



Federal Communications Commission
Washington, D.C. 20554

April 19, 2021

In Reply Refer to:
1800B3-KV

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In re: W279DD, Hudson, WI
WRPX, Inc.
Facility ID No. 141819
File No. BLFT-20180801ABO

Interference Complaint

Dear Counsel:

We have before us a “Petition for Reconsideration” (Petition) filed on April 29, 2020, by Stewards of Sound, Inc. (Stewards).¹ The Petition seeks reconsideration of the Media Bureau’s (Bureau) March 30, 2020,² dismissal of Stewards’ complaint alleging that W279DD, Hudson, Wisconsin (W279DD or Translator)³ is causing interference to the over-the-air reception of WWIB(FM).⁴ For the reasons discussed below, we deny the Petition.

Background. First Complaint. On August 24, 2017, Stewards filed an interference complaint (First Complaint) alleging that W279DD, as then licensed (2016 License)⁵ on channel 279 at Hudson Wisconsin, was interfering with the over the air reception of WWIB(FM). On June 11, 2018, the Bureau

¹ Stewards is the licensee of WWIB(FM), Hallie, Wisconsin.

² See Letter from James D. Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau, to Peter Tannenwald, Esq., *et. al.* (Mar. 30, 2020) (on file in BLFT-20180801ABO) (*Second Complaint Dismissal Letter*).

³ W279DD is licensed to WRPX, Inc. (WRPX or Licensee).

⁴ Also before us are an “Opposition to Petition for Reconsideration” (Opposition) filed on May 12, 2020, by WRPX; and a “Reply” (Reply) filed on May 15, 2020, by Stewards.

⁵ File No. BLFT-20160502ABR. See *Broadcast Actions*, Public Notice, Report No. 48743 (rel. May 26, 2016).

granted the First Complaint and ordered WRPX to cease operations and remediate the interference caused to WWIB(FM);⁶ the parties did not appeal the Bureau's decision.

On June 27, 2018, WRPX filed a minor modification application (2018 Permit)⁷ seeking to operate W279DD with a directional antenna. The Bureau granted the 2018 Permit on July 13, 2018. On August 1, 2018, WRPX filed an application for a license to cover (2018 License)⁸ the 2018 Permit, which the Bureau granted on September 12, 2018.

Second Complaint. On October 31, 2018, Stewards filed a second interference complaint (Second Complaint) alleging that W279DD, as licensed under the 2018 License, is causing interference to the over-the-air reception of WWIB(FM). While the Second Complaint was pending, the Commission revised its rules relating to FM translator interference complaints and the complaint resolution process.⁹ In the *Translator Interference Order*, the Commission stated that complaints still pending as of the effective date of the new rules would be decided under those rules, and if necessary, parties would be given an opportunity to submit supplemental materials to address the new rules.¹⁰ The new rules became effective on August 13, 2019.¹¹

On August 22, 2019, the Bureau notified Stewards that the Second Complaint lacked certain information required by the Commission's new rules (Rules).¹² In particular, the Bureau noted, *inter alia*,¹³ that the Second Complaint did not contain a statement that Stewards had used commercially reasonable efforts to inform WRPX of the interference alleged therein and attempted private resolution and that the complaint did not include the required minimum number of valid listener complaints, as

⁶ See Letter from James D. Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau, to James A. Koerner, Esq., *et. al.* (Jun. 11, 2018) (on file in BLFT-20180801ABO) (*First Complaint Grant Letter*).

⁷ File No. BPFT-20180627AAR. See *Broadcast Actions*, Public Notice, Report No. 49280 (rel. Jul. 18, 2018). In the 2018 Permit application, WRPX stated “[t]he instant application is being filed to remediate alleged interference . . . and changes the antenna from nondirectional to directional with no other modifications.” Exh. 1, 2018 Permit.

⁸ File No. BLFT-20180801ABO. See *Broadcast Actions*, Public Notice, Report No. 49322 (rel. Sep. 17, 2018).

⁹ 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*), *recon denied*, Order on Reconsideration, 35 FCC Rcd 11561 (2020).

¹⁰ *Translator Interference Order* at 3482, para. 49.

¹¹ *Media Bureau Announces August 13, 2019, Effective Date of Amended Rules for FM Translator Interference*, MB Docket No. 18-119, Public Notice, 34 FCC Rcd 7004 (MB 2019).

¹² See Letter from James Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau, to Peter Tannenwald, Esq. (Aug. 22, 2019) (on file in BLFT-20180801ABO) (*Second Complaint Deficiency Letter*).

¹³ *Id.* at 1-3. Specifically, the Bureau noted that the following information was missing from the Second Complaint: (1) detailed information on the Station's protected contour and the population located therein; (2) the required minimum number of valid listener complaints, as determined by the population located within the Station's protected contour and defined in section 74.1201(k) of the Commission's rules; (3) a statement that the Station is operating within its licensed parameters; (4) a statement that the Station has used commercially reasonable efforts to inform the Translator of the claimed interference and attempted private resolution; and (5) U/D 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. *Id.*

defined in sections 74.1203(a)(3)(iv)¹⁴ and 74.1201(k)¹⁵ of the Rules. The Bureau informed Stewards that failure to submit the required information would result in dismissal of the Second Complaint.¹⁶

On October 21, 2019, Stewards filed a supplement to the Second Complaint (Second Complaint Supplement), which it claimed included the information requested in the *Second Complaint Deficiency Letter*.

Second Complaint Dismissal Letter. On March 30, 2020, the Bureau released the *Second Complaint Dismissal Letter* finding that Second Complaint and Second Complaint Supplement were not a valid and complete interference claim package.¹⁷ Specifically, the Bureau found that Stewards merely detailed efforts made in August 2017 to privately resolve the interference alleged in the First Complaint, which had been adjudicated, but that Stewards failed to state that it had attempted to privately resolve the interference issues raised in the Second Complaint.¹⁸ The Bureau also found that none of the listener complaints reported listening over-the-air to WWIB(FM) but rather reported listening “to WWIB on 103.7 at least twice a month.”¹⁹

Pleadings. On April 29, 2020, Stewards filed the Petition seeking reconsideration of the dismissal of the Second Complaint. In the Petition, Stewards claims that the Bureau “improperly expanded the requirements adopted in [the *Translator Interference Order*]” when it concluded that Stewards’ statement about an attempted private resolution was insufficient because it related to a separate claim that had already been adjudicated, rather than the complaint at issue in this proceeding.²⁰ Stewards contends that its interference dispute with W279DD has been ongoing and that the *Translator Interference Order* does not require that Stewards repeat its previous attempts to resolve the matter privately.²¹ Stewards further asserts the *Second Complaint Deficiency Letter* did not state “that new efforts at private resolution were required.”²² Stewards also claims that it was not reasonable for the Bureau to find that Stewards’ listener complaints were not valid because they simply stated that the complainant listens to WWIB(FM) on or at 103.7, rather than specifying that the complainant “listens over-the-air” in accordance with section 74.1201(k) of the Rules that all the complaining listeners were relying on over the air reception.”²³ Additionally, Stewards argues that the Bureau should order WRPX to complete installation of the new antenna authorized in a minor modification application granted on

¹⁴ 47 CFR § 74.1203(a)(3)(iv).

¹⁵ *Id.* § 74.1201(k).

¹⁶ *Second Complaint Deficiency Letter* at 3.

¹⁷ *See Second Complaint Dismissal Letter.*

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 2.

²⁰ Petition at 1.

²¹ *Id.* at 3.

²² *Id.* at 4. Stewards argues that it “did in fact repeat the required recitation in its supplemental materials” and provides a copy of email correspondence between engineers for Stewards and WRPX, dated in May 2017, discussing the interference cited in the First Complaint. *Id.*, Exh. 1. “Emails between Pat Wahl (Stewards’ Chief Engineer) and Mark Mueller (WRPX’s Consulting Engineer) (dated May 2, 2017 – May 23, 2017) (May 2017 Email Exchange).

²³ *Id.* at 6.

January 16, 2020 (2020 Permit),²⁴ so that WRPX would not be able “sit on its construction permit” and “install only after Stewards has done all of the work required to file a new complaint.”²⁵

On May 12, 2020, WRPX filed an Opposition arguing that Stewards made no effort to privately resolve the interference alleged in the Second Complaint and that the May 2017 email correspondence between engineers for Stewards and WRPX²⁶ occurred “well before the FCC adjudication of the first Stewards complaint.”²⁷ WRPX also contends that the listener complaints did not report listening over-the-air to WWIB(FM) and that the listeners could have been listening to a WWIB(FM) translator. WRPX states that as of May 2020 it had not yet constructed the 2020 Permit because of winter weather conditions and the COVID-19 shutdown in Wisconsin.²⁸ Additionally, WRPX questions whether “the WWIB 45 dBu contour toward the translator [W279DD] is as shown in the Complaint.”²⁹

On May 15, 2020, Stewards filed a Reply reiterating that it tried to privately resolve the interference purportedly caused by W279DD and that the listener complaints reported listening to WWIB(FM) over-the-air even though they did not specifically state that the complainant “listens over-the-air” to WWIB(FM). Stewards asserts that the Opposition shows that private discussions between Stewards and WRPX were even more extensive than what Stewards documented in its previous filings and that “the parties have communicated privately for over two years, including as recent as October 2019.”³⁰ Stewards also declares that WRPX’s claim that the listener complainants may have been tuning into a translator rather than WWIB(FM) “makes no sense, because listeners whose radios were tuned to a frequency other than 103.7 MHz would not receive interference from the [W279DD] translator and so would not have complained to Stewards.”³¹ Stewards again requests that WRPX be ordered to “promptly” construct the 2020 Permit or cease operations because winter weather has passed and “[n]ot all tower work has been suspended because of the pandemic.”³² Lastly, in response to WRPX’s assertions that WWIB(FM)’s 45 dBu contour as shown in the Second Complaint is not accurate, Stewards reports that WWIB(FM) is operating with its licensed facilities and within its licensed parameters.³³

²⁴ File No. 87322 (2020 Permit). *See Broadcast Actions*, Public Notice, Report No. PN-2-20012149280 (rel. Jan. 21, 2020).

²⁵ Petition at 7-8 & n.9. In addition, Stewards also submitted on reconsideration email correspondence that occurred in March 2020 between the parties’ respective counsel discussing WRPX’s timeframe for constructing the 2020 Permit. *Id.* Exh. 2, “Email Exchange between Stewards’ Counsel and WRPX’s Counsel (dated March 10, 2020 – March 17, 2020) (March 2020 Email Exchange).

²⁶ *See supra* note 22.

²⁷ Opposition at 3.

²⁸ *Id.*

²⁹ *Id.* WRPX claims that WWIB(FM)’s antenna is “not delivering the expected field intensities to the west [and] . . . is quite low.” Exh. 3, Email from Mark A. Mueller to Patrick Wahl *et. al.* (Oct. 25, 2019, 1:38AM CDT), *Id.* (2019 WRPX Email). In support, WRPX attaches correspondence between WWIB(FM) personnel and its then consulting engineer, dated April 8, 1983, purportedly discussing the output of WWIB(FM)’s licensed antenna. *See* Exh. 4, Letter from Terry D. Steward, Manager, WWIB(FM) to Bob Jones, Consulting Engineer, (Apr. 8, 1983), *Id.* (1983 WWIB(FM) Letter).

³⁰ Reply at 2 (citing 2019 WRPX Email).

³¹ Reply at 3.

³² *Id.*

³³ “Declaration of Patrick Wahl” (May 15, 2020), *Id.*

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission’s original order or raises additional facts not known or existing at the time of the petitioner’s last opportunity to present such matters.³⁴ As discussed below, Stewards has failed to demonstrate that reconsideration is warranted.

Pursuant to section 74.1203(a)(3)(iv) of the Rules, a valid and complete interference claim package must include “a statement that the complaining station has used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted a private resolution.”³⁵ Stewards argues that the Bureau improperly expanded the requirements of section 74.1203(a)(3)(iv) of the Rules by finding Stewards made “insufficient, rather than non-existent, private attempts to resolve the interference.”³⁶ We disagree. In the *Second Complaint Dismissal Letter*, the Bureau found that Stewards failed to include the statement required by section 74.1203(a)(3)(iv) of the Rules because Stewards reported only an August 2017 attempt to resolve the interference alleged in the adjudicated First Complaint proceeding.³⁷ The First Complaint concerned W279DD’s operations under the 2016 License and was adjudicated by the Bureau in June 2018.³⁸ As discussed above, WRPX subsequently applied for and obtained the 2018 License, which superseded the 2016 License. Therefore, Stewards’ statement that it attempted to resolve the interference raised in the First Complaint proceeding, which involved W279DD’s operations under its previous license, does not demonstrate that Stewards attempted to resolve the interference raised in the present proceeding regarding the Second Complaint, which involves W279DD’s operations under its current license. Similarly, the May 2017 Email Exchange between engineers for Stewards and WRPX concerns the interference resulting from the Translator’s discontinued operations under its previous license and therefore does not demonstrate that Stewards attempted to resolve the presently alleged interference that Stewards claims is the result of the Translator’s operations under its current license.³⁹ While Stewards asserts that the 2019 WRPX Email and the March 2020 Email Exchange between parties’ counsel demonstrate that the parties communicated about the interference at issue in this proceeding, both of those communications occurred after Stewards filed the Second Complaint Supplement.⁴⁰

Stewards also claims that in the *Translator Interference Order* the Commission “stated only that complaints still pending would be decided pursuant to the new rules and should be amended with ‘supplemental’ materials, not created anew.”⁴¹ However, contrary to Stewards’ assertion, the *Second Complaint Deficiency Letter* did not require that Stewards create the Second Complaint anew but merely afforded Stewards a one-time opportunity to supplement the Second Complaint with information that was missing from the complaint and required to continue processing it under the revised interference complaint procedures. The *Second Complaint Deficiency Letter* specifically noted that the Second

³⁴ See 47 CFR § 1.1069c)-(d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964).

³⁵ 47 CFR § 74.1203(a)(3)(iv). See also *Translator Interference Order*, 34 FCC Rcd at 3470, para. 24 (“[G]iven the streamlined procedures that are imposed by this *Report and Order*, translators and complaining station should have the opportunity to resolve the matter privately prior to filing a formal interference claim with the Commission.”).

³⁶ Petition at 1.

³⁷ See *Second Complaint Dismissal Letter* at 3.

³⁸ See *First Complaint Grant Letter*.

³⁹ See *supra* note 22.

⁴⁰ See *supra* notes 25, and 29.

⁴¹ *Id.* at 3-4.

Complaint was missing a “[s]tatement that the Complaining Station licensee has used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted private resolution” of such interference, *i.e.*, the interference from the Translator’s operations under the 2018 License, as alleged in the Second Complaint, which was the subject of the *Second Complaint Deficiency Letter*. Therefore, the Bureau provided Stewards with ample notice that in order to avoid dismissal of the Second Complaint, Stewards needed to submit a statement confirming that it used commercially reasonable efforts to inform WRPX of the claimed interference from the Translator’s operations under the 2018 license and attempted a private resolution. As discussed in the *Second Complaint Dismissal Letter*, Stewards did not so do.⁴²

Lastly, we reject Stewards’ request that WRPX be ordered to build the 2020 Permit within 30 days. Stewards fails to present any legal basis requiring WRPX to construct before the 2020 Permit’s January 16, 2023, expiration date. However, given that WRPX requested the modification to “remediate the alleged interference [to WWIB(FM)]”⁴³ we strongly encourage WRPX to promptly construct the 2020 Permit. Because we are affirming our dismissal of the Second Complaint and Second Complaint Supplement, we need not address WRPX’s assertions about the accuracy of WWIB(FM)’s 45 dB contour as shown in the Second Complaint. Stewards has affirmed that WWIB(FM) is operating within its licensed parameters, and the record does not indicate otherwise.⁴⁴

Conclusion. For the reasons discussed above, **IT IS ORDERED** that the Petition for Reconsideration filed by Stewards of Sound, Inc., on April 29, 2020, **IS DENIED**.

Sincerely

James D. Bradshaw
Senior Deputy Chief
Audio Division
Media Bureau

⁴² Because we are affirming the Bureau’s finding in the *Second Complaint Dismissal Letter* that Stewards failed to use commercially reasonable efforts to inform WRPX of the claimed interference and attempted a private resolution prior to filing the Second Complaint, as required by Section 74.1203(a)(3)(iv) of the Rules, we need not address Stewards’ assertion that the complainants listened over-the-air to WWIB(FM).

⁴³ 2020 Permit, Exh. 1.

⁴⁴ *See supra* note 33.