



Federal Communications Commission
Washington, D.C. 20554

May 30, 2018

In Reply Refer to:
1800B3-HOD

Indiana Community Radio Corp.
PO Box 846
Greenfield, IN 46140

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In re: Indiana Community Radio Corp.
W275BD, Greenfield, Indiana
Facility ID No. 143744
File No. BLFT-20151120AGX

Dear Sirs:

We have before us 33 complaints that allege W275BD, Greenfield, Indiana (Translator), an FM translator licensed to Indiana Community Radio Corp. (ICRC), is interfering with listener reception of WXCH(FM), Columbus, Indiana, a full power FM station licensed to Reising Radio Partners, Inc. (Reising).¹ The Translator rebroadcasts the signal of WNOW-FM, Speedway, Indiana, a station licensed to Radio One of Indiana, LLC (Radio One). At ICRC's request, Radio One and its counsel have responded to the complaints and represented ICRC before the Commission in this matter.² In addition to the complaints, before us are (1) a Request for Dismissal of Interference Complaints (January Dismissal Request) and a Request for Dismissal of Complaints (February Dismissal Request) filed by Radio One,

¹ All but one of these complaints are the subject of interference remediation letters sent by Media Bureau (Bureau) staff on December 15, 2015, October 18, 2016, and December 5, 2016. Letter from James D. Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau, to Indiana Community Radio Corp. (Dec. 15, 2015) (First FCC Letter); Letter from James D. Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau, to Indiana Community Radio Corp. (Oct. 18, 2016) (Second FCC Letter); Letter from James D. Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau, to Indiana Community Radio Corp. (Dec. 5, 2016) (Third FCC Letter). Reising Radio Partners, Inc. (Reising) submitted one additional listener complaint on January 25, 2017, which is the second complaint from that listener and also is pending. The listener's first complaint was included in the Second FCC Letter. While a total of 43 complaints were filed, Bureau staff informed the parties that ten complaints had been resolved. E-mail from Robert Gates, Electronics Engineer, Audio Division, FCC Media Bureau, to John Garziglia, Counsel, Radio One of Indiana, LLC (Oct. 14, 2016 11:16 AM EDT) (October Email). Although we do not require further action on these ten complaints in light of the staff's email, to the extent that the email permits Radio One's disregard of complaints simply for failure to respond to a questionnaire sent by Radio One on ICRC's behalf, we disavow that rationale for the reasons set forth below. *See infra* at 6-7 (explaining that failure to respond to the questionnaire does not amount to a failure to cooperate). In addition, we note that these ten listener complainants are not precluded from submitting new interference complaints. Indeed, five have done so and their complaints are addressed herein.

² Letter from John F. Garziglia, Counsel, Radio One of Indiana, LLC, to James D. Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau, at 1 and Attach. 1 (Jan. 14, 2016) (First Report).

on January 20, 2016, and February 11, 2016, respectively; (2) two reports regarding interference remediation efforts filed by Radio One on November 17, 2016, and January 4, 2017; (3) a letter from Reising dated December 20, 2016, which comments on the November 17, 2016, report; and (4) a Motion for W275BD to Suspend Operations (Motion) filed by Reising on December 1, 2017.³ For the reasons set forth below, we dismiss in part as moot and otherwise deny the January and February Dismissal Requests and dismiss one interference complaint. We also grant in part the Motion, and direct ICRC to, within 30 days of release of this letter, both resolve the remaining interference complaints and report to the Media Bureau (Bureau) on its efforts.

Background. WXCH(FM) operates on the same channel as the Translator. Reising first submitted listener interference complaints to the Commission via emails in December 2015.⁴ In response to these complaints, Bureau staff sent an interference remediation letter (First FCC Letter) to ICRC.⁵ The letter required ICRC to eliminate any actual interference caused by the Translator, resolve all complaints, and submit a detailed report regarding its resolution of the complaints.

Radio One sent a letter containing a lengthy questionnaire (Radio One Questionnaire) to each of the complainants by mail.⁶ On January 4, 2016, Reising complained via email to Bureau staff about the Radio One Questionnaire.⁷ The next day, Bureau staff sent an email response, clarifying that (1) listeners had no obligation to respond to the Radio One Questionnaire, (2) if listeners are interested in remediation of interference, they “MUST express to ICRC their continuing desire to listen to WXCH, as well as the location(s) where they listen, when they listen, and the radio equipment that they have been using to listen,” (3) listeners must also “be willing to provide the translator station, or its designee, an opportunity to install filters, replace any equipment or provide other remedial measures to eliminate the problem,” (4) listeners may provide the needed information “in letter or email form,” and (5) while the FCC expects listeners to be honest, listeners need not sign their submissions under penalty of perjury.⁸

Radio One filed a report (First Report) on its efforts on January 14, 2016. Therein, Radio One argued that none of the listeners were entitled to interference remediation because they (1) were not disinterested, (2) failed to respond to the Radio One Questionnaire, or (3) did not desire remediation.⁹

Six days later, Radio One filed the January Dismissal Request, which seeks dismissal of the complaints addressed in the First FCC Letter and the First Report and other subsequently filed

³ Radio One opposed the Motion and Reising replied. Opposition to Motion for W275BD to Suspend Operations (rec. Jan. 10, 2018) (Opposition); Reply to Opposition to Motion for W275BD to Suspend Operations (rec. Jan. 23, 2018).

⁴ E-mail from Keith Reising, President and CEO, Reising Radio Partners, Inc., to Robert Gates, Electronics Engineer, Audio Division, FCC Media Bureau (Dec. 4, 2015 14:30 EST); E-mail from Keith Reising, President and CEO, Reising Radio Partners, Inc., to Robert Gates, Electronics Engineer, Audio Division, FCC Media Bureau (Dec. 11, 2015 11:33 EST).

⁵ Letter from James D. Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau, to Indiana Community Radio Corp. (Dec. 15, 2015).

⁶ See, e.g., First Report at Attach. 3.

⁷ E-mail from Keith Reising, President and CEO, Reising Radio Partners, Inc., to Robert Gates, Electronics Engineer, Audio Division, FCC Media Bureau (Jan. 4, 2016 17:37 EST).

⁸ E-mail from James Bradshaw, Deputy Chief, Engineering, Audio Division, FCC Media Bureau, to Keith Reising, President and CEO, Reising Radio Partners, Inc. (Jan. 5, 2016 11:39 EST) (emphasis in original) (January 5th Email).

⁹ First Report at 3-7.

complaints.¹⁰ Radio One argues that dismissal is appropriate because complaints of interference outside of WXCH(FM)'s protected contour were not cognizable under Section 74.1203(a)(3).¹¹ It also argues that dismissal of "complaints arising outside of the protected signal of an existing radio station makes public interest sense."¹² The next day, Bureau staff emailed the parties expressing disagreement with Radio One's interpretation of Section 74.1203(a)(3).¹³ Bureau staff stated: "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 the listeners."¹⁴

A few weeks later, Radio One filed the February Dismissal Request, which seeks dismissal of the complaints covered by the First FCC Letter and discussed in the First Report. In support of this request, Radio One cites its findings, set forth in the First Report, that interference remediation is not required for any of the complaints attached to the First FCC Letter because each complainant either is not disinterested, has not responded to the letter Radio One sent, or does not desire remediation.¹⁵ Radio One notes that Reising has not refuted any of these findings.¹⁶ Radio One also restates—and expands upon—its argument that no remediation is required because all of the complaints allege interference at locations outside WXCH(FM)'s protected contour.¹⁷ Radio One argues for the first time that the Local Community Radio Act of 2010 (LCRA) modified Section 74.1203(a)(3) such that the co-channel interference at issue here need not be remediated.¹⁸

In an October 14, 2016, email (October Email), Bureau staff indicated there was "only one unresolved complaint" left among those covered by the First FCC Letter and the First Report. With respect to that complaint, Bureau staff rejected Radio One's assertion that the complainant was not a disinterested party because she was Facebook friends with WXCH(FM)'s General Manager and one of its on-air hosts. Bureau staff required follow up with the listener and immediate resolution of her complaint. In an October 17, 2016, email, Reising disputed the determinations made in the Bureau's October Email to deem all but one complaint resolved, referring to Bureau staff's guidance that listeners have no obligation to respond to the Radio One Questionnaire.¹⁹ That same day, Bureau staff responded by email, indicating that the Radio One Questionnaire was overbroad but that, "if complainants have chosen to

¹⁰ Letter from John F. Garziglia, Counsel, Radio One of Indiana, LLC, to James D. Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau, at 1, 3 (Jan. 20, 2016) (noting the filing of additional complaints and requesting that "all" of Reising's complaints "be promptly dismissed").

¹¹ *Id.* at 2.

¹² *Id.*

¹³ E-mail from James Bradshaw, Deputy Chief, Engineering, Audio Division, FCC Media Bureau, to John F. Garziglia, Counsel, Radio One of Indiana, LLC, et al (Jan. 21, 2016 12:41 EST) (January 21st Email).

¹⁴ *Id.*

¹⁵ Request for Dismissal of Complaints at 2-3, 15 (Feb. 11, 2016).

¹⁶ *Id.* at 5, 15.

¹⁷ *Id.* at 5-15, 15-16. Acknowledging the January 21st Email, Radio One stated: "If this January 21, 2016 email message from Mr. Bradshaw is a decision document regarding the [January Dismissal Request], then this 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 is not a decision document, then this Request for Dismissal formally puts this issue before the Media Bureau." *Id.* at 6.

¹⁸ *Id.* at 13-15.

¹⁹ Email from Keith Reising, President and CEO, Reising Radio Partners, Inc., to Robert Gates, Electronics Engineer, Audio Division, FCC Media Bureau (Oct. 17, 2016 3:28 PM EST).

provide no response at all to the station, such complaints are considered resolved.”²⁰ Bureau staff noted that Reising could dispute any claims made by Radio One that it believed were untrue and recommended that Reising submit something on the record explaining why the complaints at issue should be considered. Rather than submit something on the record, Reising sent Bureau staff an email.²¹ The email asserts that the complaints “should be considered because of the inappropriate way the complaints were approached with the questionnaire designed specifically to get no response.” The email also disputes Radio One’s claim that it resolved the interference experienced by one of the complainants.

Throughout this time, Reising continued to submit listener complaints via email.²² On October 18, 2016, Bureau staff sent a second interference remediation letter (Second FCC Letter) to ICRC regarding these complaints.²³ Like the First FCC Letter, this letter instructed ICRC to eliminate any actual interference caused by the Translator, to resolve all complaints, and to submit a detailed report regarding its resolution of the complaints. Radio One sent the Radio One Questionnaire to the complainants identified in the Second FCC Letter.²⁴

On November 17, 2016, Radio One submitted a report on its second round of interference remediation efforts (Second Report). The Second Report claims that interference remediation is not required for many of the complaints covered by the Second FCC Letter because the complainants either are not disinterested, did not respond to the Radio One Questionnaire, or did not desire remediation.²⁵ Radio One indicated that its efforts with respect to the remaining complainants were ongoing.²⁶ Reising disputes the Second Report, arguing Radio One could not rely on a complainant’s failure to respond to the Radio One Questionnaire or a complainant’s failure to explicitly request remediation.²⁷ Reising also disputes Radio One’s account of its engineers’ interactions with various complainants and its allegations regarding various complainants.

²⁰ E-mail from James Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau, to Keith Reising, President and CEO, Reising Radio Partners, Inc. (Oct. 17, 2016 3:55 PM EDT).

²¹ Email from Keith Reising, President and CEO, Reising Radio Partners, Inc., to James Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau (Oct. 18, 2016 11:07 AM EST).

²² E-mail from Keith Reising, President and CEO, Reising Radio Partners, Inc., to Robert Gates, Electronics Engineer, Audio Division, FCC Media Bureau (Jan. 5, 2016 17:40 EST); E-mail from Mike King, General Manager, WXCH(FM), to Robert Gates, Electronics Engineer, Audio Division, FCC Media Bureau (Jan. 19, 2016 8:27 EST); E-mail from Mike King, General Manager, WXCH(FM), to Robert Gates, Electronics Engineer, Audio Division, FCC Media Bureau, and James Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau (Jan. 22, 2016 11:46 EST); E-mail from Mike King, General Manager, WXCH(FM), to Robert Gates, Electronics Engineer, Audio Division, FCC Media Bureau (Jan. 26, 2016 14:14 EST); E-mail from Mike King, General Manager, WXCH(FM), to Robert Gates, Electronics Engineer, Audio Division, FCC Media Bureau (Feb. 1, 2016 11:00 EST); E-mail from Mike King, General Manager, WXCH(FM), to James Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau, et al (Oct. 18, 2016 11:46 EDT).

²³ See Second FCC Letter.

²⁴ Letter from John F. Garziglia, Counsel, Radio One of Indiana, LLC, to James D. Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau, at 4-5 and Attach. 1 (Nov. 17, 2016) (Second Report).

²⁵ *Id.* at 5-17.

²⁶ *Id.* at 6, 10-11.

²⁷ Letter from Keith Reising, President and CEO, Reising Radio Partners, Inc., to Marlene H. Dortch, Secretary, FCC (Dec. 20, 2016).

Reising submitted additional listener complaints via email.²⁸ On December 5, 2016, Bureau staff sent a third interference remediation letter (Third FCC Letter) to ICRC regarding these complaints.²⁹ Like its predecessors, the Third FCC Letter required ICRC to eliminate any actual interference caused by the Translator, to resolve all complaints, and to submit a detailed report regarding its resolution of the complaints. Radio One sent the Radio One Questionnaire to the complainants identified in the Third FCC Letter.³⁰

On January 4, 2017, Radio One filed a report on its third round of interference remediation efforts (Third Report). The Third Report argues that no remediation is required for any of the complainants covered by the Third FCC Letter because the complaints either are not disinterested, failed to respond to the Radio One Questionnaire, or experienced interference outside of WXCH(FM)'s protected contour.³¹ Subsequently, on January 25, 2017, Reising submitted another complaint.³²

Reising recently filed the Motion, which urges the Commission to order ICRC “to immediately suspend operations” or, in the alternative “issue a letter immediately giving ICRC ... 30 days to resolve the interference complaints attached to this proceeding.”³³ In support of the Motion, Reising argues that ICRC has “failed to resolve listener complaints,” “intentionally misled WXCH listeners that their interference complaints were non-cognizable,” and “ignored specific instructions from Commission staff to resolve just these types of interference complaints.”³⁴

Discussion. Procedural Issues. With regard to Radio One’s allegation that Reising violated the Commission’s *ex parte* rules because it did not serve the interference complaints covered by the First FCC Letter on ICRC when it submitted them to the Commission,³⁵ Radio One does not cite to and we are unaware of any authoritative Commission guidance on this issue. We find that the interference complaints are best treated as informal requests for Commission action submitted pursuant to Section 1.41 of the Rules.³⁶ Not only were they not filed under the procedures the Commission has established for informal complaints,³⁷ but, more importantly, they seek “affirmative relief.” Under Section 1.1201(d)(1) of the Rules,³⁸ Reising and each complainant became parties for *ex parte* purposes when the complaints were filed with the Commission. We acknowledge, though, that it could be reasonably argued that Reising and

²⁸ E-mail from Mike King, General Manager, WXCH(FM), to Robert Gates, Electronics Engineer, Audio Division, FCC Media Bureau, et al (Nov. 4, 2016 13:22 EDT); E-mail from Mike King, General Manager, WXCH(FM), to James Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau, et al (Nov. 17, 2016 13:18 EST); E-mail from Mike King, General Manager, WXCH(FM), to James Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau and Robert Gates, Electronics Engineer, Audio Division, FCC Media Bureau (Dec. 5, 2016 13:07 EST).

²⁹ See Third FCC Letter.

³⁰ Letter from John F. Garziglia, Counsel, Radio One of Indiana, LLC, to James D. Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau, at 4-5 and Attach. 3 (Jan. 4, 2017) (Third Report).

³¹ *Id.* at 5-8.

³² E-mail from Keith Reising, President and CEO, Reising Radio Partners, Inc, to Robert Gates, Electronics Engineer, Audio Division, FCC Media Bureau (Jan. 25, 2017 13:01 EST).

³³ Motion at 1.

³⁴ *Id.* at 1, 4, 8-11, Exhs. 5, 7.

³⁵ February Dismissal Request at n. 2.

³⁶ 47 CFR § 1.41.

³⁷ See Filing an Informal Complaint, <https://www.fcc.gov/consumers/guides/filing-informal-complaint> (last visited April 4, 2018).

³⁸ See 47 CFR § 1.1202(d)(1) (defining as a “party” any person submitting a “filing seeking affirmative relief”).

the complainants did not become parties until the complaints were served on ICRC.³⁹ Given the lack of clear Commission guidance on this matter we conclude that no admonishment is warranted for these *ex parte* violations.

We also reject Radio One's argument that the Motion is procedurally defective because it was not timely filed.⁴⁰ The Motion is an informal request for Commission action.⁴¹ Such requests may be filed at any time.⁴²

Substantive Issues. FM translator stations operate strictly on a secondary basis. As a result, the Commission's rules specify that an FM translator station may not continue to operate if it causes any actual interference to "[t]he direct reception by the public of the off-the-air signals of any authorized broadcast station."⁴³ Specifically, if an FM translator cannot remediate the interference it is causing, it must suspend operations and may not resume them "until the interference has been eliminated."⁴⁴ We base our findings that actual interference is occurring on complaints from *bona fide* listeners. Below we address a number of arguments that Radio One makes regarding the interference complaint process. Then, in the Appendix to this Letter, we make specific determinations regarding each complaint and the remediation efforts related to it.

Information Requirements. In this case, Bureau staff forwarded listener complaints to ICRC with enough information to allow ICRC to contact the complainant to obtain additional necessary information: specifically, the identity of the affected station, the location(s) at which interference was alleged to occur, the receiver being used, and an affirmation that the complainant is a regular listener. In this circumstance, we permit ICRC to contact listeners to obtain this specific information. We do not permit, under the Rules or existing precedent, ICRC to require complainants to sign or otherwise verify their statements. Further, we decline to require complainants to explicitly state that they have "a continuing desire to listen" to the affected station, and disavow any Bureau staff guidance to this effect. If complainants are motivated enough to submit an interference complaint, we believe it is appropriate to attribute such a desire to them.⁴⁵

We reject as overbroad and overly burdensome the Radio One Questionnaire, which sought information beyond that required to resolve interference complaints under Section 74.1203(a)(3) of the Rules. ICRC may use a questionnaire to obtain the limited information set forth in the preceding paragraph. However, the Radio One Questionnaire is antithetical to the cooperative conduct that we

³⁹ See 47 CFR § 1.1202(d)(2) (defining as a "party," any person "who files a complaint ... which shows that the complainant has served it on the subject of the complaint").

⁴⁰ Opposition at 2.

⁴¹ See 47 CFR § 1.41.

⁴² *Pacific Gas and Electric Co.*, Memorandum Opinion and Order, 18 FCC Rcd 22761, 22765 paras. 9, 12 (2003) ("there is no time limit for requesting informal action").

⁴³ 47 CFR § 74.1203(a)(3).

⁴⁴ 47 CFR § 74.1203(b).

⁴⁵ We note that the complaints at issue here were submitted to WXCH(FM) via an online form that complainants found on the WXCH(FM) website. This in no way affects their validity.

require and expect of licensees. We find that the length⁴⁶ and content⁴⁷ of the Radio One Questionnaire was reasonably likely to deter complainants from pursuing their interference complaints.⁴⁸

We find that use of the Radio One Questionnaire, a document of unprecedented breadth and burdensomeness, resulted in a fundamentally flawed remediation procedure. Accordingly, we conclude that a failure to respond to the Radio One Questionnaire does not amount to a failure to cooperate and therefore that ICRC is required to engage in further remediation efforts with those complainants who did not respond to the Radio One Questionnaire. Accordingly, as noted in the Appendix, ICRC must contact each complainant that failed to respond to the Radio One Questionnaire to determine if that complainant still desires interference remediation. If so, ICRC may request that the complainant provide any information specified above that has not been provided to date. If the complainant provides the missing information, ICRC must eliminate the interference experienced by the complainant and submit a report on its efforts to the Bureau. We caution ICRC that, in communicating with a complainant, it may seek to obtain only the information discussed above. ICRC shall have 30 days from the release of this letter to fully resolve and satisfactorily document its resolution of the interference experienced by these complainants. In the event that ICRC fails to do so, we will take whatever actions are necessary to eliminate the interference.

In order to make this process as convenient as possible for complainants, we direct ICRC to honor each complainant's expressed preference to be contacted by U.S. mail, email, or telephone. It did not do so during its prior remediation efforts.⁴⁹ We expect any further contact with the complainants to be via the method of communication specified by them. ICRC may, however, supplement its outreach efforts by using U.S. mail to confirm a telephone contact, memorialize a telephonic information request, share written information with a complainant, etc. Further, ICRC may use letters sent via U.S. mail, return receipt requested, to help establish lack of complainant cooperation.⁵⁰

Bona Fide Listeners. Under Section 74.1203(a) a translator station may not continue to operate if it causes "any" actual and unresolved interference. Given this stringent "no interference" requirement, the Commission has limited the interference complaint process to *bona fide* listeners who are

⁴⁶ The Radio One Questionnaire contained pages of requests for information unrelated to the interference at issue. See, e.g., Second Report, Attach. 1; Third Report, Attach. 3.

⁴⁷ For instance, the Radio One Questionnaire states that complainants must "answer all of the questions below for us to evaluate and request a fix of any problems, if required" and says that, if Radio One did not receive a response on or before a particular date, it would assume the complainant was no longer experiencing a problem and notify the Commission of that fact. Second Report, Attach. 1 at 8, 16, 19, 27, 30, 38 (emphasis in original); Third Report, Attach. 3 at 2, 10, 12, 20 (emphasis in original). It also states "the maximum distance that the Federal Communications Commission expects that WXCH listeners will be able to receive satisfactory reception is approximately 17½ miles from the WXCH transmitter site." Second Report, Attach. 1 at 8, 19, 30; Third Report, Attach. 3 at 2, 12. As discussed, *infra*, there is no indication, express or implied, in the order adopting Section 74.1203(a)(3) that the interference protection provided therein is limited to the affected station's protected contour, and no such limitation has ever been applied. The Radio One Questionnaire also requests that complainants "certify as to the complete truthfulness and accuracy of the above responses under penalty of perjury." Second Report, Attach. 1 at 16, 27, 38; Third Report, Attach. 3 at 10, 20. Radio One continued to send out letters requesting such certifications even after receiving Bureau staff guidance that no such certifications are required of complainants. Second Report, Attach. 1 at 16, 27, 38; Third Report, Attach. 3 at 10, 20.

⁴⁸ In fact, nearly half of the complainants did not respond to the letter.

⁴⁹ All but one of the complainants requested to be contacted by email or telephone but Radio One contacted them by U.S. mail, return receipt requested. Second Report at 4 and Attach. 2; Third Report at 4 and Attach. 2.

⁵⁰ 47 CFR § 74.1203(b). As noted, in communicating with these complainants, ICRC may seek to obtain only the information discussed herein.

“disinterested,” *i.e.*, persons or entities who do not have a legal, economic, or familial stake in the outcome of the proceeding.⁵¹

Applying this standard here, we find no merit to Radio One’s arguments seeking to disqualify complainants as not disinterested. In particular, we reject the attempt to do so based on friendships and other social connections between complainants (or their relatives) and WXCH(FM)’s employees and owners.⁵² We likewise reject Radio One’s assertion that Facebook friendships and other social media connections between a complainant and an affected station’s employee or owner render the complainant not disinterested. We also reject Radio One’s argument that past employment at the affected station or past employment with the affected station’s licensee renders a complainant not disinterested. Unlike current employment at a station or with a station’s licensee, past employment, by itself, does not convey a financial interest in the outcome of a complaint proceeding involving that station. In addition, contact between an affected station and a complainant regarding the status of a complaint and/or how to obtain interference remediation does not render a complainant not disinterested, in and of itself.⁵³ Finally, we find that other factors presented in the complaints at issue do not render the subject complainants not disinterested.⁵⁴

For the reasons set forth herein and in the Appendix, we reject ICRC’s arguments that various complainants are not disinterested. Accordingly, as discussed above, ICRC must contact each complainant that it argued was not disinterested to determine if that complainant still desires interference remediation. If the complainant still does, ICRC may request that the complainant provide any information discussed above that has not been provided to date. If the complainant provides the missing information, ICRC must eliminate the interference experienced by the complainant and submit a report on its efforts to the Bureau. ICRC shall have 30 days from the release of this letter to fully resolve and satisfactorily document its resolution of the interference experienced by these complainants. In the event that ICRC fails to do so, we will take whatever actions are necessary to eliminate the interference.

Location of Interference. Radio One argues that a complaint is ineligible for interference remediation if it relates to interference at a location outside WXCH(FM)’s 60 dBμ protected contour.⁵⁵ Radio One lays out three different legal theories in support of this assertion, further discussed below. The first focuses on the “protected” language in Section 74.1203(a)(3) of the Rules. The second relies on Section 5(2) of the Local Community Radio Act of 2010 (LCRA), which requires the Commission to base its licensing decisions “on the needs of the local community.”⁵⁶ The third is grounded in the “equal in status” language set forth in Section 5(3) of the LCRA and either Section 73.809 of the Rules or Section 7(6) of the LCRA.⁵⁷ We consider and reject each of these theories below and affirm the Commission’s previous determination that there are no geographic limits on interference complaints filed under Section 74.1203(a)(3) of the Rules.

At the outset, we reject Radio One’s argument that the “protected” language in Section 74.1203(a)(3) restricts cognizable interference complaints to those within the 60 dBμ contour of

⁵¹ *Association for Community Education, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12688 para. 16 and n. 37 (2004). *See also Creation of a Low Power Radio Service*, Fifth Report and Order, 27 FCC Rcd 15402, 15441, para. 109. (2012).

⁵² Second Report at 6, 8, 13, 15-16 and Attach. 1; Third Report at 5.

⁵³ Second Report at 11-12, 16-17 and Attach 1.

⁵⁴ Thus, a complainant’s request to meet with a translator licensee at the same location as another complainant does not mean these complainants are disinterested. Second Report at 7 and Attach. 1; Third Report at 7, 8, and Attach. 1. Likewise, the fact that a complainant asked a technical question does not indicate, without more, that the complainant is not disinterested. Second Report at 8, 16-17, and Attach. 1; Third Report at 7, 8, and Attach. 1.

⁵⁵ February Dismissal Request at 15.

⁵⁶ Pub. L. No. 111-371, 124 Stat. 4072 (2011).

⁵⁷ LCRA §§ 5(3), 7(6); 47 CFR § 73.809.

WXCH(FM).⁵⁸ In support of its claim, Radio One contends that the Commission and the Bureau have not specifically discussed the meaning of the term “protected” as it is used in Section 74.1203(a)(3) and asserts that it should be given the same meaning as it is given in Section 74.1204 of the Rules.⁵⁹ We reject Radio One’s argument for two reasons. First, there is no indication, express or implied, in the order adopting Section 74.1203(a)(3) that the interference protection provided therein is limited to the affected station’s protected contour, and no such limitation has ever been applied.⁶⁰ Second, while both Section 74.1203(a)(3) and Section 74.1204 do include the word “protected,” it does not follow that we must give “protected” the same meaning in both of these contexts. Indeed, that would not make sense here where Section 74.1203(a)(3) uses “protected” as part of the phrase “protected signal” and Section 74.1204 uses it as part of the phrase “protected contour.”⁶¹ It is the phrases “protected signal” and “protected contour” that have different meanings.⁶² The Commission has not—as Radio One asserts—used the terms “protected signal” and “protected contour” interchangeably.⁶³ In Section 74.1203(a), the Commission uses the phrase “protected signal” to refer to the signal that is legally protected from interference by operation of the rule. The qualifier “protected” is necessary to clarify the applicability of the phrase “regardless of the quality of such reception, the strength of the signal so used, or the channel on which the protected signal is transmitted.” The word “protected” clarifies that this phrase applies to the full power FM station, not the translator station. In Section 74.1204, on the other hand, the phrase “protected contour” has a well-established meaning in the allocations context that refers to a specific contour within which a signal is protected from interference.

⁵⁸ February Dismissal Request at 5-13. *See also* Third Report at 3; Second Report at 3; January Dismissal Request at 2. Section 74.1203(a)(3) provides that an FM translator “will not be permitted to continue to operate if it causes any actual interference to ... [t]he direct reception by the public of the off-the-air signals of any authorized broadcast station.” Interference occurs for purposes of this provision “whenever reception of a regularly used signal is impaired by the signals radiated by the FM translator ..., regardless of the quality of such reception, the strength of the signal so used, or the channel on which the protected signal is transmitted.” 47 CFR § 74.1203(a)(3).

⁵⁹ February Dismissal Request at 5-6, 7. *See also* Third Report at 3; Second Report at 3; January Dismissal Request at 2.

⁶⁰ *See FM Translator and Booster Stations*, Report and Order, 20 RR 2d 1538 (1970); *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212 (1990).

⁶¹ We find Radio One’s citation of *Transactive Corp. v. U.S.*, 91 F.3d 232, 238 (D.C. Cir. 1996), inapposite. February Dismissal Request at 7. In that case, the court rejected an argument that an agency’s definition of a term—“disburse”—in its regulations implementing a statute was unrelated to the meaning of that same term as used in the regulation’s authorization statute. Here, we are determining whether the meaning of one phrase—“protected contour”—should define the meaning of a second phrase—“protected signal.”

⁶² This logic applies equally to Section 74.1204, Section 336(f)(1)(E) and (f)(7)(B) of the Act, Section 7(6) of the LCRA, and the other rule sections cited by Radio One, all of which use the term “protected” to modify the term “contour.” February Dismissal Request at 9-11. Indeed, Radio One’s citations to various other provisions of the law and the Commission’s rules—all of which contain the phrase “protected contour”—only serves to emphasize that, had the Commission intended to limit actionable complaints to those regarding interference within a station’s protected contour, it would have used the phrase “protected contour” not the phrase “protected signal.”

⁶³ The decision that Radio One cites to and quotes from to support this statement does use the phrases “desired signal” and “protected signal” in discussing use of the undesired-to-desired signal strength ratio interference prediction methodology. *See* February Dismissal Request at 7 n. 4, *citing* Neal A. Jackson, Letter Order, 25 FCC Rcd 7123, n.3 (MB 2010) (“Under the U/D signal strength ratio methodology . . . , 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).”). However, the Bureau used this terminology to distinguish between the two signals at issue: the “undesired” or “interfering” translator’s signal and the “desired” or “protected” station’s signal. The term “protected signal” is used in a similar manner in Section 74.1203(a)(3) (*i.e.*, to distinguish between the signal of the FM translator subject to interference remediation obligations and the signal of the station entitled to protection from interference).

We further reject Radio One's argument that, if Section 74.1203(a)(3) did not limit cognizable interference complaints to those locations within a station's protected contour, there would be no need for Section 7(6) of the LCRA to specify that the Commission must apply the interference remediation requirements and procedures set forth in Section 74.1203 "without regard to whether such complaints of interference occur within or outside of the protected contour of such stations."⁶⁴ Radio One ignores the last sentence of Section 7(6), which contains language recognizing that Section 74.1203 imposes no geographic limits on interference complaints.

Finally, we reject Radio One's argument that Section 5 of the Local Community Radio Act of 2010 "may very well have overridden the parts of Section 74.1203" relied upon by the Bureau in the Second FCC Letter.⁶⁵ That section states:

The Federal Communications Commission, when licensing new FM translator stations, FM booster stations, and low-power FM stations, shall ensure that—(1) licenses are available to FM translator stations, FM booster stations, and low-power FM stations; (2) such decisions are made based on the needs of the local community; and (3) FM translator stations, FM booster stations, and low power FM stations remain equal in status and secondary to existing and modified full-service FM stations.

The Commission has explained previously that the "Section 5 mandates apply 'when licensing new FM translator stations, FM booster stations and low-power FM stations.' That is, Section 5 as a whole concerns the processing of applications."⁶⁶ This case involves the resolution of complaints alleging actual interference caused by a licensed translator station, not the processing of an application. Therefore, Section 5 of the LCRA does not apply.

Regularly Used Signal. We reject Radio One's argument that, outside of an affected station's protected contour, an affected station's signal is too weak to be "regularly used" under Section 74.1203(a)(3).⁶⁷ The typical 60 dBμ protected contour standard is by no means an outer limit of listenability.⁶⁸ Rather, it has been principally used as an allocations tool, which "reflects a balance between providing adequate service areas and permitting a sufficient number of FM assignments."⁶⁹ Further, Section 74.1203(a)(3) specifically states that signal strength is not a relevant factor.⁷⁰

⁶⁴ LCRA § 7(6); February Dismissal Request at 11-12.

⁶⁵ February Dismissal Request at 13.

⁶⁶ *Creation of a Low Power FM Radio Service*, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364, 3375-76, para. 25 (2012) (emphasis in original; quoting Section 5).

⁶⁷ Second Report at 17-18 (asserting that the complaints seek "to protect some concept of the diminishing WXCH signal as it gets closer to Indianapolis, more than twice the distance it is expected to be received as a regularly used signal"); Third Report at 8 (same). *See also* Second Report, Attach. 1 at 8, 19, 30; Third Report, Attach. 3 at 2, 12.

⁶⁸ *1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, Second Report and Order, 15 FCC Rcd 21649, 21658, para. 19 (2000) ("We recognize that all stations, including Class C stations, may provide useful service beyond their individual protected contours in the absence of interference").

⁶⁹ *Id.*

⁷⁰ 47 CFR § 74.1203(a)(3) (specifying that interference occurs "whenever reception of a regularly used signal is impaired ... regardless of the ... the strength of the signal so used"). We note that Bureau staff has considered an affected station's signal strength but only to predict whether an FM translator will cause interference to the affected station for purposes of Section 74.1204(f). 47 CFR § 74.1204(f) (providing that an application for an FM translator station will not be accepted for filing "if the predicted 1 mV/m field strength contour of the FM translator station will overlap a populated area already receiving a regularly, used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station ... and grant of the authorization will result in interference to

Section 307(b) of the Communications Act. We find no merit to Radio One's argument that Section 307(b) of the Act requires us to allow the Translator to continue to operate even if it is causing interference to WXCH(FM)'s signal.⁷¹ Radio One would have us compare the needs of Greenfield, Indiana—the Translator's community of license—against the needs of Columbus, Indiana—WXCH(FM)'s community of license. It contends that cognizance of "distant complaints of reception difficulties well outside the protected contour of a subject station" goes against the "fair, efficient, and equitable distribution" provision of Section 307(b) of the Act.⁷² According to Radio One, "[r]emoving in-contour FM translator service due to purported interference to a distant FM station unfairly, inefficiently and inequitably favors the extension of the weak signal of the distant station to vast areas, to the disfavor of thousands, or tens of thousands of listeners, to the in-contour FM translator."⁷³ Radio One ignores the fact that "the Commission has historically accorded no weight to translators in assessing the comparative needs of a community for radio service under its Section 307(b) licensing policies."⁷⁴ It has done so because FM translators—even those rebroadcasting AM station signals—are secondary stations and can be forced off the air by full service FM stations at any time. Accordingly, we reject Radio One's argument that Section 307(b) requires us to allow the Translator to continue to operate even if it is causing interference to WXCH(FM)'s signal.

Remediation Efforts. To the extent that ICRC offered satellite radio and Internet radio as technological solutions to the interference experienced by a listener,⁷⁵ we note that "providing a non-broadcast subscription service ... does not constitute a basis for curing a Section 74.1203(a)(3) violation."⁷⁶ As we have previously noted, "a listener may reasonably reject a non-broadcast technology delivered on a subscription basis to offset interference to a signal which the listener desires to receive off-the-air in an unimpeded manner."⁷⁷

Conclusion/Actions. Accordingly, IT IS ORDERED that the Request for Dismissal of Interference Complaints and Request for Dismissal of Complaints filed by Radio One of Indiana, LLC, on January 20 and February 11, 2016, respectively, ARE DISMISSED IN PART AS MOOT⁷⁸ AND OTHERWISE DENIED.

IT IS FURTHER ORDERED that the Motion for W275BD to Suspend Operations filed by Reising Radio Partners Inc. on December 1, 2017, IS GRANTED IN PART and IT IS ORDERED that Indiana Community Radio Corp. shall, within 30 days of release of this letter eliminate any interference caused by W275BD, Greenfield, IN, to reception of the signal of WXCH(FM), Columbus, Indiana, by the complainants specified in the Appendix to this letter.

the reception of such signal"). Neither the Bureau nor the Commission has ever considered the signal strength of an affected station in determining whether actual interference has occurred under Section 74.1203(a)(3).

⁷¹ Third Report at 9.

⁷² Third FCC Letter at 9.

⁷³ *Id.*

⁷⁴ *Creation of a Low Power Radio Service*, Third Further Notice of Proposed Rulemaking, 26 FCC Rcd 9986, 9993 para. 16 (2011). See also, *id.* at 9993 para. 17 ("The main rationales for the exclusion of translators from Section 307(b) assessments are their status as secondary stations and, as a related matter, their potential preemption by full-service stations.").

⁷⁵ See Appendix, Frank Murphy.

⁷⁶ *Radio Power, Inc.*, Letter Order, 26 FCC Rcd 14385, 14386 (MB 2011).

⁷⁷ *Id.*

⁷⁸ Both the January Dismissal Request and the February Dismissal Request seek dismissal of the complaints covered by the First FCC Letter. Because the October Email determined that ten of those complaints had been resolved, the portions of the dismissal request related to those complaints are moot.

IT IS FURTHER ORDERED that, within 30 days of the release of this letter, Indiana Community Radio Corp. shall submit a report to the Media Bureau indicating (1) the name of the complainant, (2) the location of the interference, (3) the specific devices receiving the interference, and (4) the means by which the interference was eliminated.

IT IS FURTHER ORDERED that, as discussed in the Appendix to this letter, the complaint filed by Kevin Marsh IS DISMISSED.

Sincerely,



Albert Shuldiner
Chief, Audio Division
Media Bureau

APPENDIX

With one exception, the Media Bureau (Bureau) previously reviewed the complaints at issue here, found they contained adequate information, forwarded them to ICRC, and directed ICRC to resolve them and report on its efforts. Radio One responded to the complaints and represented ICRC before the Commission in this matter. In this representative capacity, Radio One submitted reports dated January 14, 2016 (First Report), November 17, 2016 (Second Report), and January 4, 2017 (Third Report). We do not consider the First Report herein because Bureau staff already reviewed the First Report, indicated in an email to Radio One and Reising that ten of the eleven complaints covered in that report were resolved and, in that same email, rejected Radio One's argument that the remaining complainant was not disinterested and required remediation of the interference experienced by that complainant. Below, we consider the Second and Third Reports and address whether, as Radio One argues, ICRC is not obligated to remediate the interference experienced by the complainants discussed in these reports. We also determine whether various complaints have been resolved.

Vicki Adams, John Drew, LeighAnn Hayes, Jason Mann, Bill McKee, Rusty Richards, Sheri Sims, Rachel Taylor, Ronnie Warren. Radio One argues that ICRC need not remediate the interference experienced by these complainants because they did not respond to the Radio One Questionnaire. ICRC, however, cannot rely upon the complainants' failure to respond to that questionnaire. We direct ICRC to contact the complainants—via their preferred method of communication—to determine if they still desire interference remediation. If they do, ICRC may request additional information from the complainants to the extent that their complaints omitted any of the information discussed in this letter. Regardless of whether ICRC may or does request any additional information from the complainants, it must eliminate the interference experienced by them (or demonstrate that it is absolved from further responsibility for the complaints due to complainants' failure to provide such information) and submit a report on its efforts within 30 days of the release of this letter.

Mike Casse, Lyle Edwards, David Lancaster. Radio One states that it mailed the Radio One Questionnaire to these complainants but they were returned as undeliverable or unclaimed. Radio One argues that this absolves ICRC of any further responsibility for their complaints. We disagree. The complainants requested to be contacted by either email or telephone but Radio One made no attempt to contact complainants via these methods of communication. We direct ICRC to contact the complainants—via their preferred method of communication—to determine if they still desire interference remediation. If they do, ICRC may request additional information from the complainants to the extent that their complaints omitted any of the information discussed in this letter. Regardless of whether ICRC may or does request any additional information from the complainants, it must eliminate the interference experienced by them (or demonstrate that it is absolved from further responsibility for the complaints due to complainants' failure to provide such information) and submit a report on its efforts within 30 days of the release of this letter.

Ryan Cinninger. In the Second Report, Radio One indicated that it received Mr. Cinninger's response to the Radio One Questionnaire on November 15, 2016, which "did not leave an opportunity to contact Mr. Cinninger in time for this [Second Report]." Radio One did not offer any further information regarding Mr. Cinninger in the Third Report. Subsequent to the submission of that report, Mr. Cinninger lodged another interference complaint with Reising. Reising submitted the complaint to the Bureau on January 25, 2017. Given this second complaint and the absence of any evidence on the record demonstrating that Radio One communicated with Mr. Cinninger after he responded to the questionnaire, we order ICRC to contact him—via his preferred method of communication—to determine if he still desires interference remediation. If he does, ICRC may request additional information from him to the extent that his complaint omitted any of the information discussed in this letter. Regardless of whether ICRC may or does request any additional information from Mr. Cinninger, it must eliminate the interference experienced by him (or demonstrate that it is absolved from further responsibility for the complaint due to

complainant's failure to provide such information) and submit a report on its efforts to the Bureau within 30 days of the release of this letter.

Jeff Christian. Radio One indicates it met with Mr. Christian on November 14, 2016. According to Radio One, during a telephone conversation related to scheduling this meeting, Mr. Christian asked if ICRC had reduced the Translator's power and stated he was able to receive WXCH(FM)'s signal "farther than he normally could" that morning. Mr. Christian also indicated that he used to live next door to the engineer for WXCH(FM), had worked at another station licensed to Reising in 1993 and was friends with "all of the individual people at WXCH." Radio One argues that Mr. Christian is not disinterested and therefore not a *bona fide* listener entitled to interference remediation. We find no merit to this argument. Friendships with an affected station's staff do not render a complainant not disinterested. The same is true of past employment with the licensee of an affected station. In any event, Reising denies that Mr. Christian is "close friends" with WXCH(FM) staff and also denies that Mr. Christian is employed at another station licensed to Reising.⁷⁹ We direct ICRC to contact Mr. Christian—via his preferred method of communication—to determine if he still desires interference remediation. If he does, ICRC may request additional information from him to the extent that his complaint omitted any of the information discussed in this letter. Regardless of whether ICRC may or does request any additional information from Mr. Christian, it must eliminate the interference experienced by him (or demonstrate that it is absolved from further responsibility for the complaint due to complainant's failure to provide such information) and submit a report on its efforts to the Bureau within 30 days of the release of this letter.

Ken Curry. Radio One indicates that it met with Mr. Curry on December 13, 2016. According to Radio One, Mr. Curry requested to meet at the same location as another complainant. Based on this and Mr. Curry asking a technical question, Radio One concludes that Mr. Curry is not disinterested and therefore not a *bona fide* listener entitled to interference remediation. In the alternative, Radio One argues that ICRC need not remediate the interference that Mr. Curry is experiencing because the interference occurs at locations outside of WXCH(FM)'s protected contour. We reject both of Radio One's arguments. Neither the fact that two or more complainants are concerned about interference at the same location nor the fact that a complainant asked a technical question can render the complainant not disinterested. Further, there are no geographic limits on interference complaints filed pursuant to Section 74.1203(a)(3). We direct ICRC to contact Mr. Curry—via his preferred method of communication—to determine if he still desires interference remediation. If he does, ICRC may request additional information from him to the extent that his complaint omitted any of the information discussed in this letter. Regardless of whether ICRC may or does request any additional information from the Mr. Curry, it must eliminate the interference experienced by him (or demonstrate that it is absolved from further responsibility for the complaint due to complainant's failure to provide such information) and submit a report on its efforts to the Bureau within 30 days of the release of this letter.

Richard Haehl. Radio One argues that Mr. Haehl is not disinterested and therefore is not a *bona fide* listener entitled to interference remediation. Radio One contends that "the Haehl family knows the Reising Family who owns the station." It also notes that "Parker Haehl is friends with Chelsea Reising (family member of WXCH owner) and is a project manager at Richard Haehl's office." These connections between the Haehl family and the Reising family do not render Mr. Haehl not disinterested. Accordingly, we order ICRC to contact Mr. Haehl—via his preferred method of communication—to determine if he still desires interference remediation. If he does, ICRC may request additional information from him to the extent that his complaint omitted any of the information discussed in this letter. Regardless of whether ICRC may or does request any additional information from the Mr. Haehl, it must eliminate the interference experienced by him (or demonstrate that it is absolved from further

⁷⁹ Letter from Keith Reising, President and CEO, Reising Radio Partners, Inc., to Marlene H. Dortch, Secretary, FCC, at 7 (Dec. 20, 2016) (Reising Letter).

responsibility for the complaint due to complainant's failure to provide such information) and submit a report on its efforts to the Bureau within 30 days of the release of this letter.

Don Harding. In the Second Report, Radio One indicated that it had not yet received a return receipt for the letter it sent to Mr. Harding. Radio One did not offer any further information regarding Mr. Harding in the Third Report. Within 30 days of the release of this letter, ICRC must provide a further update to the Bureau regarding Mr. Harding and its efforts to eliminate the interference experienced by him.

Don Hart. In the Second Report, Radio One indicates it emailed Mr. Hart on November 8, 2016, but Mr. Hart had not responded to the email at the time Radio One filed the Second Report on November 17, 2016. Radio One did not offer any further information regarding Mr. Hart in its Third Report. Within 30 days of the release of this letter, ICRC must provide a further update to the Bureau regarding Mr. Hart and its efforts to eliminate the interference experienced by him.

Ted Hoffman. Radio One argues that Mr. Hoffman is not disinterested and therefore not a *bona fide* listener entitled to interference remediation. According to Radio One, Mr. Hoffman requested to meet at the same location as another complainant and cited the same reasons for choosing this location as another complainant. Based on this, Radio One asserts that Mr. Hoffman "is connected to WXCH in some way." The fact that two or more complainants are concerned about interference at the same location does not mean that they have a clear legal, financial, or familial stake in the complaint proceeding and thus fails to establish that they are not disinterested. Radio One also notes that Mr. Hoffman is Director of Operations at a funeral home and cemetery and that a family member of Keith Reising, President and CEO, Reising Radio Partners, Inc., the licensee of WXCH(FM), is buried at this cemetery. Based on this, Radio One concludes that Mr. Reising and Mr. Hoffman have a business relationship and contends that this renders Mr. Hoffman not disinterested. We reject this argument. Infrequent patronage of a complainant's business or place of employment by an affected station's employees or owners does not render the complainant not disinterested. In any event, Reising denies that any of Mr. Reising's relatives are buried at this particular cemetery.⁸⁰ We order ICRC to contact Mr. Hoffman—via his preferred method of communication—to determine if he still desires interference remediation. If he does, ICRC may request additional information from him to the extent that his complaint omitted any of the information discussed in this letter. Regardless of whether ICRC may or does request any additional information from the Mr. Hoffman, it must eliminate the interference experienced by him (or demonstrate that it is absolved from further responsibility for the complaint due to complainant's failure to provide such information) and submit a report on its efforts to the Bureau within 30 days of the release of this letter.

John Hubler. Radio One argues that Mr. Hubler is not disinterested and therefore is not a *bona fide* listener entitled to interference remediation. Radio One states that Mr. Hubler "apparently" owns a business that its engineer is "fairly certain either was or is now an advertiser on WXCH or affiliated stations." Radio One has not produced any evidence to support these claims with respect to Mr. Hubler. Accordingly, we reject his claim that Mr. Hubler is not disinterested. We order ICRC to contact him—via his preferred method of communication—to determine if he still desires interference remediation. If he does, ICRC may request additional information from him to the extent that his complaint omitted any of the information discussed in this letter. Regardless of whether ICRC may or does request any additional information from the Mr. Hubler, it must eliminate the interference experienced by him (or demonstrate that it is absolved from further responsibility for the complaint due to complainant's failure to provide such information) and submit a report on its efforts to the Bureau within 30 days of the release of this letter.

Kevin Marsh. Radio One indicates it emailed the Radio One Questionnaire to the email address Mr. Marsh included in his complaint but the email was returned as undeliverable. Because Mr. Marsh

⁸⁰ Reising Letter at 6.

provided no other contact information in his complaint, we find ICRC is absolved of further responsibility for his complaint.

Randal McDaniel. Radio One indicates that Mr. McDaniel responded to its letter on November 15, 2016, which “did not leave an opportunity to contact Mr. McDaniel in time for this [Second Report].” Radio One did not offer any further information regarding Mr. McDaniel in the Third Report. Within 30 days of the release of this order, ICRC must provide a further update to the Media Bureau regarding Mr. McDaniel and its efforts to eliminate the interference experienced by him.

Ron Mote. In the Second Report, Radio One indicated it would meet with Mr. Mote on November 18, 2016. Radio One did not offer any further information regarding Mr. Mote in its Third Report. Within 30 days of the release of this order, ICRC must provide a further update to the Media Bureau regarding Mr. Mote and its efforts to eliminate the interference experienced by him.

Frank Murphy. Radio One states that its engineers met with Mr. Murphy on November 10, 2016. Radio One reports that, at that time, the engineers and Mr. Murphy discussed reception of the WXCH(FM) signal in his home. According to Radio One, the engineers offered to install a directional antenna in Mr. Murphy’s attic. Mr. Murphy informed them that he was having a tower constructed for a television antenna and would prefer to mount the directional antenna on that tower. Radio One states that its engineers committed to get back in touch with Mr. Murphy regarding next steps. According to Radio One, while “Mr. Murphy mentioned WXCH reception in his cars being a problem,” its engineers “understood that being able to satisfactorily receive WXCH in his home and barn would be an acceptable remediation of Mr. Murphy’s WXCH reception issues.” Radio One states that, when one of its engineers later spoke to Mr. Murphy, Mr. Murphy informed them that he was concerned not with home reception but with vehicle reception. Radio One reports that Mr. Murphy told the engineer that he had spoken with the General Manager of WXCH(FM). Based on this, Radio One asserts that the General Manager “induced” Mr. Murphy to change his request and concludes that “this connivance” between the General Manager and Mr. Murphy demonstrates that Mr. Murphy is not disinterested and therefore not a *bona fide* listener entitled to interference remediation.

Reising disputes this account. Reising submits an email exchange from November 23, 2016, between WXCH(FM)’s General Manager and Mr. Murphy in which the General Manager asks Mr. Murphy to review Radio One’s summary of its engineers’ meeting with him and “let him know if it is completely accurate.”⁸¹ The General Manager does remind Mr. Murphy that his original complaint indicated he wanted to be able to listen to WXCH(FM) on his boom box, at his home, on his “Bose” and in his car. He also flags for Mr. Murphy that Radio One contends it was the General Manager who “introduced the idea of listening to MOJO in your car” but goes on to state “[i]f you disagree with me or them, it’s fine either way, again we are just trying to verify what happened at the meeting and the accuracy of the summary.”

Mr. Murphy disputes much of Radio One’s summary of his meeting with its engineers. He indicates that he received “what appeared to be a form letter” from WXCH(FM)’s General Manager on October 20, 2016. The letter informed Mr. Murphy that he “would be contacted by an investigator asking me information such as what type of audio equipment I used, what my listening habits were, address and phone number so that the investigators could contact me if necessary.” Mr. Murphy received the Radio One Questionnaire a week or two later. Then, on November 3, 2016, the General Manager called and asked Mr. Murphy if he had received the questionnaire, if he had filled out the questionnaire and if he had returned it. When Mr. Murphy said he had received the questionnaire and completed it but had not yet sent it back, the General Manager informed him that it needed to be returned by November 4, 2016. According to Mr. Murphy, the two made some small talk and he indicated he “wouldn’t have much to

⁸¹ Reising Letter at 5-6 and Attach. C.

show an investigator as we had found a way to compensate for most of the interference at home and they probably weren't going to drive to work and back with me." Mr. Murphy indicates that he had no contact with the General Manager until November 23, 2016, when the General Manager emailed him Radio One's summary of its engineers' meeting with him. He states that "[a]t no time did [the General Manager] coach me as to what to say, at no time did Mike 'induce' me to say that reception in my car was now my concern!!!"

Mr. Murphy also discusses his meeting with Radio One engineers on November 10, 2016. He affirms that the Radio One engineers offered to install an antenna in his attic and states that they also offered to provide "a better quality antenna" to replace another antenna Mr. Murphy had installed in order to improve reception of WXCH(FM). Mr. Murphy states that he informed the Radio One engineer that "the biggest problem we were facing was the lack of reception in cars." According to Mr. Murphy, the engineer suggested installing satellite radio in the vehicles and later suggested Internet radio. During this later conversation, Mr. Murphy states that the Radio One engineer characterized his focus as home reception and reports that he corrected the engineer and explained that, when he spoke with the General Manager on November 3, 2016, he had indicated his biggest concern was "the cars." When the Radio One engineer gave Mr. Murphy the sense that he thought Mr. Murphy had been coached by the General Manager, he "made it clear to him at that time ... NOBODY had coached me in any way."

We find Reising has adequately rebutted Radio One's speculative claim that Mr. Murphy is not disinterested. In so doing, we reject Radio One's inference that any contact between staff of an affected station and a complainant proves that the complainant is not disinterested. Accordingly, we order ICRC to contact Mr. Murphy—via his preferred method of communication—to determine if he still desires interference remediation. If he does, ICRC may request additional information from him to the extent that his complaint omitted any of the information discussed in this letter. Regardless of whether ICRC may or does request any additional information from the Mr. Murphy, it must eliminate the interference experienced by him (or demonstrate that it is absolved from further responsibility for the complaint due to complainant's failure to provide such information) and submit a report on its efforts to the Media Bureau within 30 days of the release of this letter. We note that should Radio One renew its discussion of satellite or Internet radio with Mr. Murphy, Mr. Murphy is free to reject those options and to request that Radio One take steps to resolve the interference to his over-the-air reception of WXCH(FM)'s signal.

Aimee Reisert. Radio One states that its engineers met with Ms. Reisert on November 11, 2016, and offered to "swap out her car radio with a different one with a better tuner so as to help eliminate her reception issues." According to Radio One, Ms. Reisert was "hesitant" to take this step. Radio One asked her to consider it "as that would be the next step to help resolve her issue" but had not heard back by November 17, 2016. Radio One argues ICRC is thus absolved of further responsibility for Ms. Reisert's complaint.

Reising, however, submits an email WXCH(FM)'s General Manager received from Ms. Reisert on December 14, 2016.⁸² Therein, she indicates that she emailed one of Radio One's engineers on November 18, 2016, to indicate that she would "take them up on their offer of a new radio in my vehicle." In the email, she states that she has not heard back from anyone. Given this evidence, we direct ICRC to contact Ms. Reisert—via her preferred method of communication—to determine if she still desires interference remediation. If she does, ICRC may request additional information from her to the extent that her complaint omitted any of the information discussed in this letter. Regardless of whether ICRC may or does request any additional information from Ms. Reisert, it must eliminate the interference experienced by her (or demonstrate that it is absolved from further responsibility for the complaint due to complainant's failure to provide such information), and submit a report on its efforts to the Bureau within 30 days of the release of this letter.

⁸² Reising Letter at Attach. D.

Kaylyn Shinolt. Radio One indicates it met with Ms. Shinolt on November 12, 2016. According to Radio One, during this meeting, its engineer asked Ms. Shinolt if she knew anyone at WXCH(FM) and she indicated she was friends with WXCH(FM)'s General Manager. Radio One argues that Ms. Shinolt is not disinterested and thus not a *bona fide* listener entitled to interference remediation. Friendship, though, cannot render a complainant not disinterested. Accordingly, we order ICRC to contact Ms. Shinolt—via her preferred method of communication—to determine if she still desires interference remediation. If she does, ICRC may request additional information from her to the extent that her complaint omitted any of the information discussed in this letter. Regardless of whether ICRC may or does request any additional information from Ms. Shinolt, it must eliminate the interference experienced by her (or demonstrate that it is absolved from further responsibility for the complaint due to complainant's failure to provide such information) and submit a report on its efforts to the Bureau within 30 days of the release of this letter.

Thelma Slisher. Radio One indicates that its engineers contacted Ms. Slisher and offered her new radios for her home and office. According to Radio One, she accepted. Within 30 days of the release of this letter, ICRC must update the Bureau on its efforts with respect to Ms. Slisher so that we can determine whether it has resolved her interference complaint.