

2018 OCT -2
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, CA)

Accepted / Filed

SEP 27 2018

To: Chief, Audio Division, Media Bureau

Federal Communications Commission
Office of the Secretary

REPLY TO
OPPOSITION TO REQUEST FOR WAIVER

Gary M. Cocola, Licensee of K259CF, here replies to the Opposition to the request for waiver submitted on September 5, 2018 (“Waiver Request”). Briefly, the waiver request acknowledged that the complainant, Bott Communications, Inc., had generated and documented a number of listener complaints of asserted interference of reception to co-channel KCIV. All such complaints were beyond the 60 dBu contour of KCIV, and even beyond the 54 dBu contour.

Recognizing that the Commission, in a pending proceeding, MB Docket No.18-119, had proposed categorically to disregard complaints originating from locations beyond the 54 dBu contour, the Licensee sought a waiver of the provisions of Section 74.1203, in conformity with the proposal, to continue broadcasting without interruption. In the meantime, and having established that up-to-date FM receivers encounter no such objectionable interference, Licensee established a call-in number for complainants to request a replacement radio. No such call-ins had occurred, and the Licensee has begun pro-actively contacting all households for which a telephone number was provided, with the offer of a replacement radio. That project is ongoing.

Licensee disagrees with the claim of the Opposition (P. 4) that the waiver request fails to comply with the standard for granting waiver, *WAIT Radio v. FCC*, 418 F.2d1153 (D.C. Cir., 1969).

To the extent that the Commission had a rational basis for proposing to disregard complaints beyond the 54 dBu contour, this case is based on that type of complaint, and none other, and would establish “special circumstances.” It is stated that Licensee fails to show why addressing such listener complaints is especially onerous in this case (p. 5). Yet the Licensee is in process of addressing and resolving all such complaints. The opposition also fails to address the point that many, if not most of the complaints fail to establish regular listening at clearly delineated locations. From the complaints it is difficult to determine whether there is an actual condition of interference, as opposed to skipping, hash and outages that will be artifacts of a very weak signal far beyond the 54 dBu contour. These fact-specific conditions of distant listening establish special circumstances within the waiver standard.

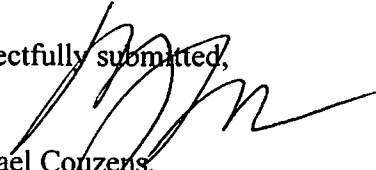
To dispute the public interest basis for the waiver request, the Opposition (at p. 7) posits a false choice. (1) and (2) Licensee is accused of falsely claiming that other interference complaints within the 54 dBu contour have been eliminated. But Licensee is aware of no such complaints. Or (2) that Licensee feels that the continuation of such interference is *per se* in the public interest. Of course that has never been claimed, and as mentioned, direct remediation efforts are underway.¹

The complainant, along with the present opposition, has submitted a “reply to Response of Gary M. Cocola to Interference Complaint and Supplement to Interference Complaint.” Apparently recognizing that the underlying complaint is not particularly sturdy in its details, complainant has improperly used the reply stage to introduce new matter, including supplemental listener complaints, Attachment C, a new engineering showing, Attachment D, and a revised map of listener complaint locations. There is no opportunity for Licensee to respond to such eleventh-hour supplemental material in a reply, and it should be disregarded.

¹ Complainant knows that a complaint telephone number was set up, but apparently is content to sit on its hands and let the interference continue, rather than contacting complainants and encouraging them to take advantage of the free remediation being offered. Some of the complainants did not provide complete or accurate contact information, but the complainant should be in a position to do a complete follow up as to every genuine complainer it has contacted or encouraged.

Turning to the pending rule making itself, the complainant notes (p. 8) a lack of “consensus” on the proposal to disregard interference complaints beyond the 54 dBu contour. Licensee has reviewed the record in MB Docket No. 18-119, and is largely in agreement with this. The record shows broad opposition to the Commission's proposed 54 dBu guideline, in many comments ranging from Comments of LPFM Coalition, August 6, 2018, to Beasley Media Group, LLC *et al.*, Reply Comments, September 5². The remainder of the Commission's proposals have wide support, notably support for the idea that a licensee causing objectionable interference should be able to move to any available channel, Reply Comments of National Association of Broadcasters, September 5, p. 1. In view of this License is preparing, and forthwith will be submitting an application for channel change, outside the current limitation to three adjacencies or to an intermediate frequency channel, Section 74.1233(a) of the Rules. An appropriate waiver request as to that rule will be supplied. Both the record in this interference complaint matter and the record in the ongoing rule making amply support such a waiver, resolving all the issues herein at an early date. In the mean time, the Licensee will continue its efforts to address and resolve every local in interference complaint on an individual basis.

Respectfully submitted,


Michael Couzens,
Attorney for
Gary M. Cocola

Michael Couzens Law Office
6536 Telegraph Avenue, Suite B201
Oakland, CA 94609

Tel. (510) 658-7654
cuz@well.com

September 27, 2018.

² Proposal to adopt the 54 dBu limit is “vigorously contested,” *Id.* p. 2.

CERTIFICATE OF SERVICE

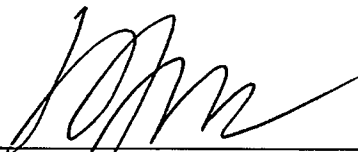
I, Michael Couzens, certify that copies of the foregoing

REPLY TO OPPOSITION TO REQUEST FOR WAIVER

were mailed by First Class Mail, with postage fully prepaid, on September 27, 2018, to the following:

James D. Bradshaw, Senior Deputy Chief
Media Bureau, Audio Division
Federal Communications Commission
445 Twelfth Street S.W.
Washington, D.C. 20554

Kathleen Victory
Fletcher, Heald and Hildreth
1300 North 17th Street, 11th floor
Arlington, VA 22209

By: 
Michael Couzens