

RECEIVED

2016 DEC 19 A 11: 28

AUDIO SERVICES DIVISION

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re:

INDIANA COMMUNITY RADIO
CORPORATION

Licensee of W275BD, Greenfield, Indiana

)
)
)
)
)
)
)

FCC File No. BLFT-20151120AGX
FCC Facility ID No. 143744

Accepted / Filed

DEC 15 2016

Federal Communications Commission
Office of the Secretary

To: Office of the Secretary
Attn: The Commission

MOTION TO DISMISS

Lee J. Peltzman
Shainis & Peltzman, Chartered
1850 M Street, N.W.
Suite 240
Washington, D.C. 20036
202-293-0011

Counsel for REISING RADIO
PARTNERS, INC.

December 15, 2016

ORIGINAL

TABLE OF CONTENTS

SUMMARY.....	ii
I. BACKGROUND.....	1
II. ARGUMENT.....	6
A. THE APPLICATION FOR REVIEW IS PROCEDURALLY DEFECTIVE AND MUST BE DISMISSED.....	6
B. RADIO ONE’S ARGUMENTS ARE LEGALLY INCORRECT.....	9
III. CONCLUSION.....	18

SUMMARY

This case presents a challenge to the Commission's Media Bureau, Audio Division with respect to whether the Audio Division will be able to successfully enforce the FCC's translator interference rules and policies.

Soon after FM Translator Station W275BD, Greenfield, Indiana filed its station license application and commenced broadcast operations, listeners to Station WXCH began to receive interference to their reception of that station. Some of the listeners contacted Station WXCH to seek information whether the station's format had changed or if there was some other reason for their inability to receive a formerly listenable signal. Listeners completed a form providing information regarding each listener's specific circumstances, which Reising Radio Partners, LLC ("RRP"), the licensee of Station WXCH, submitted to the Audio Division.

The Division sent a letter to the licensee of Station W275BD, directing the translator licensee to look into the interference complaints, eliminate any interference that the translator was causing and submit a report to the Audio Division addressing each complaint.

What has followed the Audio Division request has been nothing less than a scorched-earth campaign by Radio One of Indiana, LLC ("Radio One"), licensee of the primary station being re-broadcast by W275BD, to insult, but otherwise ignore every listener who has registered an interference complaint. This harassment began with sending a formal and threatening multi-page letter containing irrelevant and personal questions from Radio One's law firm. This was done despite the fact that, in the complaint forms filled out by the listeners that were sent to the Commission and provided to Radio One through the translator licensee, the same listeners expressly requested that they be contacted by email or telephone. Notwithstanding that the entire

purpose of the FCC's translator interference policy is to assist listeners by determining the presence of interference to listeners' reception and then eliminating it, Radio One has been far more interested in attacking listeners' character and seeking to disqualify listeners because of any prior contact these individuals may have had with WXCH or its employees. In all of the filings that Radio One has made over the past year, it has never once told the Commission whether it has checked to see if the translator is causing interference to a listener's reception of Station WXCH, and, if it has, what the results of its investigation have been. That, supposedly, was the purpose of the Division's interference inquiry, but Radio One seems hellbent on avoiding answering that important question.

Radio One has challenged the fact that the Audio Division sent a second letter to the licensee of W275BD after additional listeners' complaints were submitted to the Division. Radio One has even filed an Application for Review challenging that Division's right to enforce the Commission's translator interference rules.

In the first place, the points raised in the Radio One Application for Review have not been ruled on yet by the Division. Also, Radio One is not the proper party to challenge the Division's efforts to enforce the FCC's translator interference rules, since Radio One is not the licensee of the translator and any Division inquiries were not sent to Radio One. If Radio One has responded to those inquiries, it has been its choice in doing so, since it has never been directed by the Division to respond.

Finally, the legal positions taken by Radio One are contrary to Commission holdings, the express wording of Commission rules and the FCC's interpretation of the Local Community Radio Act of 2010. Radio One would get an "A" in any class teaching creative writing, but its originality is not the same as being legally correct on the issues it poses. Radio One is free to

postulate any theories it wishes, whether they be legal ones -- wishing the FCC to construe its translator interference rules in the same manner that Radio One has -- or factual ones -- including formulating conspiracy theories based, in part, on the “feelings” of Radio One employees. However, while Radio One may fantasize about conspiracies “until the cows come home,” W275BD is not immune from the consequences of violating the FCC’s translator interference rules. The Radio One Application for Review should be denied and W275BD should be directed to cease broadcasting, since, through Radio One, it has been hostile toward listeners while supposedly, but never quite getting to, determining the presence of and, then, eliminating interference to another station (WXCH). In fact, Radio One has not taken one step to eliminate interference to listeners’ reception of Station WXCH.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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

To: Office of the Secretary
Attn: The Commission

MOTION TO DISMISS

Reising Radio Partners, Inc. (“RRPI”), licensee of FM Station WXCH, Columbus, Indiana, by its attorney, hereby requests the dismissal of the Application for Review (“AFR”) filed by Radio One of Indiana, LLC (“Radio One”), licensee of Station WNOW-FM, Speedway, Indiana and proposed licensee of FM Translator Station W275BD, Greenfield, Indiana (the “Translator”). In support of its position, RRPI submits the following:

I. BACKGROUND

1. Station WNOW-FM is the primary station which is re-broadcast by FM Translator Station W275BD, Greenfield, Indiana. Indiana Community Radio Corporation (“ICRC”) is currently the licensee of the Translator.¹ On December 14, 2015, the Commission granted the station license application filed by the Translator to cover a construction permit for the last in a series of facilities changes made by that station over several years. Soon after the Translator filed its station license application for its most recent facilities change on November 20, 2015, and commenced broadcasting with its new facilities, WXCH began receiving notices from its listeners complaining of harmful interference to their reception of WXCH. RRPI notified the Commission of the interference complaints and, on December 15, 2015, the Audio Division issued its first letter to ICRC. Radio One, thereafter, submitted a report on behalf of

¹ On December 20, 2013, ICRC and Radio One filed an Assignment Application with the FCC requesting FCC approval to the assignment of the Translator to Radio One. The Asset Purchase Agreement (“APA”) submitted with that Application stated that the monetary consideration to be paid by Radio One to ICRC is \$275,000. ICRC-Radio One Assignment Application, filed December 20, 2015, Exhibit 4 (Asset Purchase Agreement) at p.2. The APA specified that ICRC would file a Modification Application to change facilities and stated that one of Radio One’s stations (which turned out to be WNOW-FM) would be the primary station to be re-broadcast by the Translator. APA at p.7. The APA may be terminated by Radio One if the Translator “cannot be operated [with its licensed facilities] without causing interference under Section 74.1203(a)(3) of the Commission’s rules.” APA at p.11. This provision is evidence that Radio One foresaw the possibility of interference created by the Translator when it agreed to purchase the Translator and provides significant motive for Radio One to behave in an unconscionable manner, so as to make its Translator worth the substantial price it has agreed to pay by attacking the character of listeners complaining of interference, and, otherwise to be uncooperative in attempting to eliminate that interference. The FCC found sufficient cause to take a year to review and approve the Assignment Application. Since the Commission granted the W275BD Assignment Application on October 12, 2014, Radio One and ICRC have sought and been granted a series of seven different extensions of time over two years to consummate the transaction, a highly unusual amount of time for an assignment closing. The reasons offered to justify the requested extensions seem less than candid. For example, on May 21, 2015, ICRC stated that it needed an extension of time to close because it was “in the process of securing a site that will be compliant with current FCC standards,” despite the fact that its proposed registered site, ASR1030144, was first listed in a Modification Application filed 18 months earlier, on November 20, 2013, and approved by the FCC over a year earlier, on March 7, 2014. The August 19, 2015 extension request again sought additional time to close “to allow time to locate an acceptable site,” despite the fact that the site listed in the ICRC June 8, 2015 Modification Application was the same site (ASR1030144) previously designated by ICRC in its November 20, 2013 Modification Application. No explanation has ever been provided by ICRC describing why it needed to delay closing in order to locate an acceptable site when the site proposed by it in two prior Commission applications did not change from November 2013 on and it is the currently licensed site for the Translator.

ICRC, seeking to have the Commission wash out each of the eleven complaints from individual WXCH

listeners.²

2. The detailed report submitted by Radio One summarized the results of its efforts at successfully intimidating the eleven complaining WXCH listeners. Apparently, faced with an official-looking multi-page questionnaire, not from ICRC or Radio One, but from some Washington, DC lawyer, which contained numerous improper, irrelevant, immaterial and personal questions, directed listeners to certify the accuracy of their responses (while all persons making statements should tell the truth, no FCC rule or procedure requires listeners to formally certify their information statements made to a radio station licensee, much less its attorney), provided misleading and simply incorrect information directly in conflict with the Commission's rules (Radio One, once again, substituting its opinion for the express language in FCC rules and multiple years of FCC precedent and holdings to the contrary) and threatened with what no private citizen wishes, formal involvement in a proceeding of the U.S. Government, not surprisingly, most of the eleven complaining listeners chose not to be further involved in a massive invasion of their privacy and a veritable witch hunt, in which the listeners were treated as the hunted witches. All that WXCH listeners were guilty of was making their views known

² Apparently, Radio One is indignant at the owner of RRPI expressing unhappiness that the FCC did not come to the aid of WXCH listeners and protect their right to receive interference-free broadcast service from WXCH. Providing no evidence to support its supposition, Radio One hypothesizes that the owner of RRPI was distressed that he could not listen to WXCH in areas that were a great distance from that station's location and, according to Radio One's belief, should not be able to receive service from WXCH. Not for the first nor the last time, Radio One has adopted the persona of the all-powerful and knowing Wizard of Oz, offering its own opinion in lieu of fact or law. Radio One's argument is that the FCC should disbelieve and dismiss the multiple reports of interference from WXCH listeners, none of whom have been shown to have financial or familiar relationships with the station or its licensee, and, instead, rely on Radio One's opinion, somewhat biased as it is, in view of the fact that ICRC would need to terminate service by its translator on Channel 275 if it were unable to successfully disenfranchise WXCH listeners, since it is technically impossible to eliminate interference to WXCH, a co-channel facility, also operating on Channel 275.

that they wished to continue to receive interference-free broadcast service of a station (WXCH) that they had grown to rely on. The Commission, in good faith, attempted to resolve the harmful interference by placing the burden on the Translator, consistent with Commission rules and procedures. What followed and has continued to occur has been nothing short of a study in obnoxious pernicious behavior by a Commission licensee, which, apparently, will say anything, do anything, and argue anything in order to excuse the interference of a Translator and have that Translator continue to re-broadcast its signal and interfere with listeners to another station, no matter who is harmed.

3. In its AFR, Radio One objects to an email from the Audio Division, which, apparently, resolved all but one of the listener complaints in Radio One's favor, but which requested Radio One to follow-up with a single individual. Radio One also objects to a second interference letter, dated October 18, 2016, from the Audio Division to ICRC, which is based on listener complaints with respect to the Translator causing harmful interference to listeners' continued reception of an FM station (WXCH). That interference letter contained no conclusions, final or otherwise. Radio One ignored the obvious fact that the October 18, 2016 Audio Division letter to ICRC was historically consistent with scores if not hundreds of prior FCC letters to FM translators where listener complaints had been submitted to the Commission complaining of harmful translator interference to the listeners' reception of broadcast stations.

4. Radio One's protestations are totally beyond the pale. Initially, it is truly extraordinary that Radio One would contest a Commission email, which, apparently, was in agreement with Radio One's assertions that complaints by WXCH listeners should be resolved in favor of Radio One. If any of the parties in this matter have been prejudiced, it is not Radio One, but, rather, RRPI and WXCH listeners. Those listeners contacted station WXCH in good faith

seeking the elimination of harmful interference to the reception of their station of choice. Instead of having service from their protected station restored, seemingly, not an unreasonable request, listeners received a threatening letter from a D.C. attorney sent on behalf of the Translator, containing total falsehoods, then, had their *bona fides* attacked and, finally, failed to see their rights as listeners enforced by the FCC. But, remarkably, it is Radio One which has filed a grievance, despite the reality that almost all of the good-faith interference complaints from WXCH listeners failed to receive credit by the FCC—which directly resulted from Radio One’s insidious actions intimidating WXCH listeners from pursuing their requests to receive interference-free broadcast service. Radio One, presently, has the gall to complain in its AFR that it is the one that has been mistreated.

5. Radio One argues that the terms “disinterested” and “*bona fide*” when describing a listener should be severely restricted and read differently than in prior Commission case law. Radio One, additionally, contends that, despite the clear express language in section 74.1203(a)(3) of the FCC’s rules and FCC decisions holding to the contrary, Commission regulations mean what Radio One wants them to mean and nothing more. Apparently, when Radio One uses words, just like Humpty Dumpty, those words “mean just what I choose [them] to mean—neither more nor less.”³ Radio One claims that Section 74.1203(a)(3) of the rules should be construed the same way as is Section 74.1204(a), despite the fact that the two subsections discuss different interference: theoretical interference proposed in applications and actual interference to the reception of another station after a translator station’s application has been filed and granted and the translator is constructed, licensed and operating.

³ Lewis Carroll (Charles L. Dodgson) *Through The Looking Glass*, chapter 6, p.205 (1934) (first published in 1872).

6. Radio One additionally complains that the Audio Division directing an FM translator to remedy certain types of actual interference is inconsistent with Radio One's belief regarding what the Local Community Radio Act of 2010 (the "LCRA" or the "Act") means. Once again, Radio One substitutes its opinion for fact and law, by choosing and misapplying isolated language to justify its wrong-headed conclusions. Radio One claims that the LCRA "may very well have overridden parts of Section 74.1203 of the Commission's rules relied upon by the Audio Division."⁴ It points to no language by the FCC supporting its opinion. Similarly, Radio One contends that, under the Act, according to its interpretation, the Commission must apply the same criteria when assessing alleged interference from FM translators and from Low Power FM stations. And, with respect to some LPFM stations, it is partially correct (but not in the way it hopes) in that the Commission has applied the FM translator scheme, including the parts of the Commission's rules that Radio One does not favor, to some LPFM stations.

II. ARGUMENT

A. THE APPLICATION FOR REVIEW IS PROCEDURALLY DEFECTIVE AND MUST BE DISMISSED

7. The Radio One filing is procedurally defective. As Radio One is well aware, Section 1.115(c) of the FCC's rules clearly states that "[n]o application for review will be granted if it relies on question of fact or law upon which the designated authority has been afforded no opportunity to pass." As even Radio One has acknowledged, the Audio Division did

⁴ Radio One, AFR at p.19.

not pretend to rule on any of Radio One's legal and policy argument made in its Request.⁵ The Radio One Request for Dismissal of Complaints is still pending at the Audio Division. Radio One has no legal basis to file an Application for Review with the full Commission merely because the Audio Division has not provided an immediate ruling on Radio One's suppositions in accordance with Radio One's time schedule. Moreover, contrary to Radio One's rationalization, it is not a person directly "aggrieved" by any action of the Audio Division, as required under Section 1.115 of the Commission's rules. Radio One is not the Translator licensee and occupies a position similar to a proposed Buyer of a station or a Programmer under an LMA. Just as a stockholder lacks standing to sue on behalf of a corporation, Radio One is not the appropriate party to file an Application for Review. The actions which it complains of were directed to another party, which is the licensee of the Translator. At some point in time Radio One may become the Translator licensee -- although after two years from the FCC grant of its assignment application, a serious question may be posed as to when, if ever, that may occur -- but it is not licensee at present.

8. Radio One points to isolated emails from Audio Division staff and incorrectly claims that the Division has considered its arguments and denied them. For example, Radio One

⁵ *Id.*, pp. 8-9. Radio One also points out in its AFR that RRPI has failed to contest Radio One's arguments made in its Request for Dismissal of Complaints. AFR at p.4. Radio One's obvious attempt to rewrite the FCC's translator interference rules and policies, in the opinion of RRPI, did not initially merit the filing of an Opposition, since Radio One's conclusions were so absurd as to fall from their own weight. Now, however, Radio One has filed an AFR, so RRPI believes itself obligated to comment on Radio One's assertions which are, apparently, believed by Radio One and only Radio One. It is as if Radio One has discovered that the FCC's translator interference rules and procedures, that the entire communications world has willingly agreed to comply with for decades, are all wrong, and that Radio One, alone, has figured it out. Language means not what everyone but Radio One thought it meant, but, instead, whatever meaning Radio One gives to that language. It is like the mother at a parade of soldiers, who yells out "See my son, he is the only soldier marching correctly. All of the other soldiers are one step behind." But, the remainder of the world is not one step behind Radio One. Radio One must receive credit for creative thinking and significant credit for its Translator successfully continuing to cause interference to broadcast reception by listeners and evading responsibility for the Translator causing that interference, yet, suffering no penalty to itself or the Translator re-broadcasting its station. However, that hardly makes Radio One correct in its arguments or in its successfully getting away, so far, with intimidating innocent listeners. If Radio One's actions are permitted to stand, the public interest will be the clear loser.

appears to be in a great tizzie as a result of an October 18, 2016 letter from the Audio Division to ICRC and claims that this is an adverse decision. Radio One conveniently ignores the fact that the Division letter is duplicative of scores if not hundreds of similar letters from the Audio Division requesting translators to assess whether they are causing interference and to take appropriate action required under the Commission's rules. Such letters can hardly constitute an express rejection of Radio One's position unless it is Radio One's position that the Audio Division and the full Commission must ignore the FCC's rules and policies and, instead, dance only to Radio One's tune.

9. Section 74.1203(a)(3) of the rules expressly states 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 the off-air signals of any authorized broadcast station. Any FM translator station creating actual radio interference to any authorized broadcast station is obligated under the Commission's rules to eliminate that interference. RRPI is unaware of any FCC precedent, and Radio One cites none, where the Commission, through its Media Bureau, when made aware of complaints of translator interference, has previously refused to send letters requesting that translator stations assess whether interference is present and, if it is present, then to eliminate it.

10. Radio One also claims that the LCRA has overridden parts of Section 74.1203 of the rules dealing with interference. However, if Radio One sincerely believes that the Commission must reconsider and change its current rules, the appropriate way to make its views known is to propose such a change in a Petition for Rule Making. The Commission conducted an extensive rulemaking to implement the provisions of the LCRA. The Commission did not adopt any of Radio One's proposals. If Radio One believes the Commission was incorrect in its

analyses, it had multiple opportunities to assist the FCC in “correctly” implementing the LCRA. And Radio One is free to propose changes to the FCC’s rules now. What it cannot do is to ask the FCC to adopt different rules as part of a translator interference proceeding. An Application for Review of a non-decision by the Audio Division, as in this matter, is hardly the correct forum for Radio One to make its arguments regarding what the Commission’s rules should be.

11. Radio One also raises irrelevancies in the hopes that the Audio Division will feel itself challenged and will permit Radio One to continue to violate the Commission’s translator interference rules with impunity. Just as Radio One has successfully intimidated those WXCH listeners who had the temerity to complain about harmful interference to their reception, Radio One engages in similar behavior with respect to the Audio Division. Radio One accuses the Division of misapplying the Commission’s translator interference rules when the Division sent its normal “30-day letter” directing a Translator to look into allegations of interference by listeners of an authorized broadcast station. Radio One claims that it is Division staff, alone, who have concocted an interpretation of 74.1203(a)(3) with which Radio One disagrees, when it is the full Commission which has repeatedly stated that Section 74.1203(a)(3) has no geographic limitations with respect to interference complaints. The Commission must not countenance this type of ill-informed and abusive behavior by a broadcast licensee. No licensee should be permitted to tie-up the Commission with meritless filings in the hopes that the FCC will not care enough, or will be intimidated not to enforce its rules and policies to protect innocent listeners from harmful interference. Therefore, Radio One’s AFR must be dismissed.

B. RADIO ONE’S ARGUMENTS ARE LEGALLY INCORRECT

12. Besides Radio One’s AFR being procedurally defective, the AFR is also legally

incorrect. Were the Commission to decide the issues proffered by Radio One in its AFR, the Commission, under relevant case law, would be required to deny it. Radio One, as noted earlier, substitutes its opinion and a vivid imagination for legitimate legal analysis and FCC case precedent.

13. Radio One spends an enormous amount of time attempting to present an original, if unconvincing argument, that language in Section 74.1203(a)(3) of the FCC's rules, which has heretofore been considered quite clear, means the opposite of what it has universally been held to mean. The language in question provides that the public's direct reception of an off-the-air signal of an authorized and operating broadcast station "will be considered to occur whenever reception of that regularly used signal is impaired by the signals radiated by an FM translator 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."⁶

14. Radio One declares that, contrary to the universally held view, well-settled precedent and the clear and unambiguous wording of the rule in question, Section 74.1203(a)(3), instead, should be viewed as limiting the relief available to listeners receiving interference based on the location of those listeners. Radio One arrives at its theory by seizing upon the word "protected" in Section 74.1203(a)(3) and claiming that, since the word is often used in Section 74.1204(a) to refer to a specific station contour, the word must have the same meaning when used in Section 74.1203(a)(3). Radio One argues that Section 74.1204(a)(3) should be construed as specifically defining the "protected contour" for listeners of Class A FM stations such as WXCH who are receiving interference. It asserts that the term "protected" with respect to FM

⁶ 47 CFR § 74.1203(a)(3).

signal contours cannot have one meaning in Section 74.1204(3)(a) and another in Section 74.1203(a)(3). According to Radio One, it is the Media Bureau, not the Commission, which has concluded that the language in Section 74.1203(a)(3) is clear and unambiguous and has no geographic or temporal limitations.⁷

15. The problem with Radio One's reasoning is that it does not really attempt to examine the language in Section 74.1203(a)(3) of the Rules. Had it done so, it would have noted that the term "protected signal" is used to differentiate the off-the-air signal of an authorized broadcast station referred to in the first part of the subsection and again mid-way through Section 74.1203(a)(3) ("interference will be considered to occur whenever reception of *a regularly used signal* is impaired..." (emphasis added)) from the FM translator or booster station creating the interference. The reference to "protected signal" makes it clear which of the two signals (the station signal being directly received by the public off-the-air and the FM translator station) is being protected. On the other hand, the references contained in Section 74.1204 to a "protected contour" is to a specific enumerated contour, whether it be to the 1 mV/m contour for Class A FM stations or some other protected contour. At no time does the Commission refer to a specific contour as a "protected contour" in Sections 74.1203(a)(3), (b) or (e) of the FCC's rules.⁸

16. Radio One contends that neither the Commission nor Media Bureau has taken up the issue of the meaning of what is the "protected signal" in Section 74.1203(a)(3). The reason that there has not been any such discussion is that what Radio One postulates is simply incorrect.

⁷ AFR at pp. 14-15.

⁸ Radio One contends that the Commission uses the terms "protected contour" and "protected signal" interchangeably. AFR at p. 13, note 15. And, it may be correct when the FCC discusses the applicability of Section 74.1204 of its rules. The Commission does not use the term "protected contour" and "protected signal" interchangeably when discussing Section 74.1203(a)(3) because the concept of specific protected contours is neither expressed nor contained in the wording of Section 74.1203(a)(3) nor in any discussion of the rule.

As previously noted, Radio One further contends that it is only the Media Bureau that has proclaimed that the language in Section 74.1203(a)(3) is clear and unambiguous and that the Commission, itself, has “never taken up the protected signal limitation in Section 74.1203(a)(3) of the Commission’s rules.”⁹

17. In fact, the full Commission has repeatedly interpreted Section 74.1203(a)(3) of its rules and concluded that there are no geographic limitations to the rule. In *The Association for Community Education, Inc.*,¹⁰ the Commission noted with approval the Media Bureau’s very broad interpretation of Section 74.1203(a)(3) that the rule “places no geographic or temporal limitations on [interference] complaints...” Twenty years later, in *Creation of a Low Power Radio Service* (Fifth Order on Reconsideration and Sixth Report and Order),¹¹ the Commission, while discussing Section 74.1203(a) of its rules, noted that “the Commission has interpreted this rule broadly. It places no geographic or temporal limitation on complaints. It covers all types of interference.” The Commission’s language could scarcely be clearer. The FCC interprets Section 74.1203(a)(3) to apply broadly with no geographical limitations. The reason Radio One can find no discussion regarding the specific station contour that the term “protected signal” refers to is because that language clearly does not refer to a specific contour. Section 74.1203(a)(3) applies to all instances of interference, no matter where they occur.

18. It has long been FCC law that only complaints from *bona fide* listeners of the

⁹ AFR at p.14.

¹⁰ 19 FCC Rcd 12682, 12688 (2004). *See also Living Way Ministries, Inc.*, 23 FCC Rcd 15070, 15072-73, note 16 (2008) (In a case otherwise dealing with Section 74.1204 of the rules, the Commission differentiates Section 74.1203, which “provides protection from translator interference to *all* listeners of full service stations.” (emphasis added))

¹¹ 27 FCC Rcd 15402, 15431 (2012).

desired station can force a translator off the air. In *The Association for Community Education*,¹²

the Commission stated that it approved of the staff practice requiring a complainant be

“disinterested,” that is,

“a person or entity without a legal stake in the outcome of the translator station licensing proceeding. Thus, it has regularly discounted allegations of interference by employees or principals of full-service broadcast stations, preferring instead to base its conclusions on verifiable complaints from listeners of the full-service broadcast station whose reception may be affected by the translator station’s operation.”

19. Thus, the Commission has sought to ensure that only real listeners of a station whose reception may be affected by the translator’s operation should be recognized as *bona fide* listeners for the purpose of registering complaints. However, Radio One takes this reasonable concept and seeks to expand it to such an extent that the result is unrecognizable. The parent of a child who is a Facebook friend of a child of the owner of RRPI automatically becomes suspect as a “family friend,” and, according to Radio One, can no longer be viewed as a real listener of a station whose reception is being interfered with by the Translator, but, instead, must be part of a conspiracy to bring down Radio One. A relation of a former spouse of a station employee must, according to Radio One, be considered a close friend of the employee, previously, now and forever and can expect to have her reception of her desired station be impaired for eternity because of that friendship. There must be an unholy relationship between the owner of WXCH and the funeral home who buried his grandfather over 100 years ago. It should be pretty clear that neither the listener nor RRPI’s principal attended the funeral or had anything to do with it.

¹² 19 FCC Rcd at 12688, note 37. This definition of “disinterested” was cited with approval by the FCC in *Creation of Low Power Radio Service*, 27 FCC Rcd at 15431-32. The definition was expanded later in that same Order, 27 FCC Rcd at 15441, where the Commission defined *bona fide* “disinterested” listeners to include “persons or entities without legal, economic or familiar stakes in the outcome.”

But, under Radio One's conspiratorial theories, there must be something fishy going on.

Apparently, when the principal's family chooses a funeral home, it does not do so based on convenience, location, service or price, but, rather, based on the theory that paying for the funeral will entice those working and owning the funeral home to come to the aid of RRPI when needed.

20. However, Radio One's conspiracy theories are just that, theories, without any basis. Taken to their logical extension, virtually no one is innocent. If Radio One was present at the time of the Salem witch trials, no person would have survived them, since all would be under direct suspicion. Not only is Radio One's attempt to restrict the definition of "disinterested" *bona fide* listeners incorrect, but it defies common sense. With respect to the relative of a former spouse, anyone who has ever gone through a divorce must acknowledge that the family of a former spouse is the last place to seek relief.

21. Listeners to WXCH have no legal, economic or familiar connection with WXCH or its licensee. It is hardly an unusual situation for radio employees to urge listeners to be Facebook friends. A successful station seeks to form a connection between the station and its listeners. To punish a station, as Radio One seeks here, because some of the station listeners are devoted enough to want to be "friends" with station employees, makes no sense. Loyal listeners should not have their honesty challenged and their rights ignored because they like their station.¹³

¹³ Radio One argues that listeners should be viewed as taking part in some massive conspiracy because they are Facebook friends with or know station employees or station employees may have purchased a product or service from a listener or a listener's family member. Apparently, any connection, however remote, is sufficient to disqualify a listener. At the same time, Radio One desires the Commission to fully credit Radio One's recitation of facts and law as well as the statements of Radio One's employees as being unbiased, despite the fact that Radio One perceives itself as having a great deal riding on the Division's decision in this interference proceeding. What is more likely to produce a biased or incorrect statement, an individual listener's child being Facebook friends with the child of a station employee or the paid employee of the station being re-broadcast by the translator, which station is strenuously opposing the efforts of listeners to restore interference-free broadcast service?

22. Instead of making an attempt to provide relief to listeners whose reception of Station WXCH suffers from interference, Radio One has committed itself to a scorched-earth campaign, using every argument and trick available to deprive listeners service by their favorite station. Importantly, not once in its Application for Review, or for that matter at any time, has Radio One stated that its Translator does not cause interference.¹⁴ In fact, the last thing that Radio One seems concerned about is whether its translator causes interference. If Radio One had applied one percent of the effort it has made to disqualify WXCH listeners to make a good faith effort to look into and resolve those interference complaints, it would then have a platform from which to pontificate. But, Radio One has made no serious effort to resolve those interference complaints of WXCH listeners and, the reason it has made no effort is because Radio One must be well aware that it cannot resolve co-channel interference by the Translator to WXCH. For the Commission to engage in the pretense that Radio One is able to eliminate co-channel interference to WXCH, if only it is permitted the opportunity to do so, is, in effect, a sham.

23. Radio One has not denied the presence of interference to WXCH. WXCH listeners have completed forms and provided contact information and information about their interference, which Radio One has either sought to use against them or, simply, ignored. Radio One is not interested in seeking to eliminate interference because it knows that it is impossible for it to do so. In *Radio Power, Inc.*,¹⁵ the Audio Division spoke about “suitable techniques” to eliminate second or third adjacent channel interference and concluded that these techniques were not “workable in the co-channel context.” This case is also a co-channel case and normally “suitable techniques” simply will not work. Unable to cure the interference the Translator creates, Radio

¹⁴ AFR at p. 8, note 11.

¹⁵ 26 FCC Rcd 14385, 14387 (MB 2011).

One, instead, seeks to disqualify those listeners receiving interference as not being sufficiently “disinterested.” Instead of ICRC or Radio One contacting listeners by phone or email, as those listeners have requested in their complaints provided to the Audio Division, Radio One has decided that the best way to clear up interference is by having its Washington, D.C. counsel send formal multi-page letters, under the firm letterhead, containing incorrect and misleading legal opinion about where listeners can receive a listenable WXCH signal, and demanding irrelevant and personal information. It is hardly surprising that most people would think twice about completing and responding to such an ordeal. Radio One, then, looks for every excuse it can to support its conspiracy theory, claiming that WXCH listeners are really veritable pawns of RRPI. The idea that Radio One has acted in good faith here is a grand illusion.

24. Besides the fact that Radio One seeks to have the Commission change its rules in an adjudication, its interpretation of the LCRA is directly at odds with the Commission’s actions interpreting that Act. As noted, the Commission, in 2012, adopted rules for enforcing LPFM interference protection under the LCRA. The Commission noted that Section 7(1) of the LCRA, with respect to certain LPFM stations “instructs the Commission to adopt ‘the same interference protections that FM translator stations and FM booster stations are required to provide as set forth in Section 74.1203 of [the] rules.’”¹⁶ The Commission further concluded that, under Section 7(1) of the Act, certain LPFM stations would be required to “‘*eliminate*’ any actual interference they cause to the signal of an authorized station in areas where the station’s signal is

¹⁶ *Creation of a Low Power Radio Service* (Fifth Report and Order and Fourth Order on Reconsideration), 27 FCC Rcd 3315, 3326 (2012). “Section 7(1) Stations are subject to the same interference protection regime applicable to FM translator and booster stations, which is set forth in Section 74.1203 of the rules.” *Id.* at 3328.

‘regularly used.’” (citing Section 74.1203(a)(3) of the rules).¹⁷ This Commission language dealing with interference protection for LPFM stations contains no reference to assessing the needs of the local community as is stressed by Radio One in its AFR. Neither does the language speak to ignoring Section 74.1203 interference provisions for co-channel interference to translators. Radio One’s suppositions regarding the LCRA are made up and are simply incorrect.

25. Moreover, Radio One’s assertion that, under the LCRA, the Commission must treat FM translators as equal in status in the application of its rules to LPFM stations with respect to interference issues¹⁸ is at variance with the express language of the LCRA. As the Commission has observed, the LCRA accords varying interference protection and remediation regimes applicable to Section 7(1) Stations and to Section 7(3) Stations.

“Specifically, under Section 7(1), which incorporates the requirements for FM translators and boosters, Section 7(1) Stations must ‘eliminate’ any actual interference they cause to the signal of any authorized station in areas where the station’s signal is ‘regularly used’ [citing 74.1203(a)(3)]. Section 7(3), on the other hand, would obligate such stations only to ‘address’ complaints of interference occurring within an effected station’s protected contour.”¹⁹

26. Therefore, not only is Radio One incorrect in its statement that translators and

¹⁷ *Id.* at 3327 (emphasis in original). As with FM translators under Section 74.1203(a)(3), the requirement was considered “to encompass locations beyond the authorized station’s protected contour.” *Id.* “Section 7(1) Stations must remediate any actual interference caused by their operations or go off the air; must respond to all complaints meeting the specifications set forth in Section 74.1203; and must do so in the manner described in that section...Congress required our wholesale adoption of the well-established and comprehensive regime in Section 74.1203 of the rules....” *Id.* at 3328.

¹⁸ AFR at p. 22. Despite Radio One’s claims, the Commission has observed that “through these two provisions, Congress has created two different interference protection and remediation regimes,” one that applies to Section 7(1) Stations and one that applies to other Section 7(3) Stations. *Creation of a Low Power Radio Service*, 27 FCC Rcd at 3327.

¹⁹ *Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order), 27 FCC Rcd at 15434.

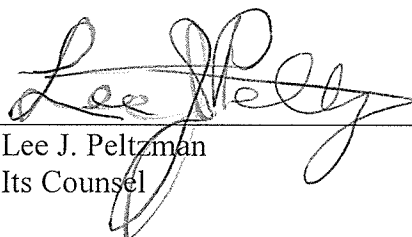
LPFM stations must receive the same treatment when it comes to enforcement of the FCC interference policies, Radio One fails to understand that, even as to LPFM stations, “Congress intended to create two different interference protection and remediation regimes” applicable to different types of LPFM stations.²⁰

III. CONCLUSION

In view of the above, the Radio One Application for Review should be dismissed, since it is procedurally defective. It is yet another example of Radio One’s efforts in fighting a guerilla war, attacking every effort by the Audio Division to hold a translator licensee responsible for the interference it has created. Any action short of directing ICRC to cease operation of the Translator immediately will continue to reward Radio One for its harassment and encourage other “broadcast outlaws” to violate the Commission’s translator interference rules and policies.

Respectfully submitted,

REISING RADIO PARTNERS, INC.

By: 

Lee J. Peltzman
Its Counsel

Shainis & Peltzman, Chartered
1850 M Street NW
Suite 240
Washington, DC 20036
202-293-0011

December 15, 2016

²⁰ *Id.*

CERTIFICATE OF SERVICE

I, Malinda Markland, certify that on this 15th day of December, 2016, I caused a copy of the foregoing MOTION TO DISMISS to be sent by first class United States main, postage prepaid, or by email to the following:

John F. Garziglia, Esq.
Womble, Carlyle, Sandridge & Rice, LLP
1200 19th Street, NW
Suite 500
Washington, D.C. 20036

James Bradshaw
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Robert Gates
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

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



Malinda Markland