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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
WRPX, INC.) **Facility ID No. 141819**
)
FM Translator Station **W279DD**)
Hudson, WI)

To: Chief, Audio Division, Media Bureau
Filed in ECFS Inbox-1.41

PETITION FOR RECONSIDERATION

1. Introduction. On April 29, 2020, Stewards of Sound, Inc. (“Stewards”) filed a Petition for Reconsideration (“Petition”) of the Audio Division’s letter ruling of March 30, 2020 (“Decision”), dismissing Stewards’ interference complaint (“Complaint”) against WRPX, Inc. (“WRPX”) with respect to interference caused by FM translator W279DD, Facility ID 141819, to listener reception of the co-channel signal of WWIB, Facility ID 63428. WRPX filed an Opposition on May 12, 2020. This is Stewards’ Reply to WRPX’s Opposition.¹

2. WRPX has presented no reasons that undermine, and has in fact reinforced, Stewards’ position that the Decision improperly expanded the Commission’s recently adopted complaint requirements² when it faulted Stewards for insufficient, rather than non-existent, private attempts to resolve the interference problem, and the Decision also defied common sense in holding that a listener who states that he or she cannot receive WWIB “on 103.7” has not stated that listening took place over the air. Moreover, no one has disproved the basic fact that

¹ Since there is no LMS file number associated with this proceeding, all pleadings have been filed using Inbox-1.41 of the Commission’s Electronic Comments Filing System (“ECFS”).

² See *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, 34 FCC Rcd. 3457 (2019) (“Report and Order”).

WWIB listeners are experiencing interference that is flatly forbidden by Section 74.1203(a)(3) of the FCC's Rules.

3. Private Negotiation. WRPX's own pleading shows that private discussions between Stewards and WRPX were even more extensive than what Stewards documented. Some of the discussions were by telephone, with no recordings or transcripts retained, but the email of May 23, 2017, from Pat Wahl of Stewards to Mark Mueller, WRPX's consultant, included as an exhibit to WRPX's Opposition, shows that Stewards attempted to reach the consultant by telephone and had not received a response. WRPX also submitted an email dated October 25, 2019, from Mr. Mueller to Mr. Wahl, showing ongoing discussion.

4. The FCC rule³ requires a "*statement* that the complaining station licensee has used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted private resolution [*emphasis added*]." The rule does not dictate the nature or length of the attempts, nor does it specify which party should propose solutions. In the instant case, WRPX has proposed solutions twice, by filing applications to modify the translator's antenna pattern, with its most recent proposal embodied in LMS File No. 0000087322, as recited in its October 25, 2019, email. In sum, the statement required by the rule was unquestionably made in the Petition, and the parties have communicated privately for over two years, including recently.

5. Installation of WRPX's Proposed New Antenna. Despite the private communication and the grant of WRPX's latest application, the proposed new antenna has not yet been installed. WRPX gives two reasons. One is winter weather, which has now passed with the change of seasons. The other is the pandemic emergency, but WRPX has provided no details

³ Section 74.1203(a)(3)(iv).

as to what, if any, efforts it has made to find a tower crew to replace its antenna; nor has WRPX even stated that it has purchased the antenna and has it ready to install. Not all tower work has been suspended because of the pandemic, as evidenced by the fact that the TV spectrum repack is proceeding, albeit with some delays. Therefore, Stewards maintains its position that WRPX should be directed to install the new antenna promptly or else shut the translator down until installation has been completed.⁴

6. Listening on Translators. WRPX's claim that WWIB's listeners may be tuning to a translator rather than the primary station makes no sense, because listeners whose radios were tuned to a frequency other than 103.7 MHz would not receive interference from the translator and so would not have complained to Stewards.⁵

7. WWIB Operation with Licensed Parameters. Finally, WRPX challenges Stewards' claim that WWIB is operating in conformance with the terms of its license, because the WWIB antenna is old, and its performance may be impaired. WRPX cites no authority for

⁴ There has been some discussion in the pleadings regarding whether WRPX complied with the FCC's Order of June 11, 2018, to shut down the translator. In its Opposition, WRPX provided a copy of its letter of June 28, 2018, to the Commission, indicating that at first, the translator power was reduced, and later, the translator was shut down pending issuance of an STA to resume operation with reduced power. It should be noted that the June 28 letter was not served on Stewards, and it does not appear in CDBS. Stewards' request for enforcement does appear in CDBS. The STA application appears in CDBS but was not listed in any FCC public notice and was also not served on Stewards. Therefore, Stewards was at the time aware of only WRPX's application to modify its directional antenna pattern, which it learned about through the Commission's public notices. Upon noting the modification application, Stewards waited to see if the new antenna pattern would resolve the interference problem and returned to the Commission with a new complaint only after ascertaining that listeners continued to experience interference.

⁵ Among the listener complaints submitted by Stewards on October 21, 2019, John Caterer, Dave Clausen, and Jerry Holman explicitly refer to "WDGY" as the source of the interference, showing that interference was being received on 103.7 MHz. WDGY is the primary station rebroadcast by W279DD.

the proposition that operation “within its licensed parameters”⁶ means other than operation at the geographic coordinates, with the power, at the antenna height, and with the type of antenna specified in the station’s authorization. Inspection and evaluation of the performance of the station’s equipment is not part of the rule. But notwithstanding the absence of a showing that WWIB is not operating with its licensed facilities and parameters, the fact is that the WWIB antenna was refurbished since the exchange of correspondence between Terry D. Steward and Robert A. Jones in 1983;⁷ so the 1983 correspondence is irrelevant.

8. Conclusion. Nothing in either the pleadings or in real life has refuted the conclusion that the end result of the Decision is a continuation of proven interference that is occurring in fact, contrary to the letter, spirit, and intent of Section 74.1203(a)(3) of the Commission’s Rules. W279DD has been on the air causing interference to reception of WWIB for four years -- interference that has been well documented.

9. If reconsideration is not granted, the effect will be that the Audio Division will have rewritten the rule to say, instead of that a translator may not cause interference to a primary station, that a translator may cause interference unless the primary station files a complaint which precisely complies with every literal word of Section 74.1203(a)(3) in the way that the Audio Division decides to apply those words. That is not what the rule says, has never been articulated as what the Commission decided, and turns the basic purpose of the rule upside down by favoring translators – a secondary service – over primary stations.

⁶ See Section 74.1203(a)(iii) of the Commission’s Rules.

⁷ See attached Declaration of Patrick Wahl. Also note that in the correspondence submitted by WRPX, Mr. Steward concluded that the old antenna would give better coverage than a new one, and Mr. Jones replied that he agreed that the antenna should not be replaced.

10. As a result of the Decision, WRPX is free to tear up its latest construction permit and to continue to operate a translator that unquestionably is causing interference to over-the-air reception of WWIB by *bona fide* listeners. The correct solution, which comports with purpose and intent of the regulatory scheme, is to require WRPX to install its new antenna immediately, and as a way to encourage promptness, to require that the translator cease operation with its present facilities.

Respectfully submitted,



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Counsel for Stewards of Sound, Inc.

May 15, 2020

DECLARATION OF PATRICK WAHL

Patrick Wahl hereby declares as follows:

1. I am Chief Engineer for Stewards of Sound, Inc., licensee of radio stations WWIB(FM) and WOGO(AM), Hallie, Wisconsin.
2. I personally oversaw in the rebuilding of the antenna of WWIB, along with Terry D. Steward, including testing each antenna bay. I have reviewed WWIB's records and have confirmed that the rebuild was completed on March 20, 1998.
3. I have been employed by Stewards for more than 37 years. As Chief Engineer, I pay careful and ongoing attention to the performance of WWIB's transmission equipment. I believe that the existing antenna is performing well.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 15, 2020

A handwritten signature in black ink, appearing to read 'Patrick Wahl', written over a horizontal line.

Patrick Wahl

CERTIFICATE OF SERVICE

I, Peter Tannenwald, do hereby certify that I have, this 14th day of May, 2020, caused to a copy of the foregoing “Petition for Reconsideration” to be sent by electronic mail to:

James A. Koerner, Esq.
jkoerner.law@comcast.net
7020 Richard Drive
Bethesda, MD 20817
Counsel for WRPX, Inc.



Peter Tannenwald

Peter Tannenwald

From: no-reply@fcc.gov
Sent: Friday, May 15, 2020 5:33 PM
To: Peter Tannenwald
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Author(s): Peter Tannenwald, Matthew H. McCormick

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