

REQUEST FOR WAIVER OF 47 C.F.R. § 74.1203(A)(3)

Hispanos Communications LLC (“Hispanos”), licensee of FM translator station W254DV, Miramar, Florida (Facility ID 202998) (the “Station”), hereby respectfully requests that the Federal Communications Commission (“FCC” or “Commission”) waive Section 74.1203(a)(3) of its rules pertaining to interference from FM translator stations given the special circumstances presented below. This request accompanies an application for a minor modification of the Station’s licensed facilities seeking Commission consent to change the Station’s frequency to a non-adjacent channel on a displacement basis, as well as to modify the Station’s directional antenna pattern and effective radiated power.

I. BACKGROUND

Under Section 74.1203(a)(3) of the Commission’s rules, an authorized FM translator station “will not be permitted to continue to operate if it causes any actual interference to . . . [t]he direct reception by the public of the off-the-air signals of any . . . previously authorized secondary station.”¹

The Station serves as a fill-in translator for full power AM station WRHC(AM) (“WRHC”), Coral Gables, Florida (Facility ID 73945). As detailed elsewhere in this application, the Station has been receiving significant interference from full power FM station WKGR(FM), Wellington, Florida (Facility ID 1245). As a result, Hispanos is seeking consent to change the Station’s frequency to 100.3 MHz. As the technical showing further illustrates, however, the proposed modification would result in interference to the direct reception of co-channel low power FM (“LPFM”) station WQNB-LP (“WQNB”), Miami, Florida (Facility ID 196346),

¹ 47 C.F.R. § 74.1203(a)(3).

licensed to BEWARE, Inc. (“BEWARE”). WQNB, however, has been silent for many months and by every indication appears to have abandoned its transmitter site and studio.

More specifically, on October 17, 2022, BEWARE filed a request for Special Temporary Authority (“STA”) to permit WQNB to remain silent for 180 days.² The Commission granted this request in a letter dated October 28, 2022, authorizing WQNB to remain silent for six months.³ The Commission’s letter specified that WQNB had been silent since October 3, 2022.⁴ The STA expired in April 2023. As of today, BEWARE has neither filed a notification that WQNB has resumed operation, nor a request to extend the station’s STA to remain silent.

As explained in the Declarations contained in Attachment 1 hereto, Hispanos’s staff has monitored WQNB’s frequency numerous times over the last several months to determine if the LPFM has returned to the air. To their knowledge, it has not.

On May 15, 2023, the Operations Manager and Station Engineer for the Hispanos Miami market visited the transmitter and studio location listed for WQNB in the FCC’s database to assess whether WQNB was operating or capable of operation. After being given access to the building and its roof by the building’s maintenance staff, the Hispanos employees were unable to detect any signal for WQNB on-site. They observed several cellphone towers and microwave dishes on the roof of the building, but only a single antenna suitable for LPFM transmission. This antenna was not operational, however, and in fact its cables had been cut. Though the transmission facilities were said to have been occupied by WQNB at some point, the space was

² See Letter from Victoria McCauley, Audio Division, Media Bureau, to Levan Joseph, BEWARE, Inc. (Oct. 28, 2022) (“FCC Letter”).

³ See *id.*

⁴ See *id.*

clearly vacant at the time of Hispanos's visit, with no broadcast equipment located on premises. Moreover, according to building staff, the space was available to rent.

On July 19, 2023, Hispanos's General Manager spoke via phone with an individual who identified himself as the building administrator at the address listed for WQNB's transmitter and studio site. This individual reported that the previous tenants had been gone for a "long time," that the space was indeed available for rent, and that Hispanos could use the existing antenna if it wished.

II. WAIVER REQUEST

The Commission may waive its rules for good cause shown.⁵ Waiver is appropriate when (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.⁶ Waiver of Section 74.1203(a)(3) in this case satisfies both of these criteria.

WQNB plainly is and has been non-operational for a significant period of time, and BEWARE has not complied with the Commission's rules requiring the licensee to request extension of its silent STA if suspension of operation will exceed the STA's original term. Moreover, the facts belie any notion that the Station will resume operation before its license expires as a matter of law on October 4, 2023.⁷ Salem respectfully submits that to allow WQNB—a licensed facility in name only—to stand in the way of the instant application would disserve the public interest. As this application demonstrates, given the significant interference

⁵ See 47 C.F.R. § 1.3.

⁶ See *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁷ See FCC Letter; 47 U.S.C. § 312(g).

the Station currently is receiving, Hispanos has a genuine need to modify the license to provide the best possible service to its local community.

The unique circumstances of this situation warrant a waiver of Section 74.1203(a)(3). Hispanos acknowledges that the purpose of Section 74.1203(a)(3) is to protect the reception of secondary stations, including LPFMs, from interference from FM translators. Here, however, the LPFM to be protected is, for all intents and purposes, non-existent. Moreover, while WQNB remains silent, wasting valuable spectral resources,⁸ Hispanos is making every effort to enhance the quality of service it and its primary station, WRHC, provide to its listeners. Time and time again, the Commission has found that improving audience reception furthers the public interest.⁹

III. CONCLUSION

For the reasons stated above, Hispanos respectfully requests that the Commission waive Section 74.1203(a)(3) of its rules and grant the instant application.

⁸ The Commission has long emphasized that a broadcast license is a “valuable privilege to utilize the airwaves” See *Gresham Communications, Inc., et al.*, Memorandum Opinion and Order, FCC 11-127, para. 8 (rel. Aug. 25, 2011); see also *Application of Joseph F. Bryant (Transferor) & James W. Owens & Lorianne Crook-Owens (Transferees) for Transfer of Control of Bryant Communications, Inc., Licensee of Station WJFB(TV), Lebanon, Tennessee*, 6 FCC Rcd 6121, para. 19 (rel. Oct. 31, 1991).

⁹ See, e.g., *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Roanoke, Virginia)*, Notice of Proposed Rulemaking, DA 23-23, para. 3 (rel. Jan. 11, 2023) (finding that harms of proposed channel change are “outweighed by the overall public interest benefit of improving reception”); *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Tracy, Minnesota)*, Report and Order, 8 FCC Rcd 3704, para. 2 (rel. May 28, 1993) (finding that “the public interest would be served” by a channel substitution because “it would provide expanded reception service to the community.”).

ATTACHMENT 1: DECLARATIONS

DECLARATION OF MONICA RABASSA

I, Monica Rabassa, declare as follows:

1. Since November 2022 I have been the General Manager of WWFE(AM), Miami, FL (Facility ID 21391); WRHC(AM), Coral Gables, FL (Facility ID 73945); WMYM(AM), Kendall, FL (Facility ID 12833); and their associated FM translators, which are owned and operated by Salem Media Group, Inc. and its subsidiary Hispanos Communications LLC.

2. In that capacity, I am aware of the instant displacement application to change to 100.3 the frequency of the FM translator W254DV, Miramar, FL (Facility ID 202998), which serves as a fill-in for WRHC(AM).

3. I am further aware that the Federal Communications Commission (the "FCC") sent a letter dated October 28, 2022, to BEWARE, Inc., licensee of low power FM station WQNB-LP (the "LPFM") granting BEWARE's request for special temporary authority ("STA") to allow the LPFM to remain silent for a period of 180 days. The FCC's letter stated that the LPFM had been silent since October 3, 2022. The FCC granted the STA request to remain silent through approximately April 2023.

4. According to the FCC's database, BEWARE has neither filed a notification that the LPFM had resumed operation nor an STA extension request for the LPFM to remain dark.

5. My staff and I have monitored the LPFM frequency numerous times over the last several months to determine if the station has gone back on the air. To our knowledge it has not, including as of today.

6. On July 19, 2023, I called and spoke to a gentleman at the Miami Gardens Business Center, located at 18350 NW 2nd Ave, Miami, FL 33169 (the "Building"). This is the

address listed as the transmitter site for the LPFM. During our call, the individual I reached identified himself as Dvir Derhy, the Building administrator.

7. I told Mr. Derhy that our operations manager, Jorge Rodriguez, Jr., had been to the Building in May and had seen that there was a radio studio there that was not being used, as well as an antenna suitable for broadcast transmission with a cut-off cable.

8. I asked Mr. Derhy if the space was available for us to rent, if we could use the antenna, and how long the previous broadcast tenants had been gone. He told me that the previous tenants had been gone for a "long time," that the space was available, and that we could use the antenna. I thanked him for his time.

I hereby declare under penalty of perjury that, to the best of my knowledge, information, and belief, the foregoing is true and correct.

Executed in Miami, FL on July 20, 2023.
City, State


Monica Rabassa

DECLARATION OF JORGE RODRIGUEZ, JR.

I, Jorge Rodriguez, Jr., declare as follows:

1. I am the Operations Manager of WWFE(AM), Miami, FL (Facility ID 21391); WRHC(AM), Coral Gables, FL (Facility ID 73945); WMYM(AM), Kendall, FL (Facility ID 12833); and their associated FM translators, which are owned and operated by Salem Media Group, Inc. and its subsidiary Hispanos Communications LLC.

2. In that capacity, I am aware of the instant displacement application to change to 100.3 the frequency of the FM translator W254DV, Miramar, FL (Facility ID 202998), which serves as a fill-in for WRHC(AM).

3. In connection with the preparation of this application, I have monitored the status of WQNB-LP (the "LPFM"), which went silent on October 3, 2022, intermittently for two months. To my knowledge, the LPFM has not returned to air.

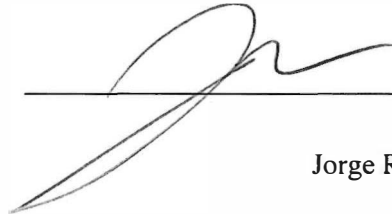
4. In addition, I visited the transmitter and studio location for the LPFM on May 15, 2023 (as listed in the FCC database, Miami Gardens Business Center at 18350 NW 2nd Ave, Miami, FL 33169). I and station engineer Eduardo Rodriguez were given access to the building and to its roof, escorted by building maintenance. We were unable to detect any signal for the LPFM on-site.

5. Neither the LPFM nor any other broadcast station was occupying the building on the date of my visit. The space that seems to have been occupied by the LPFM at one time is vacant and, according to the maintenance person who escorted me, available to rent. No broadcast equipment was located on the premises.

6. There were several cell phone towers and microwave dishes on the roof, but only one antenna that could be used for LPFM transmission. The antenna was not operational, and its cables were cut.

I hereby declare under penalty of perjury that, to the best of my knowledge, information, and belief, the foregoing is true and correct.

Executed in Miami, FL on July 20, 2023.
City, State


Jorge Rodriguez, Jr.