

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

In re)
)
FM Translator Station W228CX,) Facility ID # 150595
Indianapolis, Indiana)

To: The Secretary, Federal Communications Commission
Attn: The Chief, Audio Division, Media Bureau

UPDATE TO THE RECORD REGARDING FM TRANSLATOR W228CX

Emmis Radio License, LLC (“Emmis”), the licensee of FM translator station W228CX, Indianapolis, Indiana, hereby submits this update to the record in response to an informal request from FCC staff. Specifically, the staff has asked Emmis for an update regarding 17 complainants identified in a September 13, 2016 filing by Woof Boom Radio Muncie License, LLC (“Woof Boom”).¹ Updates regarding each of these complainants are set forth below.

1. Jeff Cummings. Mr. David Schmiedel, whom Emmis has retained to investigate the complaints in this matter,² reached Mr. Cummings via telephone on December 14, 2016. During that conversation, Mr. Schmiedel offered to have an engineer consult with Mr. Cummings in person to attempt to resolve his interference concerns. Mr. Cummings declined. As Mr. Cummings has refused efforts at remediation, Emmis is absolved from responsibility for his complaint.

¹ Woof Boom, Response to Report on Interference Complaints and Renewed Petition for Immediate Termination of Translator Operations (Sept. 13, 2016) (“WB September Response”). Each of the complainants identified by FCC staff was identified by Woof Boom as a “VALID UNREMEDIED COMPLAINT” in the WB September Response. As explained in filings made by Emmis on July 1 and July 15, 2016, and again herein, however, a number of the complaints were invalid from the outset, and remain so, because of insufficient specificity or because they were made by complainants who are not disinterested listeners.

² The qualifications of Mr. Schmiedel, a broadcast engineer with over 46 years of experience, are a matter of record in this case. A Declaration by Mr. Schmiedel attesting to the facts set forth in this update is attached as Exhibit A hereto.

2. **Mike Davenport.** In a June 2016 interview with Mr. Schmiedel, Mr. Davenport indicated that he had experienced interference to his reception of Woof Boom station WMXQ three months prior to October 2015, when W228CX commenced operation.³ Because Woof Boom's September 13 response indicated that Mr. Davenport may have been confused as to the date the interference started, Mr. Schmiedel reached Mr. Davenport again via telephone on December 14, 2016. During that conversation, Mr. Schmiedel offered to have an engineer consult with Mr. Davenport in person. Mr. Davenport declined. As Mr. Davenport has refused efforts at remediation, Emmis is absolved from responsibility for his complaint.

3. **David Edwards.** Emmis has maintained that Mr. Edwards' complaint is insufficiently vague as to the locations where he experiences interference.⁴ Woof Boom's September 13 submission is no more helpful on that point, stating only that Mr. Edwards "can name several regions" where he experiences interference.⁵ Nonetheless, Mr. Schmiedel reached out to Mr. Edwards once again via telephone on December 14, 2016. During that call, Mr. Schmiedel offered to have an engineer consult with Mr. Edwards in person to resolve interference he may be experiencing. Mr. Edwards declined. Mr. Edwards further stated that he no longer listens to WMXQ and no longer wants to be involved. As Mr. Edwards has refused efforts at remediation and does not wish to pursue his complaint, Emmis is absolved from responsibility for that complaint.

4. **Robin Gabriel.** In both an initial face-to-face interview with Mr. Schmiedel and a returned questionnaire, Ms. Gabriel indicated that she experienced interference prior to October

³ Emmis, Report on Interference Complaints (July 1, 2016) ("Emmis July 1 Report"), at 6 & Complainant Attachment 13.

⁴ Emmis July 1 Report at 7 & Complainant Attachment 18.

⁵ WB September Response at Attachment 2.

17, 2015, the date W228CX commenced operation.⁶ Woof Boom's September filing suggests (without evidence) that Ms. Gabriel "may have been confused on what day the interference started."⁷ Thus, Mr. Schmiedel reached out to Ms. Gabriel again via phone on December 14, 2016. During that call, Ms. Gabriel refused Mr. Schmiedel's offer of an in-person consultation with an engineer. As Ms. Gabriel has refused efforts at remediation, Emmis is absolved of responsibility for her complaint.

5. Quintin Harlan. As Emmis has demonstrated previously, Mr. Harlan is not a *bona fide* disinterested listener and his complaint is insufficiently verifiable.⁸ Mr. Harlan previously indicated that he is "friends with employees" of WMXQ and he provided a very non-specific location of interference (i.e., "driving in Anderson, IN").⁹ Woof Boom's latest filing does not dispute that Mr. Harlan is friends with WMXQ employees, nor does it provide more specific location information. Thus, Mr. Harlan is not a *bona fide* disinterested listener, and his complaint continues to be insufficiently verifiable. In any case, Mr. Schmiedel reached Mr. Harlan by telephone on December 21, 2016, and when Mr. Schmiedel offered to arrange a visit from an Emmis engineer to investigate his concerns, Mr. Harlan declined. As Mr. Harlan has refused efforts at remediation, Emmis is absolved of responsibility for her complaint.

6. Jeff Mellott. Mr. Schmiedel initially made contact with Mr. Mellott by mailing a questionnaire to Mr. Mellott's home address. However, a follow-up questionnaire mailed to the same address on July 5, 2016 was returned as undeliverable after several attempts. The

⁶ Emmis July 1 Report at 8 & Complainant Attachment 21.

⁷ WB September Response at Attachment 2.

⁸ Emmis July 1 Report at 9 & Complainant Attachment 24.

⁹ *Id.*

mailing address is the only contact information Mr. Schmiedel has for Mr. Mellott.¹⁰ Woof Boom's September filing provides no additional contact information for Mr. Mellott; indeed, the response suggests that Woof Boom itself has had no recent contact with him.¹¹ At this point, therefore, Mr. Mellott must be deemed to have rejected efforts at remediation, and Emmis is absolved from responsibility for his complaint.

7. **Rick Owen.** Emmis has previously demonstrated Mr. Schmiedel's prior remediation efforts with respect to Mr. Owen,¹² but Woof Boom's September response suggested that additional remediation was necessary. Mr. Schmiedel reached Mr. Owen by telephone on December 16, 2016, and offered to have an engineer again consult with Mr. Owen. Mr. Owen declined the offer. Accordingly, Mr. Owen must be deemed to have rejected efforts at additional remediation, and Emmis is therefore absolved from responsibility for his complaint.

8. **Levi Rinker.** As Emmis explained in its July 1, 2016 report, Mr. Rinker is not and never has been a disinterested listener. Mr. Rinker is the Downtown Specialist for the Economic Development Department for the City of Anderson, Indiana. In a June 2016 interview with Mr. Schmiedel, Mr. Rinker stated that "[t]he city of Anderson is building a relationship with [Woof Boom] hoping that [Woof Boom] will relocate their radio studios to Anderson."¹³ Accordingly, Mr. Rinker has a clear economic interest in assisting Woof Boom with its complaint. Woof Boom does not dispute Mr. Rinker's interest. Mr. Rinker is not a *bona fide* disinterested listener, and he is not entitled to interference remediation.

¹⁰ Emmis, Supplemental Report on Interference Complaints (July 15, 2016) ("Emmis Supplemental Report") at 4.

¹¹ See WB September Response at Attachment 2.

¹² Emmis Supplemental Report at 4.

¹³ Emmis July 1 Report at 11.

9. **Mike Roop.** Mr. Schmiedel initially made contact with Mr. Roop via phone. However, Mr. Roop was unavailable to talk and did not respond to Mr. Schmiedel's follow-up attempts.¹⁴ Mr. Roop has been similarly unresponsive with Woof Boom; Woof Boom reached Mr. Roop by phone in early July but admits that Mr. Roop subsequently failed to provide a promised update to Woof Boom.¹⁵ Nonetheless, Mr. Schmiedel was able to contact Mr. Roop by telephone on December 15, 2016. Mr. Schmiedel offered to arrange a visit to Mr. Roop by an Emmis engineer. Mr. Roop declined, stating that he no longer listens to local radio stations. Accordingly, Mr. Roop has rejected remediation efforts and Emmis is absolved from responsibility for his complaint.

10. **Cheryl Shirley.** Mr. Schmiedel has attempted unsuccessfully to reach Ms. Shirley by telephone. He has left several voice messages which have gone unreturned. Thus, as of this filing, Ms. Shirley must be deemed to have rejected Emmis's efforts at remediation. Should Mr. Schmiedel make contact with Ms. Shirley and be permitted to explore remediation, Emmis will update the record as appropriate.

11. **Jen Smith.** As demonstrated in Emmis's July 1 Report and its July 15 Supplement, Mr. Schmiedel has worked with Ms. Smith to resolve her interference concerns. During a phone call on December 15, 2016, however, Ms. Smith refused Mr. Schmiedel's further mitigation attempts. Mr. Schmiedel offered to have an engineer again consult with Ms. Smith in person; Ms. Smith declined. Because Ms. Smith has rejected further remediation efforts, Emmis is absolved from responsibility for her complaint.

¹⁴ Emmis July 1 Report at 11-12 & Complainant Attachment 37. Mr. Schmiedel also sent a letter and questionnaire to Mr. Roop's home address. Mr. Schmiedel has no record of receiving a questionnaire from Mr. Roop, and even Woof Boom has been unable to ascertain whether Mr. Roop returned it. WB September Response at Attachment 2 & Complainant Attachment A-37.

¹⁵ WB September Response at Attachment 2.

12. Casey Stanley. Mr. Stanley's complaint was deficient from the beginning and remains so, as Mr. Stanley has been consistently unable to identify the source of interference he experiences while driving. When Mr. Schmiedel conducted a telephone interview with Mr. Stanley on June 17, 2016, Mr. Stanley was unable to identify the station causing the interference.¹⁶ Similarly, no station is cited by Mr. Stanley in his complaint attached to Woof Boom's original pleading¹⁷ or in Woof Boom's most recent filing. In its September 13, 2016 filing, Woof Boom states that Mr. Stanley "cit[es] the sports talk station as the cause" of interference.¹⁸ Beyond its own say-so, however, Woof Boom provides no evidence of this. The phone call record it submits as Attachment A-44 does not attribute any statement regarding the source of the interference to Mr. Stanley. In fact, the only mention made of "The Fan" is in Woof Boom's own leading question, which asks "Did you discuss with [Mr. Schmiedel] the interference to WMXQ 'Max' 93.5 FM that comes from Sports talk 'The Fan' station 93.5 in Indianapolis?"¹⁹ Emmis considers Mr. Stanley's complaint to be insufficiently verifiable due to his inability to identify the source of the interference he is experiencing.

13. John Walston. Although Mr. Walston is a former employee of WMXQ, thus throwing into question whether he is a *bona fide* disinterested listener,²⁰ Mr. Schmiedel has attempted to contact Mr. Walston via his mobile phone a number of times in the past week. Each time, Mr. Walston's phone went directly to voicemail. Mr. Schmiedel has left numerous

¹⁶ Emmis July 1 Report at 13.

¹⁷ Woof Boom, Request for Revocation of License and Immediate Suspension of Operation at Exh. A, pg. 60 (May 19, 2016).

¹⁸ WB September Response at Attachment 2.

¹⁹ *Id.* at Complainant Attachment A-44.

²⁰ Emmis July 1 Report at Complainant Attachment 46.

messages for Mr. Walston but, as of the date of this filing, Mr. Walston has not returned Mr. Schmiedel's calls. Thus, Mr. Walston must be deemed to have rejected Emmis's efforts at remediation. Should Mr. Schmiedel make contact with Mr. Walston and be permitted to explore remediation, Emmis will update the record as appropriate.

14. Greg Washington. As demonstrated in Emmis's July 1 Report and its July 15 Supplement, Mr. Schmiedel has worked with Mr. Washington to resolve his interference concerns. During a phone call on December 15, 2016, however, Mr. Washington refused Mr. Schmiedel's further mitigation attempts. Mr. Schmiedel offered to have an engineer again consult with Mr. Washington in person; Mr. Washington declined. Because Mr. Washington has rejected further remediation efforts, Emmis is absolved from responsibility for his complaint.

15. Jeff York. Mr. Schmiedel has never been able to reach Mr. York. Mr. Schmiedel mailed Mr. York a letter and questionnaire; the questionnaire was never returned. No e-mail address was available and Mr. York did not return Mr. Schmiedel's voicemail messages.²¹ To date, Mr. York has not responded to any of Mr. Schmiedel's contacts. Mr. York must therefore be deemed to have rejected efforts at remediation, and Emmis is absolved from responsibility for his complaint.

16. Greg Casto. As Emmis has demonstrated previously, Mr. Casto is not a *bona fide* disinterested listener. In a face-to-face meeting with Mr. Schmiedel on July 6, 2016, Mr. Casto indicated that he is a friend of Woof Boom's Chief Engineer.²² Woof Boom does not dispute Mr. Casto's friendship with its Chief Engineer, but merely notes that "Mr. Casto has no

²¹ In Complainant Attachment A-49 to the WB September Response, Woof Boom asserts that Mr. York spoke with Mr. Schmiedel. Mr. Schmiedel, however, has never spoken with Mr. York. Woof Boom's September response also confirms that Mr. York did not return his questionnaire because of the "threat of legal action." WB September Response at Attachment 2.

²² Emmis Supplemental Report at 2.

motives to be deceptive.”²³ Having a motive or intent to deceive is beside the point. That fact remains that Mr. Casto is friends with a key Woof Boom employee intimately involved in the instant proceeding. Mr. Casto is not a *bona fide* disinterested listener, and he is not entitled to interference remediation.

17. Mike Webb. As demonstrated in Emmis’s July 15 Supplement, Mr. Schmiedel has worked with Mr. Webb to resolve his interference concerns. Mr. Schmiedel reached out to Mr. Webb via email on December 16, 2016. To date, Mr. Webb has not responded. Thus, as of this filing, Mr. Webb must be deemed to have rejected Emmis’s further efforts at remediation. Should Mr. Schmiedel make contact with Mr. Webb and be permitted to explore further remediation, Emmis will update the record as appropriate.

Conclusion

Emmis has addressed herein the 17 complainants for which Commission staff has requested updated information. As demonstrated above, Emmis believes a number of the applicable complaints were defective as initially presented and remain so. In those cases where a complaint might reasonably have been considered still unresolved, Mr. Schmiedel has made further outreach to the complainants to explore further efforts at remediation. In all of those cases, the complainants have either affirmatively rejected remediation efforts or not responded to Mr. Schmiedel’s outreach. Emmis must therefore be absolved of responsibility for those complaints, though it will update the record as appropriate in the event further remediation attempts are arranged with the few complainants who have not responded to Mr. Schmiedel’s outreach as of the date of this filing.

²³ WB September Response at Attachment 2.

Respectfully submitted,

EMMIS RADIO LICENSE, LLC

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December 22, 2016

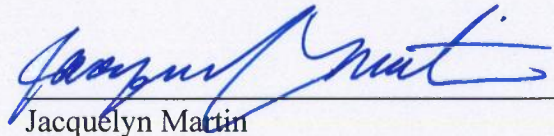
CERTIFICATE OF SERVICE

I, Jacquelyn Martin, an assistant in the law firm of Wiley Rein LLP, hereby certify that on this 22nd day of December, 2016, I caused copies of the foregoing **Update to the Record Regarding FM Translator W228CX** to be mailed via first-class postage prepaid mail with a courtesy copy sent via email to the following:

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Jacquelyn Martin

EXHIBIT A

DECLARATION OF DAVID SCHMIEDEL

I, David Schmiedel, hereby state under penalty of perjury as follows:

1. I am a consulting engineer with Schmiedel Broadcast Engineering. My qualifications are on record in this proceeding. I was retained by Emmis Radio License, LLC, the licensee of FM translator station W228CX, Indianapolis, Indiana, to investigate complaints of interference identified by FCC staff and contained in pleadings with the Federal Communications Commission by Woof Boom Muncie License LLC, the licensee of station WMXQ, Hartford City, Indiana.
2. I have reviewed the foregoing "Update to the Record Regarding FM Translator W228CX" (the "Update"). The facts contained therein are true and correct.

Digitally signed by
David Schmiedel
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Date: December 21, 2016

David Schmiedel