PROCESSING ENGINEER: ROBERT GATES**  
**TELEPHONE: (202) 418-0986**  
**FACSIMILE: (202) 418-1410**  
**INTERNET ADDRESS: Robert.Gates@fcc.gov**

Indiana Community Radio Corporation  
P. O. Box 846  
Greenfield, IN 46140

In re: INTERFERENCE COMPLAINT  
W275BD, Greenfield, IN  
BLFT-20151120AGX  
Facility ID # 143744

Dear Licensee:

This refers to interference complaints filed by Reising Radio Partners, Inc. All complaints must be resolved. Listener complaints can be filed at any time. The complaints allege that W275BD is interfering with the reception of WXCH(FM), Columbus, Indiana.

Pursuant to 47 C.F.R. § 74.1203, W275BD is required to eliminate any actual interference it causes. Therefore, it is necessary for W275BD to submit a detailed report on the attached complaint even if the complainant might have been addressed in a previous proceeding. For the complaint, the report must include: (1) the name and address of the complainant; (2) specific devices receiving the interference (i.e. type of device, manufacturer's name, model number, and serial number); and (3) any assistance provided by W275BD for each device allegedly receiving the interference and whether such interference persists. Each of the complaints must be addressed individually.

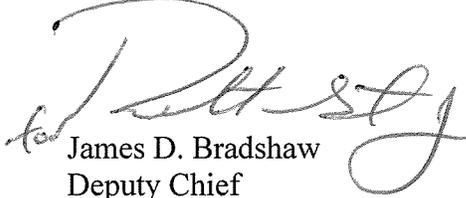
The Commission's Rules regarding FM translators restrict FM translator stations to operate strictly on a secondary basis and limit their service. Section 74.1203(a)(3) states that an FM translator station will not be permitted to continue to operate if it causes any actual radio signal interference to the direct reception by the public of the off-the-air signals of any authorized broadcast station.<sup>1</sup> Actual interference is based on listener complaints indicating that the signal they regularly receive is being impaired by the signal radiated by the FM translator station. Section 74.1203(b) states that if the

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<sup>1</sup> An FM translator station creating actual radio signal interference to any authorized broadcast station is obligated to eliminate the interference, regardless of the location where the impaired signal reception occurs.

interference cannot be properly eliminated by the application of suitable techniques, the operation of the offending FM translator station shall be suspended and shall not be resumed until the interference has been eliminated.

Within thirty days of this letter, W275BD must take appropriate actions required by the provisions of 47 C.F.R. § 74.1203 to resolve all complaints of interference to fulfill its obligations. Further action on this complaint will be withheld for a period of thirty days from the date of this letter to provide W275BD an opportunity to respond. Failure to correct all complaints within this time may require W275BD to suspend operation pursuant to 47 C.F.R. §§ 74.1203(e) and 74.1232(h).



James D. Bradshaw  
Deputy Chief  
Audio Division  
Media Bureau

Cc: Keith Reising (by email)  
Linda Jerome (by email)

## CERTIFICATE OF SERVICE

I, John F. Garziglia, an attorney at the law firm of Womble Carlyle Sandridge & Rice, LLP, do hereby certify that a true copy of the foregoing "Application for Review" was sent this 14<sup>th</sup> day of November, 2016 via U.S. Mail, postage prepaid, to the following:

Lee J. Peltzman, Esq.  
Shainis & Peltzman, Chartered  
1850 M Street, N.W. Suite 240  
Washington, DC 20036

Mr. Keith Reising  
Reising Radio Partners, Inc.  
825 Washington Street  
Columbus, IN 47201

Ms. Linda Jerome  
Indiana Community Radio Corporation  
P.O. Box 846  
Greenfield, IN 46140

  
\_\_\_\_\_  
John F. Garziglia