



Federal Communications Commission
Washington, D.C. 20554

January 10, 2020

In Reply Refer to:
1800B3-KV

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In Re: W236CZ, Columbus, OH
North American Broadcasting Company, Inc.
Facility ID No. 142835
File No. BLFT-20170608AAP

Interference Complaints

Dear Counsel:

This letter refers to Delmar Communications, Inc.'s, (Delmar or Complaining Station)¹ allegations of harmful interference caused by Translator Station W236CZ, Columbus, Ohio (W236CZ or Translator Station).² As detailed below, we are dismissing Delmar's interference complaint filed on September 7, 2017, as supplemented in a series of filings.

Background. Previous Complaints. On June 8, 2017, NABC filed the referenced license application (License Application).³ On September 7, 2017, Delmar filed a "Consolidated Petition to

¹ Delmar is the licensee of station WVXG(FM), Mount Gilead, Ohio (WVXG(FM)).

² W236CZ is licensed to North American Broadcasting Company, Inc. (NABC). The Translator Station is licensed as W230AR, Muncie, Indiana, however, our review herein concerns Delmar's allegations of interference under its operations as W236CZ

³ On July 17, 2017, the Media Bureau rescinded the June 13, 2017, grant of covering license for W236CZ; the License Application remains in pending status.

Deny Pending License Application & Request for Immediate Revocation of Operating Authority” (Complaint) arguing that W236CZ should be ordered to cease operations and the License Application denied because it is causing harmful interference to WVXG(FM). Delmar noted that in early June 2017, after W236CZ commenced program test authority operations under the License Application, it began receiving interference complaints from listeners and, in support, attached seven listener complaints.⁴ Delmar reported contacting NABC to resolve the interference, but such efforts were unsuccessful.

Delmar’s Complaint led to a volley of pleadings between the parties:

- an “Opposition” (Opposition) filed on September 20, 2017, by NABC;
- a “Reply to Opposition to Consolidated Petition to Deny Pending License Application & Request for Immediate Revocation of Operating Authority” (Reply) filed on September 27, 2017, by Delmar;
- a “Supplement to Consolidated Petition to Deny Pending License Application & Request for Immediate Revocation of Operating Authority” (First Supplement) filed on October 17, 2017, by Delmar;
- a “Second Supplement to Consolidated Petition to Deny Pending License Application & Request for Immediate Revocation of Operating Authority” (Second Supplement), filed on November 16, 2017, by Delmar;
- a “Third Supplement to Consolidated Petition to Deny Pending License Application & Request for Immediate Revocation of Operating Authority” (Third Supplement) filed on November 22, 2017, by Delmar;
- a “Response to 30-Day Letter” (30-Day Letter Response) filed on November 30, 2017, by NABC;
- a “Declaration of Gerald Mosko” filed on November 30, 2017, by NABC (NABC Declaration);
- an “Opposition to Response to 30-Day Letter” (Fourth Supplement) filed on December 12, 2017, by Delmar; and
- an “Opposition to Supplement to Response to 30-Day Letter” (Fifth Supplement) filed on January 2, 2018, by Delmar.⁵

Revised FM Translator Interference Rules. Recently, the Commission adopted certain changes to the FCC’s rules (Rules) relating to the translator interference complaint resolution process.⁶ In the *Translator Interference Order*, the Commission stated that all then remaining adjudicated complaints would be decided under the new Rules once they became effective.⁷

⁴ Specifically, the following listeners: Greg and Kelly Wenzlaff (the Wenzlaffs); Sheila Thomas (Thomas); Robert Lawyer (Lawyer); Robert Keehl (Keehl); Chris Johnston (Johnston); Pat McLoughin (McLoughin); and Jannetta Martin (Martin). Complaint, Attachments 1-2.

⁵ In these filings, Delmar attached complaints from the following listeners: David Stites (Stites); Joe Roche (Roche); James H. Cackler (Cackler); Heather Kessler (Kessler); Kelly Ryan (Ryan); Mark Mahan (Mahan); James Bernans (Bernans); Mark Ausenheimer (Ausenheimer); Robert A. Schott (Schott); Robin Snyder (Snyder); and Stanley G. Watling (Watling). Collectively, the Complaint, Reply, and the First, Second, Third, Fourth, and Fifth Supplements will be referred to as the Complaints.

⁶ See *Amendment of Part 74 of the Commission’s Rules Regarding FM Translator Interference*, Report and Order, 34 FCC Rcd 3457 (2019) (*Translator Interference Order*).

⁷ *Id.* at 3482, para 49.

On August 27, 2019, the Bureau notified Delmar that certain additional information was needed to continue processing the Complaints under the new Rules.⁸ The Bureau afforded Delmar thirty days to file the requested information.

On September 25, 2019, Delmar filed a “Response of Delmar Communications, Inc. to FCC Letter Dated August 27, 2019” (Sixth Supplement). In the Sixth Supplement, Delmar states that, per Table 1 of 47 C.F.R. § 74.1203 of the Rules,⁹ it is required to submit a minimum of six listener complaints.¹⁰ Delmar has submitted eight updated listener interference complaints¹¹ which it claims comply with the current Rules.

On October 11, 2019, NABC filed “Comments of North American Broadcasting Company, Inc. on Delmar’s 9/25/19 Submission” (Comments) arguing that the Sixth Supplement does not comply with the new Rules and, therefore, the Complaints should be dismissed. Procedurally, NABC argues that the Sixth Supplement was not filed within 30 days of *Bureau Letter*.¹² Substantively, NABC contends that except for listener Schott, none of the Sixth Supplement Listeners “identify the desired station to which the interference is alleged [but rather] . . . reference only an unspecified ‘Station.’”¹³ Nor, NABC asserts, do any report listening to WXVG(FM) over-the-air. NABC also argues that listeners Mullins and Lindembolt do not state that they have “no legal, employment, financial or familial affiliation or relationship with [WXVG] . . .” as required.¹⁴ NABC further notes that listeners Mullins, Keehl, and Johnston report interference at the same location while *Translator Interference Order* requires “‘separate receivers at separate locations.’”¹⁵ Moreover, NABC claims that none of the complaints “purported to be ‘signed’”¹⁶ but rather merely printed their names at the bottom. Lastly, NABC states there “are additional

⁸ See *Letter from James Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau to Delmar Communications, Inc.* (dated Aug. 27, 2019). (*Bureau Letter*). In particular, the Bureau found that the Complaints lacked: detailed information on the Complaining Station’s protected contour and the population located therein; the minimum number of listener complaints as determined by the population located within the Complaining Station’s protected contour; the listener’s full name, address, phone number, signature and date (within one year of Complaint and all other listener complaints); a clear, concise, and accurate description of the location where interference is alleged; a statement that the listener listens over-the-air to the desired station at least twice a month and has no legal, financial, employment, or familial affiliation or relationship with desired station; a map plotting the specific location of the alleged interference in relation to the Complaining Station’s 45 dBμ contour; a statement that the Complaining Station is operating within its licensed parameters; and the undesired/desired data demonstrating that at each listener location the ratio of undesired to desired signal strength exceeds -20 dB for co-channel situations, -6 dB for first-adjacent channel situations or 40 dB for second or third adjacent channel situations, calculated using the Commission’s standard contour prediction methodology.

⁹ 47 CFR § 74.1203.

¹⁰ Delmar states that the population with WVXG(FM)’s 60 dbu contour is 128,313 persons. See WVXG 60 dbu F (50,50) Contour Map, Sixth Supplement.

¹¹ Specifically, Mullins; Keehl; Johnston; Schott; Jeff Lindembolt (Lindembolt); Snyder; Roche; and Ryan. Collectively, these listeners will be referred to as the “Sixth Supplement Listeners.”

¹² See *Letter from James Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau to Delmar Communications, Inc.* (dated Aug. 27, 2019) (*Bureau Letter*).

¹³ Comments at 1.

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 3 (citing *Translator Interference Order*, 34 FCC Rcd at 3466 para. 15).

¹⁶ *Id.*

discrepancies” in the complaints.¹⁷

On October 21, 2019, Delmar filed a “Response of Delmar Communications, Inc. to October 11, 2019, Letter Submitted by North American Broadcasting Company, Inc.” (Response) asserting that the Sixth Supplement complies with the new Rules. Delmar notes that the Sixth Supplement Listeners emailed the complaints to the WXVG(FM) manager and “there is no doubt interference to the reception of Radio Station WXVG is at issue here.”¹⁸ Delmar also declares that the Sixth Supplement Listeners complaints were electronically signed. Regarding listeners Mullins, Keehl, and Johnston’s common interference locations, Delmar contends that “[t]here is nothing wrong or redundant . . . each of these people serve as verification for the interference received by the other two people.”¹⁹

Discussion. Procedural Issues. As an initial matter, we find that although Delmar’s initial complaint was filed as a petition to deny, its arguments are limited to interference allegations which may be filed against a pending license application. It therefore would be treated as an informal objection, because petitions to deny do not lie against license applications.²⁰ Moreover, as discussed below, we are dismissing it due to substantive deficiencies. We further find that Delmar’s Sixth Supplement was timely filed in response to the *Bureau Letter*.

Substantive Issues. Based upon our review of Delmar’s Sixth Supplement, we conclude that it is not a valid and complete interference claim package. In the *Translator Interference Order*, the Commission stated that an acceptable listener complaint must, *inter alia*, contain “a statement that the complaint listens to the desired station using an over-the-air signal at least twice a month . . . [and] has no legal, employment, financial, or familial affiliation or relationship with the desired station”²¹

We find Delmar that has failed to submit the required six rule-compliant listener complaints. Regarding the individual Sixth Supplement Listeners, apart from listener Schott, all failed to identify the desired station, WVXG(FM), in their complaints. Moreover, none reported listening “over-the-air” to WVXG(FM). In addition, listeners Mullins and Lindenbalt also failed to address whether they had a “legal, employment, financial, or familial affiliation or relationship” with WXVG(FM).²² We therefore find the Sixth Supplement to be fatally defective and will dismiss the Complaints.

¹⁷ Specifically, NABC notes that listener Roche “variously lists his name as ‘Joesph Roche’ . . . ‘Joe Rouche’ . . . [and] the final ‘Date’ for this listener [Roche] lists ‘09/06/2019’ while the email date . . . purports to be dated September 23, 2019; . . . Robert Keehl (email dated September 12, 2019, but ‘Date’ block is ‘09/21/209’); Robert Schott (e-mail dated September 23, but ‘Date’ block is ‘09/09/2019’; and Robin Snyder (e-mail dated September 23, 2019, but ‘Date’ block is ‘09/10/2019’).” *Id.* at 3.

¹⁸ Response at 2.

¹⁹ *Id.*

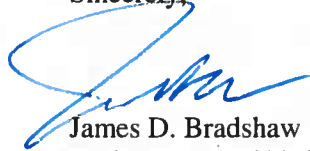
²⁰ See e.g. *Letter to J.B. Crawley and Martin Hemsley*, 22 FCC Rcd 10285, 10286 (MB 2007) (treating a petition deny a license application as an informal objection).

²¹ *Translator Interference Order*, 34 FCC Rcd at 3466 para. 17.

²² As an aside although we are dismissing the Sixth Supplement as fatally defective, for clarification purposes, we disagree that the complaints lacked “proper” electronic signatures. In *Translator Interference Order*, the Commission did not specify a particular format for electronic signatures. Additionally, while listeners Mullins, Keehl, and Johnston reported interference at “I-71 at Polaris Parkway,” Keehl, and Johnston reported more than one interference location and thus do not report interference from the “same location.” Lastly, we do not find any “additional discrepancies” apart from minor typographical errors.

Conclusion. Accordingly, IT IS ORDERED that Delmar Communications, Inc.'s, Consolidated Petition to Deny Pending License Application & Request for Immediate Revocation of Operating Authority filed on September 7, 2017, and related supplements ARE DISMISSED.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Bradshaw", is written over the typed name.

James D. Bradshaw
Senior Deputy Chief
Audio Division
Media Bureau