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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
GARY M. COCOLA,	)	Facility ID No. 144742
	)	
Licensee of FM Translator, K259CF, South Fresno, California	)	

To: Chief, Audio Division, Media Bureau

OPPOSITION TO REQUEST FOR WAIVER OF GARY M. COCOLA

Bott Communications, Inc. ("Bott"), licensee of full-power FM broadcast station, KCIV, Mount Bullion, California (Facility ID No. 6504) (Channel 260/99.9 MHz) ("KCIV"), by its undersigned counsel and pursuant to Section 1.45(b) of the Commission's rules,[1] hereby submits this Opposition to Gary M. Cocola's September 5, 2018 request for waiver ("Waiver Request")[2] of Section 74.1203(c) of the Commission's rules[3] with respect to Mr. Cocola's FM translator, K259CF, South Fresno, California (Facility ID No. 144742) ("K259CF").[4] For the reasons stated herein, Mr. Cocola's Waiver Request is procedurally deficient, and is without merit. Accordingly, the FCC should dismiss or deny the Waiver Request.

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1 47 C.F.R. § 1.45(b).

2 *See generally* Request for Waiver of Gary M. Cocola, *Gary M. Cocola, Licensee of FM Translator, K259CF, South Fresno, California (Facility ID No. 144742)* (filed Sept. 5, 2018) ("Waiver Request").

3 47 C.F.R. § 74.1203(c).

4 K259CF's operations are causing interference to the receipt of KCIV by its listeners. *See generally* Interference Complaint of Bott Communications, Inc., *Gary M. Cocola, Licensee of FM Translator, K259CF, South Fresno, California (Facility ID No. 144742)* (filed July 18, 2018) ("Interference Complaint"). Accordingly, as Mr. Cocola's Waiver Request concerns the scope of his response to Bott's Interference Complaint, Bott has standing to oppose the Waiver Request.

I. BACKGROUND

Mr. Cocola requests waiver of Section 74.1203(c) of the Commission's rules "to permit [K259CF's] continued operation for 180 days, unless it can be shown to cause destructive interference to any licensed facility beyond any potentially affected station's 54 dBμ contour."[5] Mr. Cocola asserts that waiver of Section 74.1203(c) with respect to K259CF is justified based on the FCC's proposal in the *May 2018 NPRM* to limit actual interference complaints to those made by complainants located within the desired station's 54 dBμ contour.[6] Mr. Cocola alleges that the FCC's proposed 54 dBμ contour limitation is "directed precisely at the problems [the FCC] has been having in resolving interference complaints such as this one" – as Bott's Interference Complaint is "based on allegations of alleged interference . . . not only far beyond [KCIV's] protected contour at 60 dBμ, but beyond the extremely conservative 54 dBμ contour . . . ."[7]

Mr. Cocola claims that "'Section[] [74.1203(a)(3)] . . . encourage[s] full service station licensees to *troll for complaining individuals* so that they can extend their signal out to the last gasp of his or her radio signal coming through the FM hash' . . . [s]uch is the case precisely here."[8] Mr. Cocola then alleges that the proposed 54 dBμ restriction – as applied to Bott's Interference Complaint – "would not deprive any *local* radio listener of *local* radio service . . . [b]ut would remove all of the distant complaints of interference . . . beyond the KCIV [] 54 dBμ contour."[9] Finally, Mr. Cocola asserts that since "the Commission has granted waivers for good cause shown

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5 Waiver Request at 1.

6 *Id.* at 1-2 (citing *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, MB Docket No. 18-119, Notice of Proposed Rulemaking, FCC 18-60 at 14, ¶ 28 (rel. May 10, 2018) ("*May 2018 NPRM*")).

7 *Id.* at 1.

8 *Id.* at 2 (emphasis added) (citing *May 2018 NPRM* at 12, ¶ 23 (internal citations and quotation marks omitted)).

9 *Id.* (emphasis in original).

that anticipate proposed rules prior to their final adoption,"[10] his request for waiver of Section 74.1203(c) should be granted because "[t]he public interest will not be served by suspending service [of K259CF], based on a policy in decline, only to restart later under modernized rules."[11]

II. DISCUSSION

A. Mr. Cocola's Waiver Request is Procedurally Deficient

The Waiver Request misidentifies Section 74.1203(c) as the FCC rule for which Mr. Cocola seeks waiver. The FCC requires waiver applicants to specifically identify which rule or regulation for which waiver is sought.[12] Section 74.1203(c) provides that: "[a]n *FM booster station* will be exempted from the provisions of [47 C.F.R. § 74.1203(a)-(b)] to the extent that it *may cause limited interference to its primary station's signal . . . .*"[13] Mr. Cocola seeks waiver of Section 74.1203(c) in order to permit K259CF to operate for another 180 days – without addressing the interference complaints made by KCIV's listeners located beyond the station's 54 dBμ contour.[14]

Section 74.1203(c), however, is immaterial to Mr. Cocola's resolution of the interference complaints against K259CF. First, K259CF is an FM translator – *not* an FM booster. Second, the text of Section 74.1203(c) clearly demonstrates that the purpose of the provision is to provide

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10 *Id.* (citing *Neighborhood TV Co. Inc. v. FCC*, 742 F.2d 629 (D.C. Cir. 1984)).

11 Waiver Request at 3.

12 *See Southwestern Bell Telephone Company*, Order Concluding Investigation and Denying Application for Review, 12 FCC Rcd. 19311, 19344, ¶ 66 (1997) ("SWBT's argument that it need not identify the rules for which waiver is sought is unavailing. It is not the Bureau's role to evaluate vague requests for waiver and identify all possible rule violations in order to determine whether those rules should be waived.").

13 47 C.F.R. § 74.1203(c) (emphasis added).

14 Waiver Request at 1.

FM boosters from Sections 74.1203(a) and (b)'s interference remediation requirements only with respect to FM booster interference with their *own primary station's signals.*[15] Accordingly, Mr. Cocola failed to identify in his Waiver Request the appropriate FCC rule or regulation for which waiver is sought.

On these grounds alone, Mr. Cocola's Waiver Request is procedurally defective, and must be dismissed or denied by the Commission.

B. Mr. Cocola's Waiver Request Fails to Comply with the FCC's Waiver Standard

Additionally, Mr. Cocola fails to demonstrate why the FCC should grant his request for waiver in order to permit K259CF to continue operations for at least 180 days. The Commission may grant a waiver for good cause shown.[16] A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.[17] The FCC must give waiver requests a "hard look,"[18] however, a waiver applicant "faces a high hurdle even at the starting gate."[19] Therefore, a waiver applicant must support its request with a "compelling showing."[20] For these reasons, a waiver is appropriate only if *both*: (1) special circumstances warrant a deviation from the general rule; and (2) such deviation will serve the public interest.[21]

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15 *See Creation of a Low Power Radio Service*, Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration, 27 FCC Rcd. 3315, 3325, n.76 (2012) ("We note that Section[] 74.1203(c) . . . contain[s] exemptions from the remediation requirements set forth in Sections 74.1203(a) and (b) . . . for FM booster . . . stations causing interference to their primary stations' signals.").

16 47 C.F.R. § 1.3.

17 *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

18 *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

19 *Id.*

20 *Dennis J. Kelly, Esq., et al.*, Letter, 32 FCC Rcd. 7441, 7443 (MB 2017) (citing *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd. 7090 (1999)).

21 *Ne. Cellular*, 897 F.2d at 1166.

1. Mr. Cocola Fails to Allege Special Circumstances Warranting Deviation from Section 74.1203(c)

Mr. Cocola fails to allege specific facts as to why his request for waiver is justified. As stated above, Section 74.1203(c) is inapplicable here. Therefore, it appears that Mr. Cocola is actually requesting waiver of his responsibility to eliminate interference to KCIV's listeners located outside of the station's 54 dBμ contour.[22] In doing so, Mr. Cocola fails to demonstrate why addressing such listener complaints is *particularly* onerous or burdensome for him.

Mr. Cocola alleges that the lack of geographical limitation under the FCC's current interference complaint rules "encourage[s] full service station licensees to troll for complaining individuals so that they can extend their signal out to the last gasp of his or her radio signal coming through the FM hash."[23] Mr. Cocola contends – without providing any evidence – that this is exactly what Bott is attempting to accomplish through its Interference Complaint against K259CF.[24] In reality, Bott received unsolicited complaints from listeners regarding interference to KCIV's signal.[25] This, in turn, prompted Bott to reach out to listeners for completion of uniform listener complaint forms to ensure that the listener complaints were *bona fide* pursuant to the criteria established by the Commission.[26]

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22 *See* Waiver Request at 1.

23 *Id.* at 2 (citation and internal quotations omitted).

24 *Id.* at 2 ("Such precisely is the case here.").

25 Declaration of Eben Fowler ¶ 2 ("Fowler Declaration"), attached hereto as **Attachment A**.

26 *Id.* ¶ 3. *See also Arohi Media LLC*, Letter, Ref. No. 1800B3-PPD at 3 (May 9, 2017) (complainants are *bona fide* if they are "'disinterested,'" i.e., "'a person or entity without a legal stake in the outcome of the . . . proceeding'" (citing *Association for Community Education, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd. 12682, 12688, ¶ 16 (2004))); *id.* (FCC staff requires complainants to provide his or her "name, address, location(s) at which FM translator interference occurs, and a statement that the complainant is, in fact, a listener of the affected station").

In Mr. Cocola's simultaneously-filed response ("Response")[27] to the FCC's August 6, 2018 letter ("FCC Letter")[28] concerning Bott's Interference Complaint, Mr. Cocola attacked Bott's reliance upon these uniform complaint forms. Mr. Cocola claimed that the uniform complaint forms demonstrated that the listener complaints were illegitimate because the forms "begin[] with a prejudicial and conclusory pre-printed preamble . . . [and] directs the complainant to [a] pre-digested conclusion of interference . . . ."[29] This argument, however, is baseless as the FCC does *not* prohibit the use of uniform complaint forms.[30] The forms were used by Bott to ensure that the listener complaints provided in support of its Interference Complaint were *bona fide* as required by the FCC's rules.[31] Nor does Mr. Cocola provide any evidence – in either his Waiver Request or his Response – that receipt of KCIV's signal is impossible or not "regularly used"[32] at any of the listener complainant locations outside of KCIV's 54 dBμ contour.[33] Accordingly, Mr. Cocola fails to allege specific factual circumstances as to why there is good cause shown for the Commission's grant of his Waiver Request.

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27 *See generally* Interference Response of Gary M. Cocola, Gary M. Cocola, *Licensee of FM Translator, K259CF, South Fresno, California (Facility ID No. 144742)* (filed Sept. 5, 2018) ("Response").

28 *See generally* Letter from James D. Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau, Federal Communications Commission, to Gary M. Cocola (1800B3-KV) (Aug. 6, 2018) ("FCC Letter").

29 Response at 2-3.

30 *See Arohi Media* at 3.

31 Fowler Declaration ¶ 3.

32 *See* 47 C.F.R. § 74.1203(a)(3) ("Interference will be considered to occur 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." (emphasis added)).

33 In his Response, Mr. Cocola claims that K259CF's engineer "traveled around the supposedly impacted areas of Clovis and Fresno . . . and detected no interference." Response at 3. Mr. Cocola, however, failed to attach the engineer's supporting statement, and therefore, this allegation must be dismissed by the Commission for being unsubstantiated. *See* 47 C.F.R. § 1.16.

2. *Grant of Mr. Cocola's Waiver Request is not in the Public Interest*

Mr. Cocola fails to demonstrate that grant of his Waiver Request is in the public interest. In his Waiver Request, Mr. Cocola alleges that:

> The public interest will not be served by suspending service [of K259CF for 180 days], based on a policy in decline, only to restart later under modernized rules. As stated in our separate response to the [FCC Letter], we have taken steps and will continue to take steps to resolve all interference complaints that have been drummed up by KCIV, on an individual basis.[34]

Here, Mr. Cocola seems to be stating that K259CF should not be required to suspend service pursuant to Section 74.1203 due to the existence of interference complaints made by KCIV's listeners located outside of the station's 54 dBμ contour. In doing so, Mr. Cocola here is either: (1) falsely implying that *all other* interference complaints against K259CF have been eliminated; (2) conveniently ignoring the fact that Mr. Cocola must still address the remaining listener complaints made by *bona fide* complainants located *within* KCIV's 54 dBμ contour; or (3) attempting to imply that the continual interference to KCIV's off-the-air reception by his FM translator – a secondary service – is somehow in the public interest. In reality, Mr. Cocola has not made *any* progress in resolving *any* of the interference complaints made by KCIV's listeners caused by K259CF – regardless of the complainant's location.[35]

Furthermore, Mr. Cocola misconstrues the secondary nature of the FM translator service. Mr. Cocola claims in his Response that requiring FM translators – such as K259CF – to respond to interference complaints made by complainants located beyond of the desired station's 54 dBμ

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34 Waiver Request at 3.

35 *See* Reply to Gary M. Cocola's Response to Interference Complaint and Supplement to Interference Complaint of Bott Communications, Inc., *Gary M. Cocola, Licensee of FM Translator, K259CF, South Fresno, California (Facility ID No. 144742)* at 2-10 (filed Sept. 17, 2018).

contour undermines the objectives of the FCC's AM Revitalization program, and "would preclude new [FM translator] service altogether."[36] While similar concerns were expressed in the *May 2018 NPRM*,[37] the Commission has also expressed "concern[] that *setting an outer limit for listener interference complaints* at the affected station's protected contour *would be inconsistent with translators' role as a secondary service.*"[38] Accordingly, there is no "consensus"[39] to which Mr. Cocola may allude to in order to demonstrate that grant of his waiver request is in the public interest.

Nevertheless, the fact remains that under the currently effective FCC rules, FM translators must eliminate interference occurring *beyond* the desired station's 54 dBμ contour.[40] Section 74.1203(a)(3) provides, in pertinent part, that an FM translator "will not be permitted to continue to operate if it causes any actual interference to . . . the direct reception by the public of off-the-air signals of any authorized broadcast station . . . ."[41] The FCC currently interprets this rule "*very broadly* in that it places no geographic or temporal limitation on [interference] complaints . . . ."[42] Accordingly, FM translators, as "secondary services[,] may *not* create any interference to a full service station."[43]

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36 *See* Response at 2.

37 *See May 2018 NPRM* at 14, ¶ 27 ("We believe that we can restrict stations from making specious interference allegations while preserving translators' status as a secondary service.").

38 *See id.* at 13, ¶ 26 (emphasis added).

39 *See* Response at 2.

40 *See Association for Community Education, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd. 12682, 12688, ¶ 16 (2004).

41 47 C.F.R. § 74.1203(a)(3).

42 *Arohi Media* at 3 (emphasis added) (citing *Forus FM Broadcasting of New York, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd. 7880, 7882, ¶ 16 (MMB 1992)).

43 *See May 2018 NPRM* at 13, n.88 (emphasis added). *See also Arohi Media* at 3 ("The FM translator rules strictly prohibit interference by these secondary service stations, and an

It is not in the public interest to waive Mr. Cocola's requirement of eliminating interference to KCIV's listeners beyond the station's 54 dBμ contour – many of whom have been avid listeners of the station since it commenced operations in the early 1980s.[44] Failure to protect the receipt of KCIV's signal by its listeners located beyond the station's 54 dBμ contour in order to preserve the *secondary* FM translator service provided by K259CF – as Mr. Cocola otherwise suggests – would subvert KCIV's well-established full-power FM broadcast service to the secondary nature of K259CF's more recent FM translator service in violation of established FCC policy.[45] For these reasons, Mr. Cocola *cannot* demonstrate that it is in the public interest for the Commission to grant his Waiver Request.

CONCLUSION

For the foregoing reasons, the FCC must dismiss or deny Mr. Cocola's Waiver Request, and order Mr. Cocola to eliminate interference to *all* listener complainants – or suspend service altogether – pursuant to Section 74.1203(b) of the Commission's rules.

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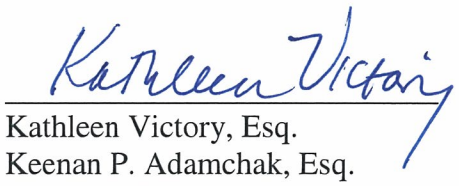
interfering FM translator station must remedy the interference or cease operation." (citing 47 C.F.R. § 74.1203(b))).

[44] *Cf. May 2018 NPRM* at 13, ¶ 26 ("[S]etting an outer limit for listener interference complaints . . . would fundamentally change the existing balance of equities between translators and other broadcast stations and *affect the listening options for listeners outside the other broadcast station's protected contour.*" (emphasis added)).

[45] *See May 2018 NPRM* at 2, ¶ 2 ("Th[e] secondary status [of FM translators] represents a balance between expanding local listener options and the "technical degradation to the overall broadcasting system that could result from a proliferation of translator stations." (quoting *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd. 7212, 7219, ¶ 48 (1990))).

Respectfully submitted,

BOTT COMMUNICATIONS, INC.



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Counsel for Bott Communications, Inc.

Dated: September 17, 2018

ATTACHMENT A

Declaration of Eben Fowler

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
GARY M. COCOLA,	)	Facility ID No. 144742
	)	
Licensee of FM Translator, K259CF,	)	
South Fresno, California	)	

DECLARATION OF EBEN FOWLER

I, **Eben Fowler**, hereby declare as follows:

1. I am the Director of Operations of Bott Communications, Inc. ("Bott"). I make this declaration in voluntary support of Bott's Opposition to Gary M. Cocola's Request for Waiver dated September 5, 2018.

2. Bott received unsolicited complaints from listeners regarding interference to KCIV's signal.

3. These unsolicited listener complaints prompted Bott to reach out to listeners for completion of uniform listener complaint forms to ensure that the unsolicited listener complaints were filed as *bona fide* complaints pursuant to the Commission's rules.

4. The completed uniform listener complaint forms were then used as support for Bott's July 18, 2018 Interference Complaint against Mr. Cocola's FM translator, K259CF, South Fresno, California (Facility ID No. 144742).

5. Accordingly, the filing of Bott's Interference Complaint was *not* the result of an effort to "troll for complaining individuals" as Mr. Cocola claims. In reality, the Interference Complaint was prompted by unsolicited complaints from listeners of interference with their off-the-air reception of Bott's full-power FM broadcast station, KCIV, Mount Bullion, California (Facility ID No. 6504).

I certify under penalty of perjury that the foregoing is true and correct.

Executed on September 14, 2018.

Eben D. Fowler

Eben Fowler

DECLARATION

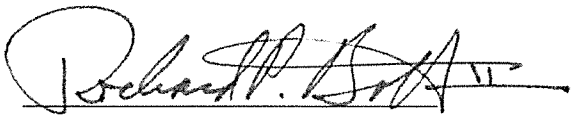
I, Richard P. Bott, II, hereby attest to the following:

1. I am the Vice President of Bott Communications, Inc.

2. I have personal knowledge of the facts set forth in the foregoing Opposition.

3. I have read the Opposition, and the responses therein are truthful and correct to the best of my knowledge, information, and belief.

I hereby certify that to the best of my knowledge and belief, under penalty of perjury, the foregoing statements are true and correct.



Richard P. Bott, II

Dated: September 14, 2018

CERTIFICATE OF SERVICE

I, Kathleen Victory, of Fletcher, Heald & Hildreth, PLC, hereby certify that I caused a true copy of the foregoing Opposition to be sent this 17th day of September, 2018, via U.S. First Class Mail, postage prepaid, and via email, where indicated, to the following individuals:

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P.O. Box 3642
Oakland, CA 94609
cuz@well.com

Gary M. Cocola
225 Crossroads Blvd., Suite 183
Carmel, CA 93923

* via email

Kathleen Victory

Kathleen Victory