



Federal Communications Commission
Washington, D.C. 20554

January 27, 2023

In Reply Refer To:
1800B3-KV

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In re: W230DH, Hopkinsville, KY
HOP Broadcasting, Inc.
Facility ID No. 202114
Application File No. 0000185461

Interference Complaint -- Response Required

Dear Counsel:

This letter refers to Sound Broadcasters, Inc. (Sound)'s¹ Interference Claim (Complaint)² filed on August 10, 2022, as supplemented on August 25, 2022 (Supplement).³ The Complaint alleges interference from FM Translator W230DH, Hopkinsville, Kentucky (W230DH)⁴ to the direct reception by the public of the off-the-air signal of WKTG(FM). For the reasons stated below, we find that Sound has submitted a valid and complete interference claim package, and we order HOP to either remediate the interference caused to WKTG(FM), as detailed *infra*, or submit evidence that Sound's Complaint and Supplement are not a valid and complete interference claim package.

¹ Sound is the licensee of Station WKTG(FM), Madisonville, Kentucky (WKTG(FM)).

² See Complaint of Sound, Pleading File No. 0000197322 (filed Aug. 10, 2022). Also before us are the following responsive pleadings: an Opposition of HOP Broadcasting, Inc. (HOP), Pleading File No. 0000197452 (filed Aug. 11, 2022) (Opposition); and Reply of Sound, Pleading File No. 0000197797 (filed Aug. 17, 2022) (Reply).

³ See Supplement of Sound, Pleading File No. 0000198326 (filed Aug. 25, 2022); and Supplement Opposition of HOP, Pleading File No. 0000199049 (filed Aug. 31, 2022) (Supplement Opposition).

⁴ W230DH is licensed to HOP.

Background. On October 13, 2021, the Bureau issued HOP a license to operate W230DH on channel 230 at Hopkinsville, Kentucky.⁵ On February 16, 2022, the Bureau issued HOP a permit to, *inter alia*, physically relocate the translator station while remaining on channel 230.⁶ On February 28, 2022, HOP filed an application for a license⁷ to cover the permitted facilities, which is currently pending, and commenced operating W230DH under the W230DH 2022 License Application, pursuant to program test authority.

On August 10, 2022, Sound filed the Complaint requesting that the Bureau order W230DH to cease operations and dismiss the W230DH 2022 License Application because W230DH is purportedly causing interference to the reception of WKTG(FM). In support, Sound submitted 13 WKTG(FM) listener complaints,⁸ which Sound states exceeds the minimum of eight listener complaints WKTG(FM) is required to provide under the Commission's rules (Rules),⁹ along with engineering showings.¹⁰ Sound claims that repeated attempts to resolve the matter privately "have resulted in unacceptable delay,"¹¹ stating that both HOP's President and engineer have acknowledged the interference and promised to "promptly" change channels, but have not done so.¹²

On August 11, 2022, HOP filed an Opposition requesting that the Bureau dismiss the Complaint because Sound failed to attempt to privately resolve the interference claim with HOP and did not submit a minimum of eight rule-complaint listener complaints. HOP claims that prior to filing the Complaint, Sound "threatened" to file it to induce HOP to modify the W230DH facilities, but Sound refused to provide any specific, factual, information on the reported interference locations to enable the parties to privately resolve the matter.¹³ HOP also asserts that any proposed change to the W230DH facilities would be unacceptable for filing until the Bureau acts on the W230DH 2022 License Application. Regarding the WKTG(FM) listener complaints, HOP declares that six Original Complainants are

⁵ Application File No. 0000159334, granted on October 13, 2021 (W230DH License). *See Broadcast Actions*, Public Notice, Report No. PN-2-211015-01, at 4 (Oct. 15, 2021).

⁶ Application File No. 0000179749, granted on February 16, 2022 (W230DH 2022 Permit). *See Broadcast Actions*, Public Notice, Report No. PN-2-220218-01, at 7 (Feb. 18, 2022).

⁷ Application File No. 0000185461 (W230DH 2022 License Application). *See Broadcast Applications*, Public Notice, Report No. PN-1-220302-01, at 4 (Mar. 2, 2022). The W230DH 2022 License Application is also the subject of an informal objection filed on March 2, 2002, by Triangle Access Broadcasting, Inc., Pleading File No. 0000185668, that will be addressed in a separate proceeding.

⁸ Specifically, Sound submitted complaints from the following WKTG(FM) listeners: Richard Wisotzkey (Wisotzkey); Dwayne A. Houchins (Houchins); Jimmy (Danny) Millwood (Millwood); Jon Luck (Luck); Ken Matheny (Matheny); Scott Mashburn (Masburn); Randi W. Ruemler (Ruemler); Hank Hendon (Hendon); Cynthia L. Clark (Clark); Christopher D. Carlton (Carlton); Logan Lynn (Lynn); David Green (Green); and James Jim Oakes (Oakes). Exhibit B, Complaint. Collectively, these listeners will be referred to as "Original Complainants."

⁹ *See* Table 1 of 47 CFR § 74.1203(a)(3).

¹⁰ Exhibit A, Complaint.

¹¹ *Id.* at 2.

¹² *Id.* at 2. Specifically, Sound cites telephone conversations with HOP's President occurring in June 2022, and email correspondence with HOP's engineer dated June 7, 10, and 21, 2022. *Id.* at 3-4 and Exhibit D.

¹³ Opposition at 2.

defective because they did not experience interference at their regular WKTG(FM) listening location.¹⁴

On August 17, 2022, Sound filed a Reply arguing that HOP's Opposition was filed merely to delay resolution of Sound's interference claim. Sound contends that "no further private resolution attempts were necessary since HOP acknowledged the interference to WKTG(FM) and agreed to eliminate that interference by changing channel."¹⁵ Regarding HOP's allegations against certain Original Complainants, Sound declares that the arguments are meritless, but that nevertheless Sound would submit additional listener complaints.¹⁶

On August 25, 2022, Sound filed the Supplement submitting six additional listener complaints¹⁷ along with engineering showings.

On August 31, 2022, HOP filed the Supplement Opposition arguing that the Supplement is defective because Sound again failed to attempt to privately resolve the interference claim and none of the Supplemental Complainants experienced interference at the locations where they regularly listen to WKTG(FM).¹⁸

Discussion. In the *Translator Interference Order*,¹⁹ the Commission adopted certain changes to the translator interference complaint resolution process. Among other things, the Commission revised the relevant rules to require that stations complaining of interference must submit a complete interference claim package consisting of specified technical showings along with a required minimum number of rule-compliant listener complaints.²⁰

As an initial matter, although Sound requests review of the Complaint and Supplement under both sections 74.1203(a)(3) and 74.1204(f) of the Rules, governing actual interference claims and predicted interference claims, respectively,²¹ Sound alleges that W230DH's operations are causing actual interference to the reception of WKTG(FM).²² Therefore, we will review the Complaint and Supplement under section 74.1203(a)(3) of the Rules.

¹⁴ Specifically, Hop cites Original Complainants Wisotzkey, Luck, Matheny, Mashburn, Ruemeler, and Carlton. *Id.* at 9.

¹⁵ Reply at 3.

¹⁶ *Id.* at 4.

¹⁷ Specifically, Sound submitted complaints from the following WKTG(FM) listeners: Bill Royce (Royce); Chandra Scott (Scott); Michael D. Beasley (Beasley); Mickey Moore (Moore); Lawrence Flowers (Flowers); and Billy T. O'Neal (O'Neal). Supplement at 5-11. Collectively, these listeners will be referred to as "Supplemental Complainants." Additionally, the Supplemental Complainants and Original Complainants will be collectively referred to as "Complainants."

¹⁸ Supplemental Opposition at 1, 3.

¹⁹ *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, MB Docket No. 18-119, Report and Order, 34 FCC Rcd 3457 (2019) (*Translator Interference Order*), recon denied, Order on Reconsideration, 35 FCC 11561 (2020). The *Translator Interference Order* became effective on August 13, 2019. *Effective Date of Amended Rules for FM Translator Interference*, MB Docket No. 18-119, Public Notice, 34 FCC Rcd 7004 (2019).

²⁰ 47 CFR §§ 74.1203(a)(3), 74.1204(f); *Translator Interference Order*, 34 FCC Rcd at 3463-3466, 3469-3470, paras. 12-15; 23-24.

²¹ 47 CFR §§ 74.1203(a)(3), 74.1204(f).

²² Complaint at 1; Supplement at 1.

Pursuant to Table 1 of section 74.1203(a)(3) of the Rules,²³ Sound is required to submit a minimum of eight rule-compliant listener complaints.²⁴ Here, Sound has submitted interference complaints from a total of 19 Complainants, which Sound claims are rule-compliant.²⁵

Based on our review of the Complaint and Supplement, we conclude that Sound has submitted a valid interference claim package. In particular, we find that Sound has exceeded its required showing of eight rule-compliant listener complaints with the following 11 rule-compliant Complainants, along with the required engineering showings: Wisotzkey; Houchins; Millwood; Matheny; Mashburn; Ruemler; Clark; Carlton; Green; O’Neal; and Flowers.²⁶ Regarding the remaining Complainants, we find their complaints are not rule-compliant and therefore are unacceptable.²⁷

We disagree with HOP’s erroneous assertion that certain Complainants are unacceptable because “there was no correlation between the location where the listener was purportedly a ‘regular listener’ and the location of the claimed interference.”²⁸ Under the Rules, a valid interference location is not limited to the listener’s regular listening location. HOP appears to have conflated the requirement to be a regular listener (i.e., listening to the complaining station at least twice monthly)²⁹ with the requirement that the interference be located within the interference zone (e.g., specific location within the complaining station’s 45 dBu contour).³⁰ Here, the above-noted 11 Complainants are regular listeners of WKTG(FM) who experienced interference within the interference zone.

We also reject HOP’s argument that the Complaint and Supplement are unacceptable due to Sound’s failure to provide HOP with the listener complaints prior to filing the Complaint and Supplement. Here HOP does not dispute that Sound made several overtures via email and telephone to discuss the interference prior to filing the Complaint.³¹ For example, in June 2022 email discussions concerning Sound’s requests to address the interference, it appears that HOP president and CEO Mike Tarter acknowledged the interference and that the translator would move to another frequency to resolve

²³ Table 1 of 47 CFR § 74.1203(a)(3).

²⁴ Specifically, Sound states that the population within W230DH’s protected service contour is 372,357 persons. Exhibit A, Complaint. For populations of 300,000 – 399,999, a minimum of eight rule-compliant listener complaints are required. *See* Table 1 of 47 CFR § 74.1203(a)(3).

²⁵ The Complainants are comprised of 13 Original Complainants and six Supplemental Complainants. *See supra* notes 8 and 17.

²⁶ Several of the Complainants reported multiple interference locations such as home, work and driving. In listing the rule-complaint complaints, we have listed in a parenthetical the acceptable interference location(s): Wisotzkey (Tractor Supply, 10710 Eagle Way); Houchins (Pennyrile Parkway, Mile Marker (MM) 16); Millwood (I-69 South, MM 15); Matheny (I-69 South, MM 13); Mashburn (I-169 South, Exits 6, 11); Ruemler (Pennyrile Parkway at Pembroke Rd.); Clark (Highway 41 North after Smokehouse Rd); Carlton (Highway 91, MM 10) Green (Pennyrile Parkway, 3-4 miles north of Exit 11); O’Neal (Personal Residence at 3231 Cox Mill Rd.); and Flowers (Pennyrile Parkway South of Crofton Exit). *See* Complaint, Exhibit B and Supplement at 5-11.

²⁷ Specifically, Hendon, Logan, Moore, Beasley Scott, and Royce did not list a precise interference location; Oakes failed to report listening to WKTG(FM) at least twice monthly and did not list a precise interference location; and Luck did not list a personal address. *Id.* *See also* 47 CFR § 74.1201(k)(1)-(3).

²⁸ Opposition at 8. *See also supra* note 14; Supplement Opposition at 3.

²⁹ *See* 47 CFR § 74.1201(k)(3).

³⁰ *See id.* § 74.1203(a)(3)(ii).

³¹ *See supra* note 12.

the interference.³² Moreover, in another June 2022 email HOP's consulting engineer stated that HOP planned "to change frequency as soon as possible."³³ Under these circumstance we find Sound's efforts to be sufficient to meet Sound's burden to attempt a private resolution of the interference claim.

Accordingly, HOP is required to address Sound's interference claim as set forth in the timeline below:³⁴

1. Within thirty days of this letter, HOP must file:

- a plan to resolve the interference;³⁵ or
- evidence that Sound's Complaint and Supplement are not a valid and complete interference claim package.³⁶

2. Within sixty days of submitting a remediation plan, if one has been submitted, HOP must file either (i) the jointly agreed upon interference testing results; (ii) the testing results of the parties mutually agreed upon independent engineer; or (iii) the results from HOP's remediation with the 11 referenced listeners³⁷ if said listeners elect to participate in the remediation process. No

³² Email from Mike Tarter, President and CEO, HOP, to Bob Kelley, President, Sound (June 3, 2022, 16:39), Exhibit D to Complaint; and Email from Mike Tarter, President and CEO, HOP, to Bob Kelley, President, Sound (June 9, 2022 14:51), *id.*

³³ Email from Charles M. Anderson, PhD, Anderson Associates, to George Nicholas, Technical Consultant to Sound (June 22, 2022, 10:28), Exhibit D to Complaint.

³⁴ *Translator Interference Order*, 34 FCC Rcd at 3468-3469, para 21. ("[T]he staff will direct the complainant station to serve the translator operator with a non-redacted copy of the relevant listener complaints so that the translator operator can verify the basic elements of the complaint, such as the existence of the complainant, current residence at the given address, etc."). Normally we would impose a requirement that Sound serve the listener complaints on HOP; however, Sound has already served HOP with the Complaint and Supplement, thus rendering it unnecessary to impose that condition.

³⁵ In the *Translator Interference Order*, the Commission declared that acceptable plans include the following: 1) relocating to an available same-band FM channel; 2) working with willing listener complainants; or 3) working with the complaining station. Regarding direct listener remediation, if the listener agrees to allow the translator station to adjust or replace its receiver equipment to address interference, the translator station "must document and certify that the desired station can now be heard on the listener's receiver." *Translator Interference Order*, 34 FCC Rcd at 3472, para. 30. If, however, the listener's equipment is not the cause, or the listener declines to participate in the remediation process, then "the translator operator and the complaining station must work together to resolve the interference complaint using suitable techniques." *Id.* at 3473, para. 32. The "lack of interference can be demonstrated by on-off tests and/or field strength measurements at the relevant site, provided they take place in a manner *acceptable to both parties*." *Id.* at 3474, para. 33 (emphasis added). If, however, "the parties fail to agree upon appropriate methods and technical parameters to be used for interference testing at a particular site or sites, the parties should engage a mutually acceptable third party engineer to observe or carry out the testing." *Id.*

³⁶ HOP has "the burden of rebutting the presumption of validity of each complaint." *Id.* at 3468-3469, para. 21. We note that the Commission has stated that the following activities are not evidence of an invalid listener complaint: "(1) social media connections [with the station] . . . ; (2) membership in listener clubs or participation in station-run promotions, contests, and events; (3) charitable donations to the station . . . and (4) time contributed volunteering at a station or at a station-run event, so long as the volunteer does not hold a regular position at the station comparable to a station employee." *Id.* at 3467, para. 19 (footnotes omitted). However, "advertisers are deemed to have a financial interest in the station, as are underwriters." *Id.*

³⁷ See *supra* page 4 and note 26.

unilateral testing results will be considered.³⁸ Upon receipt, we will review said information to determine if the interference has been resolved.

We will withhold further action on the parties' filings during the interference remediation timeline set forth above. Failure to comply with the remediation timeline may result in W230DH being ordered to cease operations.

Sincerely,

James D. Bradshaw
Senior Deputy Chief
Audio Division
Media Bureau

³⁸ The Commission opined that “[a]t any point in the process the parties may also agree that interference has been resolved using any mutually acceptable means; however, any contested data may not be unilaterally presented . . . as a remediation showing (or to dispute a remediation showing).” *Translator Interference Order*, 34 FCC Rcd at 3474, para. 33.