



Federal Communications Commission
Washington, D.C. 20554

October 18, 2011

DA 11-1727

In Reply Refer to:

1800B3-RLG

Released: October 18, 2011

Radio Power, Inc.
955 South Virginia Street
Reno, NV 89502

In re: **W284BQ, Detroit, MI**
Facility ID # 143173
BLFT-20101227ABN

Dear Licensee:

The staff has under consideration: (1) the May 19, 2011, Interference Complaint ("Complaint") filed by Citicasters Licenses, Inc. ("Citicasters"); (2) the July 27, 2011, staff letter; (3) the August 26, 2011, Report on Interference Complaint ("Report") filed by Radio Power, Inc. ("RPI"); (4) the September 9, 2011, Response to the Report on Interference Complaint ("Response") filed by Citicasters; (5) the September 26, 2011, Reply to Response ("Reply") filed by RPI; and, (6) all related pleadings. For the reasons set forth below, we require RPI to immediately cease operation of W284BQ.

Background. In its Complaint, Citicasters allege that W284BQ is interfering with the reception of co-channel station WIOT(FM), Toledo, Ohio. W284BQ is licensed to RPI. Citicasters originally identified 28 complaints from listeners in the area of Ypsilanti, Belleville and Taylor, Michigan. These listeners complained of recent difficulties receiving WIOT(FM) at their homes and in the nearby areas while driving. On July 27, 2011, staff sent an interference letter to RPI providing the station thirty days to resolve all 28 complaints of interference or suspend operation immediately. Section 74.1203 states that if interference can not be properly eliminated by suitable techniques, the operation of the translator shall be suspended.

RPI's Report on its efforts to resolve the complaints is voluminous. It includes details of RPI's correspondence with the 28 original complainants, along with many pages of testimonials from supporters of W284BQ. RPI also indicates that, on July 25, it completed a modification to the antenna to suppress the radiation to the south. In the Report, RPI indicates that as a result of its efforts, the interference complaints of five complainants have been resolved, four complainants have declined to meet with RPI, five complainants have stopped responding to correspondence, one is no longer a WIOT listener, one did not give sufficient contact information, three did not respond to any inquiries, eight have accepted smartphones offered by RPI and one complainant has declined the smartphone.

A key component of RPI's response to Citicasters' complaint of interference is to offer smartphones with the "iHeartradio" application installed, enabling the listeners to receive WIOT(FM) via the internet. RPI argues that by receiving the programming of WIOT(FM) via the internet, the interference caused by W284BQ is eliminated. These smartphones require a paid data plan to run the "iHeartradio" application. Citicasters argues that use of such a smartphone as a technical solution is insufficient and unworkable. In particular, Citicasters argues that this solution does nothing to eliminate the interference as required in Section 74.1203. Citicasters also argues that the proposed solution raises

novel issues and problems not intended by the rules, such as WIOT's potential discontinuance of use of iHeartradio, loss of wireless coverage, loss of over the air content not included on the web (such as EAS broadcasts), and the uncertainty surrounding continued coverage of service plans and fees by RPI. Therefore, Citicasters concludes that the proposed use of smartphones to "eliminate" the interference is not sufficient. RPI, in its Reply, argues the smartphones are an acceptable technique to resolve interference. Specifically, RPI states that "the use of a filter is analogous to a smart phone in that the method for receiving the broadcast signal is modified through the use of technology." RPI believes that the "delivery mechanism is not relevant; what is relevant is that the user is able to listen to WIOT(FM) without interference on the radio receiver." RPI states that the use of a smartphone improves the reception of WIOT and eliminates the interference. Finally, Citicasters provided general information about 58 additional complaints, but is currently unwilling to provide contact information for these listeners because of RPI's previous practice of posting the information on its website.

Discussion. The issues before us are whether W284BQ has failed to eliminate actual interference to co-channel Station WIOT(FM) and, therefore, whether to require RPI to suspend W284BQ operations. For the reasons set forth below, we conclude that RPI has failed to eliminate such interference and that W284BQ must suspend operations. We direct RPI to do so immediately pursuant to Section 74.1203(e) of the Commission's Rules (the Rules").¹

As an initial matter, we agree with Citicasters that the plain meaning of Section 74.1203(a) is clear and unambiguous. The prohibition on "actual interference to . . . [t]he *direct* reception by the *public* of the *off-the-air signals* of any broadcast station"² means exactly that. Thus, RPI's attempt to address specific complaints by providing a non-broadcast subscription service is wholly unavailing and does not constitute a basis for curing a Section 74.1203(a)(3) violation. As a policy matter, RPI's approach is inconsistent with the fact that broadcasting is, most essentially, a free over-the-air system that is and must remain a vital source of news, information and programming for *all* Americans.³ Thus, it is no accident that the rule explicitly protects the ability of the public to receive broadcast signals off-the-air.

For these same reasons, we reject the provision of smart phones to complaining listeners as a "suitable technique" contemplated by Section 74.1203(b).⁴ Again, we find that the plain language of the rule is controlling. RPI's attempted remedy is unresponsive to its obligation to suspend operations "until the *interference* has been eliminated."⁵ Accordingly, we need not determine whether RPI has successfully resolved individual complaints. However, for the benefit of the parties, we emphasize that we agree with Citicasters that 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. RPI's approach also fails to adequately take into account future potential listeners who will have no opportunity to recognize that their reception of WIOT(FM) is foreclosed or impaired by unresolved and actionable interference from W284BQ.

¹ 47 C.F.R. § 7403(e) (requiring translator licensee to suspend operations within three minutes of notice from the Commission that W284BQ is causing interference to another broadcast station).

² *Id.* at § 74.1203(a)(3) (emphasis added).

³ *See, e.g., Digital Broadcasting Systems and Their Impact on the Terrestrial Broadcast Service*, Notice of Proposed Rule Making, 15 FCC Rcd 1722, 1734 (1999) (seeking comment on DAB design attributes to "meet the current and future needs of *all* stakeholders in our free over-the-air broadcasting system.") (emphasis in original).

⁴ 47 C.F.R. § 74.1203(b).

⁵ *Id.* (emphasis added)

Although RPI's remedial efforts are patently insufficient in meeting Section 74.1203 requirements, we note that its approach would be extraordinarily burdensome for the Commission to oversee. The most common "suitable techniques" to eliminate second or third adjacent channel interference, *e.g.*, relocation of W284BQ transmitter to a site where there is a lack of population in its immediate vicinity and/or installation of filters on complainants' receivers, are simply unworkable in the co-channel context. We are particularly mindful of the fact that to date Citicasters has provided complaints from complainants only at locations within WIOT(FM)'s protected contour. RPI's obligation to resolve interference complaints, of course, is not so limited and arises "*whenever reception of a regularly used signal is impaired . . .*"⁶ Given the proximity and power levels of these co-channel stations, we believe that there is a considerable likelihood that the Commission will face a never-ending series of potential complaints. Moreover, RPI's decision to publicize the names of complainants – an action that will necessarily serve to discourage the filing of future *bona fide* complaints – raises significant concerns about whether a fair and prompt complaint resolution process could operate without Commission intervention. Finally, RPI's approach will inevitably lead the Commission into a quagmire of novel issues, including whether the commercial service is programmatically "equivalent"; whether the service provides comparable signal quality and reliability; whether a listener or RPI is responsible for equipment repairs and losses; whether RPI and its successors are required to purchase equipment and pay subscription fees in perpetuity; and how the Commission could effectively monitor and enforce compliance with such requirements. The Commission cannot and need not expend such significant resources to keep a translator station on the air.

In this case, the interference from W284BQ is actual and foreseeable. RPI has failed to properly eliminate such interference. Accordingly, RPI must suspend W284BQ operations immediately.

Accordingly, for the reason stated above, Radio Power Inc. IS HEREBY ORDERED TO CEASE OPERATION OF W284BQ IMMEDIATELY. This action is taken pursuant to 47 C.F.R. §§§ 74.1203(e), 74.1232(h), and 0.283.

Sincerely,

James D. Bradshaw
Deputy Chief
Audio Division
Media Bureau

cc: Marnie K. Sarver, Esq.
David O'Neil, Esq.
FCC Field Office - Detroit

⁶ 47 C.F.R. § 74.1204(b).