

**SECOND FURTHER SUPPLEMENT TO 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 further supplements its request, filed July 21, 2023, for the Federal Communications Commission (“FCC” or “Commission”) to waive Section 74.1203(a)(3) of its rules pertaining to interference from FM translator stations (the “Waiver Request”).¹ Hispanos previously supplemented the Waiver Request on October 10, 2023 (the “Supplemental Request”)² and December 21, 2023 (the “Further Supplemental Request”).³

In short, Hispanos believes in good faith that the facts Hispanos has gathered on the ground in Miami belie assertions made by BEWARE Inc. (“BEWARE” or the “Licensee”) in its January 8, 2024 response to the Commission’s Letter of Inquiry (discussed below) that WQNB-LP (“WQNB”), Miami, Florida (Facility ID 196346), was not silent for more than twelve consecutive months so as to avoid expiration of its license as a matter of law.⁴ Most importantly, despite diligent and frequent monitoring, Hispanos has never been able to pick up WQNB’s signal over the relevant time period, or currently.

I. BACKGROUND

The Waiver Request accompanied an application for a minor modification of the Station’s licensed facilities seeking FCC 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

¹ See FCC File No. 0000218218.

² See FCC File No. 0000218218, Supplement to Request for Waiver of 47 C.F.R. § 74.1203(a)(3) (“Supplemental Request”).

³ See FCC File No. 0000218218, Further Supplement to Request for Waiver of 47 C.F.R. § 74.1203(a)(3) (“Further Supplemental Request”).

⁴ 47 U.S.C. § 312(g).

pattern and effective radiated power (the “Modification Application”).⁵ Hispanos hereby incorporates by reference the factual background provided in the Supplemental Request and the Further Supplemental Request. However, Hispanos reiterates herein certain facts established in those previous filings, as relevant, to effectively communicate recent developments to the Commission.

The Commission’s Media Bureau, Audio Division (the “Division”) issued a Letter of Inquiry (“LOI”) to WQNB’s licensee, BEWARE, on November 22, 2023 requiring the Licensee to “provide evidence of [WQNB’s] operation with authorized facilities between October 2, 2022 and the present date.”⁶

On December 15, 2023, BEWARE filed a third application for Special Temporary Authority (the “Third STA”) claiming that, although the “[p]revious STA application originally anticipated placing [WQNB’s facilities] directly on [the] roof of [the] building on [the] property,” the facilities were instead “erected alongside trees at the perimeter of [the] building.”⁷ BEWARE then apparently determined it “best to again relocate the antenna structure further from the building to the perimeter of the parking lot.”⁸ The Third STA describes “the temporary facility on the same property” as using a 13.5-meter tall, one bay, omni-directional antenna.⁹ The coordinates provided for this purported new temporary facility are 25 54 55 N, 80 11 09 W,¹⁰

⁵ See FCC File No. 0000218218.

⁶ See Letter to BEWARE Inc. from Albert Shuldiner, Chief, Audio Division, Media Bureau (Nov. 22, 2023) (“LOI”).

⁷ FCC File No. 0000233023. Although the Engineering Statement for the Third STA is dated November 2023, the Third STA itself is dated December 15, 2023 in the FCC’s Licensing and Management System.

⁸ *Id.*

⁹ *Id.*

¹⁰ See *id.*

which appears to be a space on the eastern side of the Ola Condominium complex . The Division granted the Third STA the same day it was filed.¹¹

On January 8, 2024—the day on which BEWARE was required to respond to the LOI¹²—the Licensee submitted only a “Preliminary Response to Operational Status Inquiry and Request for Extension of Time” (the “Preliminary Response”) to the Division’s Victoria McCauley, requesting “a two week extension until Monday, January 22, 2024” to allow BEWARE to “work with counsel and provide a complete response to the [LOI] with supporting documentation.”¹³ It does not appear that any subsequent response from BEWARE is available on the Commission’s Licensing Management System (“LMS”).

In support of the Preliminary Response, BEWARE provided what purports to be a photo of the antenna for WQNB “as installed October 1, 2023[.]”¹⁴ As BEWARE describes it, this photo evidences the “[a]ntenna extruding above [the] treeline” at the “perimeter of [the] parking lot[.]”¹⁵ The Preliminary Response contained a hodgepodge of defensive assertions, but provided none of the proof of actual broadcast between October 2022 and October 2023 requested by the Commission to enable it to conduct a Section 312(g) analysis.

II. FURTHER SUPPLEMENT TO THE WAIVER REQUEST

The Division’s LOI essentially—and rightly—asks BEWARE to conclusively demonstrate that WQNB had indeed been in operation before its license expired as a matter of

¹¹ *See id.*

¹² The LOI required BEWARE to respond within forty-five (45) days, which placed the response deadline on January 6, 2024. *See* LOI at 1. However, because January 6, 2024 fell on a Saturday, Hispanos assumes that the Division treated the following Monday—January 8, 2024—as BEWARE’s filing deadline.

¹³ Letter to Marlene H. Dortch, Secretary, FCC, and Victoria McCauley, Attorney, Audio Division, Media Bureau, FCC, from Levan Joseph, Vice President, BEWARE, Inc., at 1 (Jan. 8, 2024).

¹⁴ *Id.* at 5.

¹⁵ *Id.*

law. As of this second further supplemental request's filing, BEWARE's response to the LOI does not appear in LMS, and thus Hispanos must assume that no such response has been filed. But regardless of whether BEWARE has provided the Division with the complete and substantive response that it promised as of January 22, it nonetheless remains abundantly clear to Hispanos that BEWARE did not resume WQNB's operations on or prior to October 3, 2023 and, in fact, that WQNB is not broadcasting from the site authorized by the Third STA granted in December 2023.

As explained in the Declaration contained in Attachment 1 hereto, on January 24, 2024, Scott Foster, Senior Vice President of Engineering for Hispanos's parent company, Salem Media Group, Inc., visited the coordinates listed in the Third STA at the Ola Condominium—the third such visit that a Hispanos representative has made to this site since October 2023.¹⁶

Upon surveying the area, Mr. Foster was unable to locate an antenna or broadcast tower of any sort anywhere near BEWARE's specified coordinates, let alone the antenna described in the Third STA or depicted in the Preliminary Response. And as was the case with each previous Hispanos visit to the Ola Condominium, Mr. Foster was unable to detect any audio emanating from WQNB in any part of the Ola Condominium complex. Instead, Mr. Foster only detected a carrier frequency. However, as soon as Mr. Foster left the neighborhood surrounding the Ola Condominium, the only signal he was able to detect was that of station WCTH, transmitting from the Florida Keys, consistent with the signal the Hispanos representatives that visited the Ola Condominium previously detected on multiple occasions.

¹⁶ See Supplemental Request at 3-4; Further Supplemental Request at 2-4. Hispanos has previously explained in connection with the Waiver Request that it found no equipment or WQNB signal prior to this time.

Hispanos continues to believe in good faith that WQNB failed to resume operations as of October 3, 2023, whether at any previous site or at the location detailed in the Third STA. Hispanos still cannot find any evidence whatsoever that WQNB is emitting a signal or that BEWARE has constructed facilities that would enable it to do so either now or prior to October 2023. Absent proof positive submitted in response to the LOI, which appears highly unlikely given the facts, BEWARE's license for WQNB has expired as a matter of law.

III. CONCLUSION

For the reasons stated in the Waiver Request, the Supplemental Request, the Further Supplemental Request, and this second further supplemental request, Hispanos respectfully requests that the Division delete WQNB and grant the Modification Application. In the alternative, Hispanos respectfully requests that the Division grant the Waiver Request and, in turn, the Modification Application.

DECLARATION OF SCOTT FOSTER

I, Scott Foster, declare as follows:

1. I am the Senior Vice President of Engineering for Salem Media Group, Inc. (“Salem”). Salem, along with its subsidiary Hispanos Communications LLC (“Hispanos”), owns and operates 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.

2. In that capacity, I am aware of the pending 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 reviewed: (1) the December 15, 2023 request for Special Temporary Authority (“STA”) filed by BEWARE Inc. (“BEWARE”) seeking temporary authorization to operate WQNB-LP, Miami, FL (Facility ID 196346) (“WQNB”) with reduced power at a temporary facility at 25 54 55 N, 80 11 09 W; and (2) BEWARE’s January 8, 2024 “Preliminary Response to Operational Status Inquiry and Request for Extension of Time” submitted in response to the Letter of Inquiry that the Audio Division of the Federal Communications Commission’s Media Bureau sent to BEWARE on November 22, 2023.

4. On January 24, 2024, I visited the coordinates that BEWARE provided in its STA. These coordinates took me to the Ola Condominium complex, located at 15225 NE 6th Avenue, Miami, Florida 33162. Upon surveying the area, I was unable to locate any antenna or broadcast tower. I was also unable to detect any audio emanating from WQNB when tuned to 100.3 FM from within the Ola Condominium complex. While I did detect a carrier frequency

while at the Ola Condominium, upon leaving the area surrounding the Ola Condominium, the only signal that I was able detect was that of radio station WCTH, transmitting from the Florida Keys.

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 Basehor, Kansas on February 9, 2024.
City, State

Scott Foster

Scott Foster