Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Indiana Community Radio Corp.	)	File No. BLFT-20151120AGX
W275BD, Greenfield, Indiana	)	Facility ID No. 143744

MEMORANDUM OPINION AND ORDER

Adopted: May 25, 2018 **Released: May 30, 2018**

By the Commission:

1. The Commission has before it Applications for Review (AFRs)[1] filed by Radio One of Indiana, LLC (Radio One).[2] The AFRs challenge two interference remediation letters[3] and an email[4] sent by Media Bureau (Bureau) staff in relation to complaints that W275BD, Greenfield, Indiana, an FM translator licensed to Indiana Community Radio Corp. (ICRC), is interfering with listener reception of full power station WXCH(FM), Columbus, Indiana.[5]

2. To the extent that the AFRs challenge the Division Letters, we dismiss them as premature. While Radio One characterizes the Division Letters as rejecting "the factual and legal arguments" it made in a Request for Dismissal of Complaints (Dismissal Request) that it submitted on

[1] Radio One Application for Review (filed Nov. 14, 2016) (November AFR); Radio One Supplement to Application for Review (filed Jan. 4, 2017) (January AFR). Although the January AFR challenges a letter sent on December 5, 2016, by Media Bureau (Bureau) staff after Radio One filed the original application for review, *see infra n. 3*, the January AFR is captioned as a supplement to the November AFR. As such, it is late-filed. 47 CFR § 1.115(d) (requiring applications for review and any supplements thereto to be filed within 30 days of notice of the action being challenged). While we could dismiss the January AFR on this ground, we instead treat it as an application for review of the December 5, 2016, Bureau staff letter.

[2] Also before the Commission is a Motion to Dismiss the November AFR filed by Reising Radio Partners, Inc. (Reising), on December 15, 2016. Section 1.115(d) of the Commission's rules (Rules), 47 CFR § 1.115(d), requires any oppositions to applications for review to "be filed within 15 days after the application for review is filed." Because the Motion to Dismiss was not filed within this time frame and Reising did not request a waiver, we dismiss the Motion to Dismiss and do not consider it herein. Further, because we do not consider the Motion to Dismiss, we also dismiss as moot the Opposition to Motion to Dismiss filed by Radio One on January 18, 2017.

[3] Letter from James D. Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau, to Indiana Community Radio Corp. (Oct. 18, 2016) (October 2016 Division Letter); Letter from James D. Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau, to Indiana Community Radio Corp. (Dec. 5, 2016) (collectively, Division Letters).

[4] 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) (Division October Email).

[5] W275BD rebroadcasts the signal of WNOW-FM, Speedway, Indiana, a station licensed to Radio One. ICRC has "appoint[ed] Radio One and its designees (including counsel) to act on ICRC's behalf" with respect to this matter. 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). We need not decide whether Radio One, rather than ICRC, is a "person aggrieved" because we dismiss the AFR on other grounds. *See* 47 U.S.C § 155(c)(4) (limiting applications for review to "any person aggrieved by [an] order, decision, report or action …."); 47 CFR § 1.115(a) (same).

February 11, 2016,[6] the Division Letters did not pass upon any of the issues presented in the Dismissal Request. In fact, the Division Letters did not so much as mention the Dismissal Request. Rather, consistent with Bureau practice, the *pro forma* Division Letters merely notified ICRC of the submitted interference complaints, directed ICRC to take appropriate steps to resolve the complaints, and provided ICRC with 30 days to respond to the Bureau. The Division Letters did not restrict ICRC from presenting arguments as to why it should not be required to resolve the individual complaints referenced in the Division Letters. Indeed, Radio One (on behalf of ICRC) presented such arguments.[7] The complaints and Radio One's arguments in response are pending before the Bureau; thus we dismiss Radio One's AFR as premature.[8]

3. To the extent the November AFR challenges the Division October Email, we dismiss it as moot. The Division October Email deemed "unresolved" a complaint lodged by Kaylyn Shinolt on December 3, 2015 and directed ICRC to "resolve [the] complaint immediately."[9] Subsequent to the Division October Email, the Bureau in the October 2016 Division Letter forwarded another complaint from Ms. Shinolt. Ms. Shinolt's second complaint raises the same interference concern as her first complaint. Because this second complaint and ICRC's response to it remain pending before the Bureau,[10] we dismiss Radio One's challenge to the Division October Email as moot.

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[6] November AFR at 6.

[7] Among other arguments, ICRC claimed that the complainants are not disinterested, failed to respond to a questionnaire, and/or experienced interference outside of WXCH(FM)'s protected contour. *See* Letter from John F. Garziglia, Counsel, Radio One of Indiana, LLC, to James D. Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau (Nov. 17, 2016) (Second Report); Letter from John F. Garziglia, Counsel, Radio One of Indiana, LLC, to James D. Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau (Jan. 4, 2017).

[8] *See* 47 U.S.C. § 155(c)(5) ("No such application for review shall rely on questions of fact or law upon which the [delegated authority] has been afforded no opportunity to pass."); 47 CFR § 1.115(c) (same); *Black Television Workshop of Los Angeles, Inc.,* Memorandum Opinion and Order, 4 FCC Rcd 3871, 3873, paras. 14-15 (AFR of a document which does not make findings or conclusions but simply informs party of allegations dismissed as "premature"). The Bureau's Audio Division is simultaneously releasing a letter decision that addresses each of the pending complaints referenced in the Division Letters and Radio One's response. *Indiana Community Radio Corp.*, Letter (rel. May 30, 2018).

[9] *See* Division October Email (rejecting ICRC's claim that Ms. Shinolt was not disinterested because she was Facebook friends with the general manager of WXCH).

[10] Second Report at 13 (arguing that Ms. Shinolt was not disinterested because she was "personal friends" with the general manager of WXCH).

4. IT IS ORDERED that the Motion to Dismiss filed by Reising Radio Partners Inc. on December 15, 2016, which sought dismissal of the Application for Review filed by Radio One of Indiana, LLC, on November 14, 2016, IS DISMISSED as untimely filed pursuant to Section 1.115(d) of the Commission's Rules.[11] IT IS FURTHER ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, and Section 1.115(a) and (c) of the Commission's Rules,[12] the Applications for Review filed by Radio One of Indiana, LLC, on November 14, 2016, and January 4, 2017, ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[11] 47 CFR § 1.115(d).

[12] 47 U.S.C. § 155(c)(5); 47 CFR § 1.115(a), (c).