



Federal Communications Commission
Washington, D.C. 20554

September 28, 2020

In Reply Refer to:
1800B3-KV

New River Community Church
c/o Christopher D. Imlay, Esq.
Booth, Freret & Imlay, LLC
14356 Cape May Road
Silver Spring, Maryland 20904-6011

Red Wolf Broadcasting Corporation
c/o Scott Woodworth, Esq.
Edinger Associates PLLC
1725 I Street, NW
Suite 300
Washington, DC 20006

In re: WYPH-LP, Manchester, Connecticut
New River Community Church
Facility ID No. 193136
File No. BLL-20170807AAT

Interference Complaint

Dear Counsel:

This letter refers to an “Interference Complaint” (Complaint) filed as an informal objection on January 10, 2020, by Red Wolf Broadcasting Corporation (Red Wolf)¹ alleging that WYPH-LP, Manchester, Connecticut (WYPH-LP)² is causing interference to WDRC-FM. On April 23, 2020, the Media Bureau (Bureau) ordered WYPH-LP to cease operations and remediate the interference caused to WDRC-FM.³ On April 29, 2020, New River filed a “Response to Interference Complaint and Request to Vacate Cease Operation Order” (Complaint Response Request).⁴ For the reasons, discussed below, we

¹ Red Wolf is the licensee of WDRC-FM, Hartford, Connecticut.

² WYPH-LP is licensed to New River Community Church (New River).

³ See *Letter from James D. Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau, FCC, to New River Community Church* (dated Apr. 23, 2020) (*Cease Operations Letter*).

deny New River's Complaint Response Request and Strike Motion, and affirm the Bureau's *Cease Operations Letter*.

Background. On January 28, 2016, New River filed an application for modified construction permit for WYPH-LP.⁵ In the Permit application, New River requested, pursuant to section 73.807(e)(1)⁶ of the Commission's rules (Rules), a second-adjacent channel waiver because WYPH-LP would be short-spaced to second-adjacent channel stations WDRC-FM and WAQY(FM),⁷ Springfield, Massachusetts.⁸ On February 9, 2016, the Bureau granted New River's second-adjacent channel waiver request and issued the Permit.⁹ On August 7, 2017, New River filed a license to cover the Permit, which the Bureau granted on August 10, 2017.¹⁰

On January 10, 2020, Red Wolf filed the Complaint alleging that WYPH-LP's operations were causing interference to the reception of WDRC-FM. In support, Red Wolf attached six listener complaints (Listener Complaints), dated between (inclusive) June 6, 2018, and November 8, 2019, each complaining of interference.¹¹

On April 23, 2020, in response to the Complaint, the Bureau ordered WYPH-LP to cease operations.¹² Citing section 73.807(e)(2)(ii)¹³ of the Rules, the Bureau further ordered WYPH-LP to remain silent until it had eliminated the interference to the reception of WDRC-FM or demonstrated that it was not the cause of said interference.¹⁴

In the Complaint Response Request, New River contends the Complaint is meritless and requests that the Bureau vacate its decision in the *Cease Operations Letter* and investigate whether Red Wolf

⁴ Also, before us are the following associated pleadings: 1) an "Opposition to Response" filed on May 20, 2020, by Red Wolf (Complaint Response Request Opposition); 2) a "Motion to Strike Opposition to Response" filed on May 26, 2020, by New River (Strike Motion); 3) an "Opposition to Motion to Strike" filed on June 2, 2020, by Red Wolf (Strike Motion Opposition); 4) a "Reply to Opposition to Motion to Strike" filed on June 4, 2020, by New River (Strike Motion Reply); 5) a "Motion to Expedite" filed on September 4, 2020 by New River; and 6) an "Opposition to Motion to Expedite" filed on September 16, 2020 by Red Wolf

⁵ File No. BPL-20160128BFG (Permit).

⁶ 47 CFR § 73.807(e)(1).

⁷ WAQY(FM), licensed to Saga Communications of New England, LLC, is not a party to the instant Complaint proceeding.

⁸ See Permit, Exhibit 11. New River further noted that under its original license (File No. BLL-20140423ABG), WYPH-LP was short-spaced to WDRC-FM and WAQY(FM).

⁹ See *Broadcast Actions*, Public Notice, Report No. 48670 (MB Feb. 12, 2016).

¹⁰ File No. BLL-20170807AAT (License). See *Broadcast Actions*, Public Notice, Report No. 49049 (MB Aug. 15, 2017).

¹¹ Specifically, Red Wolf submitted complaints from the following listeners: Dave Chappell (Chappell) reported interference "on North Main Street, Oakland Street, Sheldon Road and at the Saint Bridget School in Manchester, CT"; Joseph Pellegrino (Pellegrino) reported interference "on North Main Street, Oakland Street, and Sheldon Roads [sic] in Manchester, CT"; Ed Lamarre (Lamarre) reported interference "on North Main Street, Oakland Street, Sheldon Road and at the Saint Bridget School in Manchester, CT"; Dr. Robert Stoker (Stoker) reported interference at "375 Oakland Street"; Georgia Asselin (Asselin) reported interference at "375 Oakland Street"; and Nate Gezelman (Gezelman) reported interference at 827 Middle Turnpike East and "on North Main Street, Oakland Street, Sheldon Road and at the Saint Bridget School in Manchester, CT." Complaint, Exhibit A.

¹² See *Cease Operations Letter* at 2.

¹³ 47 CFR § 73.807(e)(2)(ii).

¹⁴ See *Cease Operations Letter* at 2, n.8.

made material misrepresentations in the Complaint. New River states that prior to the instant Complaint, WYPH-LP operated without receiving an interference complaint.¹⁵ New River notes that when WYPH-LP was operational, it broadcast New River’s church services, which New River asserts were “extremely important to its congregation . . . since the commencement of the COVID-19 pandemic.”¹⁶ New River claims that Red Wolf “fabricated” the Complaint to “oust WYPH-LP from FM channel 273 . . . to pave the way for commencement of operation of a potentially interfering FM translator, co-channel to WYPH-LP, for which Red Wolf holds a construction permit.”¹⁷

New River asserts that there are “numerous problems” with the Listener Complaints.¹⁸ Specifically, New River alleges that Red Wolf “solicited” the Listener Complaints over a “very long period of time.”¹⁹ In support, New River included a purported transcript of a WDRC-FM announcement, broadcast on or around August 6, 2019, identifying WYPH-LP as the interference source and describing reported interference locations.²⁰ New River claims the Listener Complaints were “obviously” prepared by Red Wolf and failed to demonstrate that the listener “determined for themselves what the source was of any interference” to WDRC-FM.²¹ New River also includes a text message purportedly from listener Chappell to an unidentified New River church congregant stating, “I never heard enough to determine what was there [the interference source] just the music stopped and there were people having a conversation.”²² New River reports that on January 21, 2020, Tom Ray Broadcasting, LLC (TRB), a consulting engineer firm retained by New River, performed solo interference tests at certain reported interference locations but did not detect interference from WYPH-LP to WDRC-FM on TRB’s car radio.²³

New River opines that Red Wolf holds an unbuilt FM translator construction permit on channel 273, Meriden, Connecticut, that when built will be short-spaced to WYPH-LP. New River asserts that “but for the presence of WYPH-LP, Red Wolf could let out the signal of the translator . . . and cover the City of Hartford and the City of Manchester.”²⁴

In opposition to the Complaint Response Request, Red Wolf argues that the Bureau should affirm its decision in the *Cease Operations Letter* because New River has not resolved the interference caused to the reception of WDRC-FM or demonstrated that WYPH-LP is not the source of the interference to WDRC-FM. Red Wolf contends it is irrelevant that WYPH-LP has previously operated without an interference complaint, as there is no time limit on the filing of interference complaints.²⁵ Red Wolf reports that after it acquired WDRC-FM in March 2018, Red Wolf received calls from listeners complaining of interference and it commenced an investigation which determined that WYPH-LP was the interference source.²⁶ Red Wolf argues that TRB’s interference findings should not be considered

¹⁵ Complaint Response Request at 2-3.

¹⁶ *Id.* at 2-3.

¹⁷ *Id.* at 1.

¹⁸ *Id.* at 3.

¹⁹ *Id.*

²⁰ *Id.* at 3-4.

²¹ *Id.* at 4.

²² *Id.* at 5 and Exhibit A.

²³ *Id.* at 6 and Exhibit B.

²⁴ *Id.* at 7.

²⁵ Complaint Response Request Opposition at 1, n.3.

²⁶ *Id.* at 2-3 and Exhibit A, “Declaration of John A. Fuller” (Fuller Declaration).

because TRB is not an independent party.²⁷ Red Wolf claims that after the Bureau ordered WYPH-LP to cease operations, John Fuller, President of Red Wolf, visited certain reported interference locations and found the reception of WDRC-FM to be free of interference.²⁸ Red Wolf argues that the Rules do not prohibit WDRC-FM from broadcasting announcements concerning the interference or preclude listeners from using a standardized complaint form.²⁹

Red Wolf asserts that, apart from listener Chappell, New River failed to address the Listener Complaints.³⁰ As for listener Chappell, Red Wolf argues there is no evidence that he sent the text message submitted by New River, and, even if he did, the text does not refute his interference complaint.³¹ Red Wolf also attached a May 19, 2020, declaration from listener Pellegrino, reporting that “I am no longer receiving interference from WYPH ‘Y-102’, since the weekend of April 23, 2020.”³²

Red Wolf alleges that when WYPH-LP was operating it broadcast commercials in violation of the “non-profit sponsorship rules.”³³ In support, Red Wolf attached transcripts, prepared by a Red Wolf employee, of commercials purportedly transmitted on WYPH-LP’s internet station.³⁴ Lastly, Red Wolf reports that it offered to help New River move WYPH-LP to channel 232, which Red Wolf claims is available, and also offered New River the use of one of Red Wolf’s HD channels. Red Wolf claims that New River has not responded to Red Wolf’s offers.³⁵

In the Strike Motion, New River requests that Red Wolf’s Complaint Response Request Opposition be stricken from the record because it was untimely and improperly included new material. New River asserts that although Red Wolf labeled the pleading an “opposition,” it is in fact a reply, and per section 1.45 of the Rules,³⁶ the reply was due by May 7, 2020. New River argues that even if the pleading is treated as an opposition, it would still be untimely because an opposition would have been due by May 11, 2020, but the pleading was not filed until May 20, 2020.³⁷ New River also contends that Red Wolf’s filing improperly contained the following new material: 1) the Fuller Declaration, which reported his interference findings; 2) the Pellegrino Declaration, which purportedly raised a new interference claim; and 3) transcripts of sponsorship announcements allegedly broadcast on WYPH-LP’s internet station.³⁸ New River further asserts that TRB’s “credentials are above reproach” and its interference test results are “independent conclusions.”³⁹

²⁷ *Id.* at 2.

²⁸ *Id.*, Exhibit A, Fuller Declaration.

²⁹ *Id.* at 2, n.4.

³⁰ *Id.* at 3.

³¹ *Id.* at 2-3.

³² *Id.*, Exhibit B, “Declaration of Joseph Pellegrino” (Pellegrino Declaration).

³³ *Id.* Exhibit A, Fuller Declaration at 2.

³⁴ *Id.* Exhibit C, “Declaration of Matt Voos” (Voos Declaration).

³⁵ *Id.* at 3-4.

³⁶ 47 CFR § 1.45.

³⁷ Strike Motion at 2-3. New River also contends that even if Red Wolf’s pleading is considered an opposition it is untimely because per section 1.45 of the Rules it was due by May 11, 2020. *Id.*

³⁸ *Id.* at 3-4.

³⁹ *Id.* at 4, n.2.

In opposition to the Strike Motion, Red Wolf counters that section 1.45 of the Rules is inapplicable to “informal LPFM complaint proceedings.”⁴⁰ Red Wolf contends that the Pellegrino Declaration merely confirmed “that the interference to WDRC-FM stopped when WYPH-LP went off the air” after the Bureau issued the *Cease Operations Letter*.⁴¹ As an aside, Red Wolf observes that New River has not filed a notice of suspension of operations stating the date that WYPH-LP ceased broadcasting.⁴² Regarding TRB’s interference test results, Red Wolf declares that TRB is not an independent party because it was retained by New River.⁴³ Finally, Red Wolf repeats its offers to assist New River to relocate WYPH-LP to channel 232 and to provide the use of one of Red Wolf’s HD channels.⁴⁴

In reply, New River claims that section 1.45 of the Rules is a “catch-all rule” that applies to the instant pleading cycle, and thus, Red Wolf’s pleading was untimely and improperly contained new material.⁴⁵ New River also contends that it is not required to file a notice of suspension of operations for WYPH-LP because section 73.802(e)(2)(ii) of the Rules permits short transmissions to test remedial measures during periods of suspended operation.⁴⁶ New River reiterates that the Bureau should accept TRB’s interference test results because TRB’s credentials “are beyond reproach.”⁴⁷ Nevertheless, New River states that “it is willing to participate in interference tests, at Red Wolf’s expense, using a qualified consulting engineering under the supervision of Thomas R. Ray III, and a report given to the Commission. But the Commission should vacate the cease operations order as a precondition of that procedure.”⁴⁸ Finally, New River claims that channel 232 is not available because WYPH-LP would be short-spaced to co-channel and first-adjacent stations.⁴⁹

Discussion. *Strike Motion.* In the Strike Motion, New River argues that Red Wolf’s Complaint Response Request Opposition should be stricken from the record because it was untimely and improperly included new material. Citing section 1.45(c) of the Rules, New River argues that Red Wolf had five days to reply to the Complaint Response Request, and “[i]t is hornbook FCC law that new material cannot be raised in a reply pleading.”⁵⁰ New River further contends that even if Red Wolf’s filing is deemed to be an opposition, per section 1.45(b) of the Rules, it was due ten days after the Complaint Response Request.

We disagree. Section 1.45, which governs filing periods for pleadings, covers petitions to deny, not informal objections.⁵¹ There is no formal pleading cycle for informal objections.⁵² Here, Red Wolf

⁴⁰ Strike Motion Opposition at 2.

⁴¹ *Id.*

⁴² *Id.* at 1.

⁴³ *Id.* at 2, n.3.

⁴⁴ *Id.* at 2.

⁴⁵ Strike Motion Reply at 2.

⁴⁶ *Id.* at 2 & n.1.

⁴⁷ *Id.* at 4

⁴⁸ *Id.*

⁴⁹ *Id.* at 4-5.

⁵⁰ Strike Motion at 3.

⁵¹ See, e.g., *WCVO (FM), Gahanna, Ohio*, Letter, 20 FCC Rcd 12348, n.4 (MB 2005) (“47 CFR § 1.45, which governs filing periods for pleadings, covers formal Petitions to Deny and not Informal Objections”); see also *Tabback Broad. Co.*, Memorandum Opinion and Order 15 FCC Rcd 11899, 11900, para. 4 (MB 2000) (“[T]he

filed the Complaint as an informal objection. New River opposed the Complaint in the Complaint Response Request, and then Red Wolf responded to the New River pleading with the Complaint Response Request Opposition. Because section 1.45 is inapplicable to the instant proceeding, we deny New River's Strike Motion.

Complaint. As discussed above, WYPH-LP is licensed pursuant to a granted second-adjacent channel waiver.⁵³ Section 73.807(e)(2)(ii) stipulates that “[a]n LPFM station that receives a waiver under paragraph (e)(1) of this section shall suspend operation immediately upon notification by the Commission that it is causing interference to the reception of an existing or modified full-service FM station.”⁵⁴ Upon receipt of a *bona fide* complaint of interference caused by an LPFM station operating pursuant to a second-adjacent channel waiver, the Commission notifies the LPFM station, which must suspend operations until the interference is eliminated or it is demonstrated that the LPFM station is not the interference source.⁵⁵

In the Complaint, Red Wolf has submitted *bona fide* Listener Complaints reporting interference to their WDRC-FM reception. A *bona fide* complaint is defined as being “from a disinterested listener and must include the listener’s name and address, and the location at which the interference occurs.”⁵⁶ We find meritless New River’s claim that the Listener Complaints are not probative because they were “solicited” by Red Wolf over “a very long period of time.”⁵⁷ The Commission places no temporal limitation on interference complaints against LPFM stations operating pursuant to a second-adjacent channel waiver.⁵⁸ In addition, New River fails to cite any Rule prohibiting Red Wolf from broadcasting informational announcements on WDRC-FM concerning the interference or from preparing standardized interference complaint forms that are, as is the case here, reviewed and signed by the listener. Regarding the individual Listener Complaints, we find the purported text message from Listener Chappell to an unnamed New River church congregant to be unpersuasive, as there is no evidence Chappell sent the message nor do the contents indicate that Chappell disavowed his complaint.⁵⁹ We also decline to consider TRB’s interference test results because TRB was retained by New River and thus is not an independent party.⁶⁰ Similarly, we find meritless Red Wolf’s employee declaration⁶¹ alleging that

limitations on the number and timing of pleadings filed in response to petitions to deny are inapplicable to informal objections . . .”).

⁵² See *KXLG(FM), Milbank, South Dakota*, Letter, 26 FCC Rcd 15567, 15569 (MB 2011) (“there is no formal pleading cycle for informal objections”).

⁵³ See *supra* notes 9-10.

⁵⁴ 47 CFR § 73.807(e)(2)(ii).

⁵⁵ *Id.* See also, e.g., *New LPFM Stations at Birmingham, Alabama, LPFM MX Group 2*, Memorandum Opinion and Order, 31 FCC Rcd 5163, n.10 (2016) (LPFM station operating pursuant to a second-adjacent channel waiver must suspend operations upon Commission notification and cannot resume operations until elimination of interference or demonstration that LPFM station is not the interference source).

⁵⁶ *Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15432, para 84 (2012) (*LPFM Sixth Report and Order*).

⁵⁷ Complaint Response at 3.

⁵⁸ See 47 CFR § 73.807(e)(2)(ii); and *LPFM Sixth Report and Order*, 27 FCC Rcd at 15432 para 83-84.

⁵⁹ See *supra* note 22. For example, New River did not provide a declaration from Chappell confirming that he sent the purported text message to the New River Church congregant or recanting his complaint.

⁶⁰ See, e.g., *Iglesia Jesucristo Es Mi Refugio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 16310, 16319 (MB 2010) (petitioner’s engineering consultant is not a disinterested witness).

⁶¹ See *supra* note 34.

WYPH-LP broadcast commercials in violation of the Rules.⁶²

In light of the foregoing, we find that New River has failed to eliminate the interference caused to the reception of WDRC-FM or demonstrate that WYPH-LP is not the interference source.⁶³ Therefore, we deny New River's Complaint Response Request and affirm the Bureau's decision in the *Cease Operations Letter*.⁶⁴

Conclusion. Accordingly, IT IS ORDERED that the "Motion to Strike Opposition to Response" filed on May 26, 2020, by New River Community Church, IS DENIED.

IT IS FURTHER ORDERED that the "Response to Interference Complaint and Request to Vacate Cease Operation Order" filed on April 29, 2020, by New River Community Church, IS DENIED.

Sincerely,

James D. Bradshaw
Senior Deputy Chief
Audio Division
Media Bureau

⁶² See, e.g., *Second Samoan Congregation Church*, Letter, 23 FCC Rcd 16630, 16636 (MB 2008) (applicant's counsel's statements should be given little weight because he is not a disinterested witness).

⁶³ As an aside, we note that our independent engineering review indicates that channel 232 is not available for potential relocation because WYPH-LP would then be short-spaced to co-channel and adjacent channel stations in violation of the spacing requirements set forth in 47 CFR § 73.807. See also *LPFM Sixth Report and Order*, 27 FCC Rcd at 15430 para 80 ("We remind potential LPFM applicants that the LCRA permits the Commission to grant waivers only of second-adjacent, and not co- and first-adjacent, spacing requirements.").

⁶⁴ Although the Bureau ordered WYPH-LP to cease operations, New River is still obligated to file a written notification of the date WYPH-LP's operations were suspended. See *Amendment of Parts 73 and 74 to Improve the Low Power FM Service Technical Rules*, MB Docket Nos. 19-193, 17-105, Report and Order, 35 FCC Rcd 4115, 4135, para. 49 (Apr. 23, 2020) (the Bureau has consistently required LPFM stations to provide notification within 10 days of temporarily discontinuing operations).