

September 10, 2021

VIA U.S. MAIL

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9050 Junction Drive
Annapolis Junction, MD 20701

Attn: Chief, Audio Division, Media Bureau

Re: Complaint Against Low Power FM Station WXNS-LP, Nashville, Tennessee
(FCC Facility ID No. 194547)

Dear Ms. Dortch:

On behalf of The Cromwell Group, Inc., submitted herewith is a Complaint filed against North Nashville Community Radio, licensee of Low Power FM Station WXNS-LP, Nashville, Tennessee.

Please date-stamp the enclosed "Return Copy" of this filing and return it in the enclosed self-addressed stamped envelope. Should there be any questions regarding this matter, please contact the undersigned counsel.

Respectfully submitted,



Nancy A. Ory



**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In re Matter of

NORTH NASHVILLE COMMUNITY RADIO

Low Power FM Station WXNS-LP

Channel 292 (106.3 MHz)

Nashville, Tennessee

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Facility ID No. 194547

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

COMPLAINT

The Cromwell Group, Inc. (“*CGI*”) is the licensee of FM translator station W292ED, Channel 292 (106.3 MHz), Franklin, Tennessee (FCC Facility ID No. 155680) (“*W292ED*”). North Nashville Community Radio (“*NNCR*”) is the licensee of low power FM station WXNS-LP, Channel 292 (106.3 MHz), Nashville, Tennessee (FCC Facility ID No. 194547) (“*WXNS-LP*”). W292ED operates on the same channel as WXNS-LP and is blocked from improving its facilities by the purported operation of WXNS-LP. To CGI’s knowledge and belief, however, WXNS-LP has never been on the air from its licensed facilities, and the station is currently silent.

NNCR filed an application for license to cover on December 16, 2019 (LMS File No. 0000093433) (the “*License Application*”) stating that it had built WXNS-LP in accordance with its underlying construction permit. In addition, NNCR filed a renewal application on April 28, 2020 (LMS File No. 0000112844) (the “*Renewal Application*”) in which it made the following certifications:

- (1) **Adherence to Minimum Operating Schedule:** the station has not been silent (or operating for less than its prescribed minimum operating hours) for any period of more than 30 days;
- (2) **Silent Station:** the station is currently on the air broadcasting programming intended to be received by the public; and
- (3) **Discontinued Operations:** during the preceding license term, the station has not been silent for any consecutive 12-month period.

The foregoing certifications were all false. WXNS-LP has never been operational at the tower site where it purports to be located; moreover, it has no authorization to use that site. NNCR allegedly built WXNS-LP at a tower site owned by American Tower Corporation (“*American Tower*”) located at 925 Cowan Street, Nashville, Tennessee (coordinates 36° 11’ 25.5” N, 086 ° 46’ 46.4 W). American Tower refers to this site as Tower Site Number 308965. Representatives of American Tower have informed CGI that (i) NNCR has no lease or license to access Tower Site Number 308965; (ii) American Tower has no knowledge that NNCR or WXNS-LP has installed an FM antenna on the site and, if installed, the antenna is unauthorized; and (iii) Tower Site Number 308965 is a “decommissioned” site that has not had electrical power running to it since at least 2017.¹ Attachment B hereto depicts an FM antenna mounted on top of American Tower Site Number 308965. Attachment C and Attachment D depict the tower site’s master electrical meter pedestal on February 12, 2017 and May 29, 2020, respectively. The master electrical meter pedestal has positions for five (5) meters, but no meters are actually connected, and, consequently, no electrical service is in place.

¹ Attachment A hereto includes a summary of email correspondence between Bayard H. Walters, President of CGI and various representatives of American Tower Company confirming that NNCR does not have a lease at Tower Site Number 308965.

As demonstrated by the photographs in Attachments C and D, WXNS-LP could not have been operational at the times the License Application and the Renewal Application were filed because there was no electrical power to the tower site. Furthermore, CGI personnel have repeatedly tried to receive WXNS-LP over the past year and there is no audible signal in the licensed area. NNCR is essentially warehousing spectrum that it has no intention of using.

The Commission's rules state that no person may, "[i]n any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading."² A misrepresentation does not require a finding of an intent to deceive the Commission, but rather requires that the information be material.³ NNCR's certification that WXNS-LP is operational from a tower site that has no electrical power and where NNCR has no lease is clearly material and a false factual statement. NNCR has falsely certified its operational status to the Commission in both the License Application and the Renewal Application.

² 47 C.F.R. § 1.17(a)(2).

³ *Rocket Radio Corporation K246CH (Tuba City, Arizona)*, Memorandum Opinion and Order, DA 20-1134 (¶ 13) (rel. Sept. 28, 2020).

CONCLUSION

Due to NNCR's false certifications and misrepresentations to the Commission, CGI thus respectfully requests that NNCR's operational authority for WXNS-LP be revoked and that the Commission consider further sanctions against NNCR.

Respectfully submitted,

THE CROMWELL GROUP, INC.

By: Nancy A. Ory
Nancy A. Ory
Grant B. Lukas
Lerman Senter PLLC
2001 L Street, NW
Suite 400
Washington, DC 20036
(202) 416-6791

September 10, 2021

Its Attorneys

Attachment A

Summary of Electronic Mail Correspondence with American Tower

From: Cody.Peters@americantower.com
To: budbayard@aol.com
Cc: Shannon.Monaghan@americantower.com
Sent: 1/21/2021 10:58:08 AM Central Standard Time
Subject: RE: [EXTERNAL] American Tower Metrocenter Tn 1 Site 308965

Hi Bud,

Good morning. I don't have any further information on this FM antenna.

Have you checked with the FCC?

Best,

Cody Peters

American Tower Corporation

10 Presidential Way

Woburn, MA 01801

781-926-7041 office

cody.peters@americantower.com

From: Bayard/Rosemary Walters <budbayard@aol.com>
Sent: Wednesday, January 20, 2021 6:42 AM
To: Cody Peters <Cody.Peters@americantower.com>
Cc: Shannon Monaghan <Shannon.Monaghan@americantower.com>
Subject: [EXTERNAL] American Tower Metrocenter Tn 1 Site 308965

Cody/Shannon - Have you learned any more about this site and the LPFM.
antenna mounted there. Is there any equipment in your
building or coax to the antenna. You confirmed that there
is no lease.

Bud

Bayard H Walters

Crowmell Group, Inc

----- Original message -----

From: Cody Peters <Cody.Peters@americantower.com>
Date: 1/4/21 9:55 AM (GMT-06:00)
To: Bayard/Rosemary Walters <budbayard@aol.com>
Subject: RE: [EXTERNAL] American Tower Metrocenter Tn 1 Site 308965

Hi Bud,

I'll have my team look into this. Thanks for sharing.

Best,

Cody Peters
American Tower Corporation
10 Presidential Way
Woburn, MA 01801
781-926-7041 office
cody.peters@americantower.com

From: Bayard/Rosemary Walters <budbayard@aol.com>
Sent: Wednesday, December 30, 2020 3:05 PM
To: Cody Peters <Cody.Peters@americantower.com>
Subject: [EXTERNAL] American Tower Metrocenter Tn 1 Site 308965

Cody- I just sent you a picture of the antenna mounted at this site.

Can you verify there is no lease and there is no broadcast equipment in your building. I have never heard the station on the air and if they are not paying you rent, something is fishy.

Bud

From: Cody.Peters@americantower.com
To: budbayard@aol.com
Sent: 12/30/2020 1:46:29 PM Central Standard Time
Subject: RE: [EXTERNAL] American Tower Metrocenter Tn 1 Site 308965
Hi Bud,

Merry Christmas! It doesn't appear that there are any FM tenants on site #308965. Why do you ask?

Best,

Cody Peters
American Tower Corporation
10 Presidential Way
Woburn, MA 01801
781-926-7041 office
cody.peters@americantower.com

From: Bayard/Rosemary Walters <budbayard@aol.com>
Sent: Wednesday, December 23, 2020 3:54 PM
To: Shannon Monaghan <Shannon.Monaghan@americantower.com>; Cody Peters <Cody.Peters@americantower.com>
Subject: [EXTERNAL] American Tower Metrocenter Tn 1 Site 308965

Cody/Shannon - Attached is the sign for the above site. Do you have a tenant on that tower for a Low Power FM. Could you confirm. If you do, could you let me know the contact as I would like to reach them.

Also attached is our Holiday letter. If you have time to read it, please do.

All the best,

Bud

Bayard H Walters, President
Cromwell Group, Inc
PO Box 150846, Nashville, Tn 37215
615-361-7560 (o)/366-4313 (f)

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From: Shannon.Monaghan@americantower.com
To: budbayard@aol.com, Cody.Peters@americantower.com
Sent: 1/4/2021 8:55:06 PM Central Standard Time
Subject: RE: [EXTERNAL] American Tower Metrocenter Tn 1 Site 308965
Hi Bud,

I hope you enjoyed the holidays! I do not show any low power FMs on this structure, if you need any other information please let me know however. Thank you for sharing the holiday letter, it was a wonderful read. Wishing you all the best in the New Year!

Thank you
Shannon

Shannon Monaghan
Senior Account Project Manager
American Tower Corporation
10 Presidential Way
Woburn, MA 01801
781-926-7818 office
shannon.monaghan@americantower.com

From: Bayard/Rosemary Walters <budbayard@aol.com>
Sent: Wednesday, December 23, 2020 3:54 PM
To: Shannon Monaghan <Shannon.Monaghan@americantower.com>; Cody Peters
<Cody.Peters@americantower.com>
Subject: [EXTERNAL] American Tower Metrocenter Tn 1 Site 308965

Cody/Shannon - Attached is the sign for the above site. Do you have a tenant on that tower for a Low Power FM. Could you confirm. If you do, could you let me know the contact as I would like to reach them.

Also attached is our Holiday letter. If you have time to read it, please do.

All the best,

Bud

Bayard H Walters, President
Cromwell Group, Inc
PO Box 150846, Nashville, Tn 37215
615-361-7560 (o)/366-4313 (f)

From: Zackeriah Smith <Zackeriah.Smith@americantower.com>
Date: August 23, 2021 at 11:10:53 AM CDT
To: "Bwalters@cromwellradio.com" <Bwalters@cromwellradio.com>
Subject: 308965 Metrocenter TN 1

Here are the photos that you requested Mr Walters. I started working in the area late 2017 and Have visited it several times since then. There has been no active meters at this site since the first photo was taken in 2017 and the other photo shows the last time I was at the site. There are no meters in the meter bank so there is no power going to any equipment in the shelter. There is an AM detuner at this site but it does not connect to the electrical grid. If you would like to visit the site and take a look you can at your convenience. You can call me to get the gate combo at the time of the visit.

Thank you,

Zackeriah Smith
Operations Site Lead – Regional Operations - East
American Tower Corporation
228-265-1839 mobile
Zackeriah.Smith@americantower.com

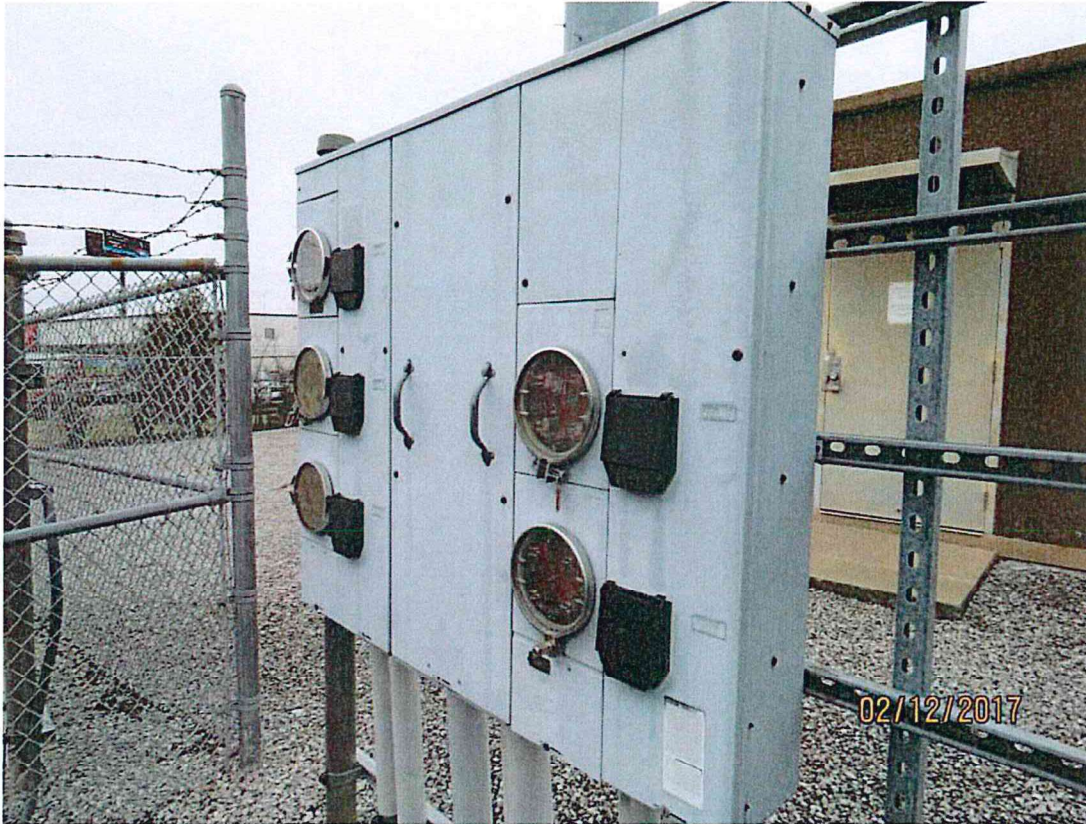
Attachment B

WXNS-LP FM Antenna Attached



Attachment C

Electrical Meter Pedestal, February 12, 2017



Attachment D

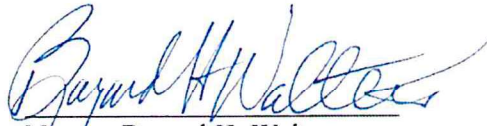
Electrical Meter Pedestal, May 29, 2020



DECLARATION OF BAYARD H. WALTERS

I, Bayard H. Walters, under penalty of perjury, hereby declare that the following is true and correct. I understand that this Declaration will be submitted to the Federal Communications Commission ("FCC").

1. I am President of The Cromwell Group, Inc., the licensee of FM translator station W292ED, Channel 292 (106.3 MHz), Franklin, Tennessee (FCC Facility ID No. 155680).
2. I have reviewed the Complaint to which this Declaration is attached and the factual statements contained therein are true and correct to the best of my knowledge, information and belief.



Name: Bayard H. Walters

Title: President

September 9, 2021

CERTIFICATE OF SERVICE

I, Sharon A. Krantzman, hereby certify that on this 10th day of September 2021, I caused a true and correct copy of this Complaint to be served on the following by first class mail, postage prepaid:

North Nashville Community Radio
3200 West End Ave. Suite 500
Nashville, TN 19457

Dan J. Alpert
Law Office of Dan J. Alpert
2120 North 21st Road
Arlington, VA 22201

James D. Bradshaw
Deputy Chief, Audio Division
Media Bureau
Federal Communications Commission
45 L Street, NE
Washington, D.C. 20554


Sharon A. Krantzman