



**Federal Communications Commission  
Washington, D.C. 20554**

May 8, 2018

*In Reply Refer to:* 1800B3-KV

Win Radio Broadcasting Corporation  
100-25 Queens Boulevard  
Suite 1CC  
Forest Hills, NY 11375

**In re: W257BW, Potomac, MD**  
File No. BLFT-20170830ABL  
Facility ID No. 141566

**Informal Objection-Interference Complaint**

Dear Permittee:

This letter refers to: (1) the above-referenced license to cover application (License Application) filed by Win Radio Broadcasting Corporation (WRBC) for FM Translator Station W257BW, Potomac, Maryland (W257BW or Station);<sup>1</sup> (2) the "Informal Objection to License Application, Request for Recession of Underlying Construction Permit and/or Designation of License Application for Hearing (or in the Alternative, Interference Complaint)" (Objection-Complaint) filed on September 8, 2017,<sup>2</sup> by Historic Takoma, Inc. (HTI); and (3) related supplemental pleadings.<sup>3</sup> For the reasons set forth below, we grant, in part, and otherwise dismiss as moot the Objection-Complaint; dismiss the License Application; and require WRBC to immediately cease operation of FM Translator Station W257BW.

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<sup>1</sup> WRBC is licensed to operate the Station, per License Application (File No. BLFT-20070830ABA) granted on September 14, 2007, on Channel 257 at New Tripoli, Pennsylvania. Under review herein, however, is WRBC's status as a permittee for the License Application to move the Station to Channel 232 at Potomac, Maryland.

<sup>2</sup> On September 11, 2017, HTI resubmitted, via the Office of the Secretary, the Objection-Complaint purportedly to include a CD ROM drive with audio files that it was unable to upload into CDBS; the Commission has no record of a CD ROM drive with this filing. For the reasons discussed *infra* note 27 this omission has no impact on our decision herein.

<sup>3</sup> HTI also filed the following pleadings: (1) a November 30, 2017, "Emergency Petition for Relief, Request for Expedited Action, and Supplement" (Emergency Petition); (2) a February 7, 2018, "Further Supplement to Emergency Petition for Relief, Request for Expedited Action and Informal Objection/Interference Complaint" (First Supplement); and an April 23, 2018, "Additional Supplement to Emergency Petition for Relief and Request for Expedited Action" (Second Supplement).

**Background.** On August 30, 2017, WRBC filed the License Application to cover a granted construction permit (Permit)<sup>4</sup> to move the Station to Channel 232 at Potomac, Maryland.

On September 8, 2017, HTI, licensee of co-channel LPFM Station WOWD-LP, Takoma Park, Maryland, filed the Objection-Complaint against the License Application and the Permit. HTI argues that the Permit should not have been granted because the Station's "technical parameters violate protections given to WOWD, as an existing station ...."<sup>5</sup> Specifically, HTI declares that Station's Permit creates prohibited new overlap with WOWD-LP in violation of Section 74.1204 of the FCC's rules (Rules).<sup>6</sup> In support, HTI attaches to the Objection-Complaint engineering studies and other technical showings.<sup>7</sup> HTI also asserts that WRBC lacked candor and made misrepresentations because it failed to list WOWD-LP as an impacted station in an exhibit narrative addressing interference protection in the Minor Modification Application.<sup>8</sup> HTI contends this omission was deliberate because WRBC identified WOWD-LP on a contour map in the Minor Modification Application which "erroneously" showed no interference to WOWD-LP.<sup>9</sup> HTI further claims that "since [W257BW's] program tests began over Labor Day weekend 2017, a number of WOWD's listeners report their regular reception [has been] impeded by harmful interference."<sup>10</sup> In support, HTI includes listener complaints.<sup>11</sup>

On November 30, 2017, HTI filed an Emergency Petition reiterating that the Station should be ordered to suspend operations, the License Application denied, and the Permit rescinded. Specifically, HTI declares that despite serving WRBC with a copy of the Objection-Complaint, it has failed to respond. In addition, HTI submits new listener complaints and engineering showings.<sup>12</sup>

On December 12, 2017, the Media Bureau (Bureau) sent WRBC a letter requiring it to respond within 30 days to the listener complaints reporting interference to their reception of WOWD-LP.<sup>13</sup> Specifically, the Bureau directed WRBC to submit a detailed report addressing the listener complaints including: "(1) the name and address of each complainant; (2) specific devices receiving the interference (i.e. type of device, manufacturer's name, model number, and serial number); and (3) any assistance provided by W257BW for each device allegedly receiving the interference and whether such interference persists."<sup>14</sup> The Bureau further noted that "[f]ailure to correct all complaints within this time may require W257BW to suspend operation pursuant to 47 CFR §§ 74.1203(e) and 74.1232(h)."<sup>15</sup>

On February 7, 2018, HTI filed the First Supplement reporting that WRBC continues to be nonresponsive to the listener complaints. On April 23, 2018, HTI filed the Second Supplement stating

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<sup>4</sup> See File No. BPFT-20160129AUE for a minor modification of license (Minor Modification Application) granted on August 9, 2016, with an expiration date of August 9, 2019.

<sup>5</sup> Objection-Complaint at 2.

<sup>6</sup> 47 CFR §74.1204.

<sup>7</sup> Objection-Complaint, Exhs. A-C.

<sup>8</sup> *Id.* at 6 (citing Minor Modification Application, Exh. 12-B-1, p.3).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.*, Exh. B.

<sup>12</sup> Emergency Petition, Exh. 1-2.

<sup>13</sup> See Letter from James D. Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau to Win Radio Broadcasting Corporation, (dated Dec. 12, 2017), (2017 Letter).

<sup>14</sup> 2017 Letter at 2

<sup>15</sup> *Id.*

that WRBC remains unresponsive and raising a new argument that the Station is transmitting with an unauthorized antenna. In support, HTI submits photos of the Station's tower site which were purportedly taken by a WOWD-LP listener on April 2, 2018.<sup>16</sup> Finally, HTI submits an additional listener complaint and more engineering showings.<sup>17</sup>

To date Commission records do not indicate any response by WRBC to the 2017 Letter or the Objection-Complaint.

**Discussion.** Section 74.1203(a) provides, in pertinent part, that an FM translator station "will not be permitted to continue to operate if it causes any actual interference to ... the direct reception by the public of off-the-air signals of any authorized broadcast station ...."<sup>18</sup> The rule places no geographic or temporal limitation on complaints, and we have long held that mobile receivers, such as automobile radios, should not be subject to interference resulting from the operation of an FM translator or booster station.<sup>19</sup> The FM translator rules strictly prohibit interference by these secondary service stations, and an interfering FM translator station must remedy the interference or suspend operation.<sup>20</sup>

The Commission has interpreted "direct reception by the public" to limit actionable complaints to those that are made by *bona fide* listeners.<sup>21</sup> Thus, it has declined to credit claims of interference<sup>22</sup> or lack of interference<sup>23</sup> from station personnel involved in an interference dispute. More generally, the Commission requires that a complainant "be 'disinterested,' e.g., a person or entity without a legal stake in the outcome of the translator station licensing proceeding."<sup>24</sup> The staff has routinely required a complainant 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. Moreover, as is the case with other types of interference complaints,<sup>25</sup> the staff has considered only those complaints of FM translator interference where the complainant cooperates in efforts to identify the source of interference and accepts reasonable corrective measures.<sup>26</sup> Accordingly, when the Commission concludes that a *bona*

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<sup>16</sup> First Supplement, Exh. 4.

<sup>17</sup> Second Supplement, Exh. 2.

<sup>18</sup> 47 CFR § 74.1203(a).

<sup>19</sup> See, e.g., *Forus FM Broad. of New York, Inc.*, 7 FCC Rcd 7880, 7882, para. 16 (MB 1992) (because of the secondary nature of FM booster stations, and the resulting requirement that they provide interference-free service, such stations will not be permitted to cause interference to mobile receivers).

<sup>20</sup> 47 CFR § 74.1203(b).

<sup>21</sup> See *Ass'n for Cmty. Educ., Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12688, para. 16 (2004) (*Ass'n for Cmty. Educ.*).

<sup>22</sup> See *id.*

<sup>23</sup> See *Living Way Ministries, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 15070, 15077, n.46 (2008).

<sup>24</sup> *Ass'n for Cmty. Educ.*, 19 FCC Rcd at 12688 n.37.

<sup>25</sup> See, e.g., *Jay Ayer and Dan J. Alpert*, Letter, 23 FCC Rcd 1879, 1883 (MB 2008) (requiring complainants to cooperate fully with the station's efforts to resolve interference and cautioning that the failure to do so could lead to a finding that the station has fulfilled its interference remediation obligations).

<sup>26</sup> See *Radio Power, Inc.*, Letter, 26 FCC Rcd 14385, 14385-86 (MB 2011) (listing grounds that translator licensee claimed are sufficient to conclude that complainant has failed to reasonably cooperate and finding that a listener may reasonably reject a non-broadcast technology to resolve interference claim).

*fide* listener has made an actionable complaint<sup>27</sup> of uncorrected interference from an FM translator, it will notify the station that “interference is being caused” and direct the station to discontinue operations.<sup>28</sup>

The issue before us is whether WRBC has eliminated the actual interference caused by the Station to certain listeners of co-channel Station WOWD-LP. Here, we find that WRBC has failed to make any effort to resolve or address any of the WOWD-LP listener complaints. Specifically, WRBC has failed to submit a report or otherwise respond as directed by the Bureau in the *2017 Letter*. Consequently, we conclude that WRBC has failed to eliminate the interference. Therefore, W257BW must suspend operations, and we will dismiss the License Application.<sup>29</sup>

**Conclusion.** Based on the above, IT IS ORDERED, that the Informal Objection to License Application, Request for Recession of Underlying Construction Permit and/or Designation of License Application for Hearing (or in the Alternative, Interference Complaint) filed by Historic Takoma, Inc on September 8, 2017, IS GRANTED in part, to the extent indicated above, and IS OTHERWISE DISMISSED.

IT IS FURTHER ORDERED that the Emergency Petition for Relief, Request for Expedited Action, and Supplement filed by Historic Takoma, Inc. on November 30, 2017, IS DISMISSED.

IT IS FURTHER ORDERED pursuant to Sections 74.1203 and 0.283 of the Rules,<sup>30</sup> based on the above, Win Radio Broadcasting Corporation IS HEREBY ORDERED TO CEASE OPERATION OF STATION W257BW IMMEDIATELY.

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<sup>27</sup> Because only a complaint from a *bona fide* listener of the desired station can force a translator station to suspend operation, the engineering showings submitted by HTI do not meet that criterion. *See, e.g., Ass'n for Cmty. Educ.*, 19 FCC Rcd at 12688, para. 16 (station's engineer locating the points on a map where the translator had interfered with the stations' signal as he drove around the full-service station's coverage area listening to the car radio did not meet that criterion) and *Valley Broad., Inc.*, 7 FCC Rcd 4317, 4319, para. 26 (MB 1992) (tests for booster interference were conducted under Special Field Test Authority by a neutral party, using a mobile receiver and a stationary receiver. The application was granted with the *caveat* that if the booster station resulted in listener interference complaints, the permittee would be required to discontinue its operation until all complaints had been resolved). Likewise, the engineering studies and showings presented by HTI in its filings are not probative because Section 74.1203(b) does not allow us to rely on such studies.

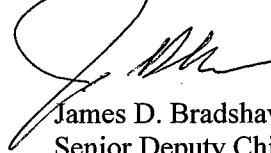
<sup>28</sup> *See* 47 CFR § 74.1203(e); *see also Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7230, para. 131 (1990), *modified*, 6 FCC Rcd 2334 (1991), *recon. denied*, 8 FCC Rcd 5093 (1993); *Ass'n for Cmty. Educ.*, 19 FCC Rcd at 12688, para. 15.

<sup>29</sup> Because we are dismissing the License Application due to WRBC's failure to eliminate interference to WOWD-LP we find HTI's other arguments raised in the Objection-Complaint and subsequent filings to be moot.

<sup>30</sup> 47 CFR §§ 74.1203 and 0.283.

IT IS FURTHER ORDERED, pursuant to Section 73.3566(a)<sup>31</sup> of the Rules that the pending License Application (BLFT-20170830ABL) filed by Win Radio Broadcasting Corporation on August 30, 2017, for Station W257BW, Potomac, Maryland IS DISMISSED.

Sincerely,



James D. Bradshaw  
Senior Deputy Chief  
Audio Division  
Media Bureau

Cc: Michael W. Richards, Esq. (by email)  
J. Geoffrey Bentley, Esq. (by email)

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<sup>31</sup> 47 CFR § 73.3566(a).