



Federal Communications Commission  
Washington, D.C. 20554

April 28, 2023

**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED AND E-MAIL**

Best Media, Inc.  
c/o Aaron P. Shainis, Esq.  
1850 M St NW  
Suite 240  
Washington, DC 20036  
(sent by electronic email to: [aaron@s-plaw.com](mailto:aaron@s-plaw.com))

**In re: FM Translator W264CW, Roosevelt,  
New Jersey**  
Facility ID No. 140947  
Renewal Application  
File No. 0000182651  
**Letter of Inquiry – Response  
Required**

Dear Licensee:

The Media Bureau has received an informal objection alleging that FM translator W264CW, Roosevelt, New Jersey (Station) has been silent for more than twelve months, warranting automatic license expiration pursuant to section 312(g) of the Communications Act of 1934, as amended (Act);<sup>1</sup> Best Media, Inc. (Licensee) failed to notify the Commission of its silence and failed to request Special Temporary Authority (STA) to remain silent;<sup>2</sup> and Licensee made false certifications regarding the Station's operational status.<sup>3</sup> Accordingly, pursuant to sections 4(i), 4(j), 308(b), and 403 of the Act, we

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<sup>1</sup> Section 312(g) of the Act provides that if a broadcast station fails to transmit broadcast signals with its authorized facilities for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license to promote equity and fairness. See 47 U.S.C. § 312(g). See, e.g., *Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543 (D.C. Cir. 2009); *A-O Broad. Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603 (2008) (*A-O Broad.*).

<sup>2</sup> 47 CFR § 74.1263(c) provides that a licensee of an FM translator station must notify the Commission of its intent to discontinue operations for 30 or more consecutive days. A special temporary authorization (STA) is the authority granted to a permittee or licensee to permit the operation of a broadcast facility for a limited period at a specified variance from the terms of the station authorization or requirements of the FCC rules applicable to the particular class of station. 47 CFR § 73.1635.

<sup>3</sup> No person may provide, in any written statement of fact, "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." 47 CFR § 1.17(a)(2). Even absent an intent to deceive, a false statement may constitute an actionable violation of Section 1.17 of the Rules if it is provided without a reasonable basis for believing that the statement is correct and not misleading. See *Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, 18 FCC Rcd 4016, 4017 (2003) (Section 1.17 is intended to "prohibit incorrect statements or omissions that are the result of negligence, as well as an intent to deceive").

direct Licensee to provide the information and documents specified in the Attachment to this letter within **30 days** of the date of this letter of inquiry (LOI).

### **Background**

Licensee filed an application for renewal of the Station's license (Application)<sup>4</sup> on January 28, 2022. On May 4, 2022, Press Communications, LLC (Press) filed an informal objection (Objection)<sup>5</sup> to the Application. In the Objection, Press argues that: 1) the Station was not operational at the time it filed the Application, and has been silent for more than 12 consecutive months warranting automatic license expiration;<sup>6</sup> 2) Licensee falsely certified in the Application that it is operational and on the air;<sup>7</sup> 3) on January 27, 2021, February 26, 2021, March 23, 2021, April 23, 2021, March 14, 2022, and May 2, 2022, Press observed that the Station was off the air, in violation of section 74.1263 of the Commission's rules (Rules);<sup>8</sup> and 3) Licensee never notified the Commission of its silent status, nor did it request STA to remain silent.<sup>9</sup>

### **Documents and Information To Be Provided**

In light of the foregoing, we seek additional information, as set forth in the Attachment, to determine whether: 1) the Station has been silent for more than twelve months warranting automatic expiration pursuant to section 312(g); 2) Licensee failed to notify the Commission of its silence and failed to request STA to remain silent; and 3) Licensee made false certifications about the Station's operational status. This letter constitutes an order of the Commission to produce the documents and information requested herein.<sup>10</sup> To knowingly or willfully make any false statement, or conceal any material fact in reply to this letter, is punishable by fine or imprisonment.<sup>11</sup> **Failure to respond appropriately to this letter constitutes a violation of the Act and Rules.**<sup>12</sup> In addition, a failure to respond appropriately to this letter may result in **dismissal of the referenced Application.**<sup>13</sup>

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<sup>4</sup> Application File No. 0000182651 (filed Jan. 28, 2022).

<sup>5</sup> Objection, Pleading File No. 0000190095 (filed May 4, 2022). Press also filed an Amendment to the Objection on May 13, 2022, Amendment, Pleading File No. 0000190775 (filed May 13, 2022).

<sup>6</sup> Objection at 1.

<sup>7</sup> *Id.* at 1-2.

<sup>8</sup> *Id.* at 2-3; Amendment at 1-2.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> See 47 U.S.C. § 155(c)(3).

<sup>11</sup> See 18 U.S.C. § 1001; see also 47 CFR § 1.17.

<sup>12</sup> See 47 U.S.C. § 503(b)(1)(B); see also e.g., *Aura Holdings of Wisconsin, Inc.*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 3688, 3696, para. 21 (2018), *aff'd*, Forfeiture Order, 34 FCC Rcd 2540 (2019) (imposing a \$19,693 penalty for failure to respond to letter of inquiry); *ABC Fulfillment Services LLC d/b/a HobbyKing USA LLC and HobbyKing.com, and Indubitably, Inc. d/b/a HobbyKing USA LLC, HobbyKing and HobbyKing.com*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 5530 (2018) *aff'd*, Forfeiture Order, 35 FCC Rcd 7441 (2020), *recon. denied*, Memorandum Opinion and Order, 36 FCC Rcd 10688 (2021) (imposing \$39,278 forfeiture for failure to respond to letter of inquiry).

<sup>13</sup> 47 CFR § 73.3568(a) (“... failure to respond to official correspondence or request for additional information, will be cause for dismissal”); see also *LPFM MX Group 37*, Memorandum Opinion and Order, 31 FCC Rcd 7512, 7517, para. 12 (2016) (dismissing application for failure to respond to letter of inquiry).

The Attachment to this letter includes filing requirements and instructions for your response and definitions for certain terms in this letter. Requests for confidential treatment or claims of attorney-client privilege or attorney work product must strictly meet the requirements stated in the attached instructions.

If you have any questions about this matter, please contact Alexander Sanjenis, Attorney, at 202-418-2779, or [alexander.sanjenis@fcc.gov](mailto:alexander.sanjenis@fcc.gov).

The Licensee is expected to provide a complete response by the deadline. If Licensee cannot provide all requested information or Documents by the deadline, it must submit all information it is able to obtain by the deadline, fully explain why certain information could not be provided, and indicate when such information will be submitted.

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

cc: Robert A. Silverman, Esq. ([Bob.Silverman@wbd-us.com](mailto:Bob.Silverman@wbd-us.com))  
(Legal Representative for Press Communications, LLC)

**Attachment**

## ATTACHMENT

### Inquiries: Information and Documents to be Provided

You must provide the following information and documents as requested below, and in accordance with the Instructions and Definitions that follow the inquiries. To ensure you provide complete and full responses to all inquiries, carefully review the Definitions that follow these inquiries and the Instructions regarding Document production and retention.

### Requests for Information

Provide answers to the following inquiries:

1. Provide all Documentation of or relating to the Station's operational status since January 27, 2021.
2. Provide Documentation of the Station's location, effective radiated power and antenna height above ground level for all periods of operation from January 27, 2021, to the present.
3. Provide all Documentation of the Station's leases, personnel records, (including payroll records appropriately redacted to protect the privacy of individual employees), engineering records, and station logs, including EAS logs, from January 27, 2021, to the present.
4. Submit all Documentation including copies of all invoices, bills, including utility bills, checks written or received, credit card charges, wire transfers or deposits of funds relating to the Station's operation.
5. Provide photographs of the Station's studio facilities and transmission facilities during this timeframe, including the dates applicable to each photograph taken, and provide exact Station coordinates.
6. Provide the full legal name of each Person(s) employed or relied upon by Licensee to respond to or answer this LOI. Provide the mailing address, email address, and telephone number for each of such Person(s).

We retain the right to ask for additional documentation.

### Filing Requirements

***Affidavit Requirement.*** We direct Licensee to support its responses with a notarized affidavit or declaration **made under penalty of perjury signed and dated by an authorized representative of Licensee with personal knowledge of the representations provided in the response to this LOI.** The affidavit or declaration **must verify the truth and accuracy of the information therein, state that all of the information requested by this LOI that is in Licensee's possession, custody, control, or knowledge has been produced, and state that any and all Documents provided in its responses are true and accurate copies of the original documents.** In addition to such general affidavit or declaration of the authorized representative described above, **if such Person or any other affiant or declarant is relying on the personal knowledge of any other individual rather than his or her own knowledge,**

**and if multiple employees or representatives of Licensee contribute to the response, Licensee shall provide separate affidavits or declarations of each such Person with personal knowledge that identify clearly to which responses the affiant or declarant with such personal knowledge is attesting.** All declarations made under penalty of perjury, in lieu of an affidavit, must comply with 47 CFR § 1.16, and be substantially in the form set forth therein. Failure to support your responses in the form described could subject you to forfeiture.

***Delivery Requirements.*** Licensee shall both send its response by commercial overnight courier or by First-Class or overnight U.S. Postal Service mail and transmit an electronic copy to the individuals designated below.

*If sent by commercial overnight mail* (other than U.S. Postal Service Express Mail or Priority Mail), the response should be sent to the attention of Alexander Sanjenis (c/o Keith Coburn), Attorney Advisor, Audio Division, Media Bureau, Federal Communications Commission, BrightKey, 9050 Junction Drive, Annapolis Junction, MD 20701.

*If sent by first-class, Express, or Priority Mail,* the response should be sent to Alexander Sanjenis (c/o Keith Coburn), Attorney Advisor, Audio Division, Media Bureau, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554.

***Electronic Copy.*** Licensee shall also transmit a copy of the response and any attachments or exhibits via email to alexander.sanjenis@fcc.gov. The electronic copy shall be produced in a format that allows the Commission to access and use it, together with instructions and all other materials necessary to use or interpret the data, including record layouts, data dictionaries, and a description of the data's source.

**Additionally, copies of Licensee's response must be sent to Press Communications, LLC, c/o Womble Bond Dickinson LLP, at the electronic mail addresses provided herein. Press Communications, LLC will have an opportunity to submit a response within fifteen days of the Licensee's filing of the responses, with a copy to be sent by electronic mail to Licensee and its counsel, where applicable. Absent a written determination by the Bureau that any specific records are deemed confidential pursuant to a request by Licensee for confidential treatment in accordance with section 0.459, both this letter and Licensee's response to the letter will be deemed non-confidential and available for public inspection in LMS.**

***Public File.*** Because this is a preliminary investigative matter, neither this LOI nor the response is required to be included in the online public inspection file for Licensee unless and until the Media Bureau, Federal Communications Commission states otherwise in writing.

## **Instructions**

***Format of Responses.*** The response must be organized in the same manner as the questions asked, *i.e.*, the response to Inquiry 1 should be labeled as responsive to Inquiry 1, etc.

***Method of Producing Documents.*** Licensee shall submit each requested Document in its entirety, even if only a portion of that Document is responsive to an inquiry or document request made herein, including all appendices, tables, or other attachments, and all other Documents referred to in the Document or attachments. Licensee shall not edit, cut, expunge, or otherwise take any action to modify any Document submitted in response to this LOI. In addition to any Document Licensee submits in

response to any inquiry or document request, Licensee shall also submit all written materials necessary to understand any Document responsive to these inquiries.

***Identification of Documents.*** For each Document or statement submitted in response to the inquiries and document requests listed here, indicate, by number, to which inquiry or document request it is responsive and identify the persons from whose files the Document was retrieved. If any Document is not dated, state the date on which it was prepared. If any Document does not identify its authors or recipients, state, if known, the names of the authors or recipients. Licensee must identify with reasonable specificity all Documents provided in response to these inquiries and document requests.

***Prior Responses.*** If a Document responsive to any inquiry or document request made herein has already been provided to the Media Bureau during this or any other investigation, identify each such Document, and when and how it was produced to the Bureau.

***Documents No Longer Available.*** If a Document responsive to any Inquiry made herein existed but is no longer available, or if Licensee is unable for any reason to produce a Document responsive to any inquiry or document request, identify each such Document by author, recipient, date, title, and specific subject matter, and explain fully why the Document is no longer available or why Licensee is otherwise unable to produce it.

***Retention of Original Documents.*** With respect only to Documents responsive to the specific inquiries and document requests made herein and any other Documents relevant to those inquiries and document requests, Licensee is directed to retain the originals of those Documents for 60 months from the date of this LOI unless (a) Licensee is required to retain Documents for a longer period of time pursuant to a Commission order or rule; (b) Licensee is directed or informed by the Media Bureau in writing to retain such Documents for some shorter or longer period of time; or (c) the Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case, Licensee must retain all such Documents until the matter has been finally concluded by payment of any monetary penalty, satisfaction of all conditions, expiration of all possible appeals, conclusion of any enforcement action brought by the United States Department of Justice, or execution and implementation of a final settlement with the Commission or the Bureau.

***Continuing Nature of Inquiries.*** The specific Inquiries made herein are continuing in nature. Licensee is required to produce in the future any and all Documents and information that are responsive to the inquiries and document requests made herein but not initially produced at the time, date, and place specified herein. In this regard, Licensee must supplement its responses (a) if Licensee learns that, in some material respect, the Documents and information initially disclosed were incomplete or incorrect or (b) if additional responsive Documents or information are acquired by or become known to Licensee after the initial production. The requirement to update the record will continue for 60 months from the date of this LOI unless: (a) Licensee is required by another Commission order or rule to retain documents for a period longer than 60 months; (b) Licensee is directed or informed by the Media Bureau in writing that the obligation to update the record will continue for some shorter or longer period of time; or (c) the Bureau or the Commission releases an item on the subject of this investigation including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case the obligation to update the record will continue until the matter has been finally concluded by payment of any such monetary penalty, satisfaction of all conditions, expiration of all possible appeals, conclusion of any enforcement action brought by the United States Department of Justice, or execution and implementation of a final settlement with the Commission or the Bureau.

If the Media Bureau determines that Licensee has continued to act/acted in violation of the Act and/or the Commission's rules, any continued noncompliant conduct after the receipt of this LOI may subject Licensee to additional penalties.

**Construction.** The terms "any" and "all," "and" and "or," and "each" and "every" shall be construed inclusively to bring within the scope of the inquiries and document requests all information and Documents that might otherwise arguably be construed as outside the scope of the requests. Likewise, the singular of any word or defined term shall include the plural and the plural of any such word or defined term shall include the singular. The words "relating to" or "relate to" shall be construed to mean, whether directly or indirectly, in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, supporting, qualifying, confirming, contradicting, or stating.

**Confidentiality.** In addition to providing the requested information and documents, any request for confidentiality of certain information or documents must strictly comply with the requirements of section 0.459 of the Commission's rules,<sup>14</sup> including a statement of the reasons for withholding the materials from inspection. The request must include a schedule of the information or documents for which confidentiality is requested that states, individually as to each such item, the information required by section 0.459(b) of the Commission's rules including, but not limited to, identifying the specific information for which confidential treatment is sought; explaining the degree to which the information is commercial or financial, or contains a trade secret or is privileged; and explaining how disclosure of the information could result in substantial competitive harm.<sup>15</sup> Accordingly, a "blanket" request for confidentiality or a casual request, including simply stamping pages "confidential," will not be considered a proper request for confidentiality, and those materials will not be treated as confidential.<sup>16</sup>

**Claims of Privilege.** If Licensee withholds any information or documents under claim of privilege, it shall submit, together with any claim of privilege, a schedule of the items withheld that states, individually as to each such item: the numbered inquiry or document request to which each item responds and the type, title, specific subject matter and date of the item; and the specific grounds for claiming that the item is privileged.

## **Definitions**

For purposes of this LOI, the following definitions apply. The definitions in this section apply regardless of whether the first letter of the defined term appears in upper or lower case.

"Document" shall mean the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, emailed, text messaged, filmed, punched, computer-stored, electronically-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made.

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<sup>14</sup> See 47 CFR § 0.459.

<sup>15</sup> See 47 CFR § 0.459(b).

<sup>16</sup> See 47 CFR § 0.459(c). If Licensee withholds any information or documents under claim of privilege, it shall submit, together with any claim of privilege, a schedule of the items withheld that states, individually as to each such item: the numbered Inquiry to which each item responds and the type, title, specific subject matter and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific grounds for claiming that the item is privileged.

“Licensee” shall mean Best Media, Inc. and any employees, time brokers, or agents, including consultants and any other persons working for or on behalf of Licensee at any time during the period covered by this LOI, whether in exchange for compensation or on a voluntary or other basis. Although this LOI refers to Licensee to collectively include each person or entity listed in this definition, any responses must specifically detail and distinguish between the actions or responsibilities of each entity or individual.

“Person” shall mean any natural person or any non-natural person, including but not limited to a business, company, corporation, enterprise, institution, organization (educational, religious, or otherwise), partnership, proprietorship, or any other entity, whether for-profit or non-profit and whether of general or limited liability and all of such non-natural person’s advisers, agents, consultants, directors, employees, members, officers, owners, partners, principals, representatives, and any other persons working for or on behalf of the foregoing, whether in a paid or unpaid status.