



Federal Communications Commission
Washington, D.C. 20554

March 30, 2020

In Reply Refer to:
1800B3-KV

WRPX, Inc.
c/o James A. Koerner, Esq.
Koerner & Olender, P.C.
7020 Richard Drive
Bethesda, MD 20817

Stewards of Sound, Inc.
c/o Peter Tannenwald, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th St., 11th Floor
Arlington, VA 22209-1104

In Re: W279DD, Hudson, WI
WRPX, Inc.
Facility ID No. 141819
File No. BLFT-20180801ABO

Interference Complaint

Dear Counsel:

This letter addresses the interference complaint (Complaint) against WRPX, Inc. (WRPX), licensee of W279DD, Hudson, Wisconsin (Translator), filed on October 31, 2018, by Stewards of Sound, Inc. (SSI), licensee of WWIB(FM), Hallie, Wisconsin (Station), and the supplement (Supplement) filed by SSI at the request of staff, on October 21, 2019 (collectively, Supplemented Complaint).¹ For the reasons discussed below, we dismiss the Supplemented Complaint.

¹ Also before us are two responsive pleadings and a letter. Response of WRPX to Renewed Interference Complaint (filed Dec. 7, 2018) (Response to Complaint); Letter from Peter Tannenwald and Michelle A. McClure, Counsel for SSI, to Marlene H. Dortch, Secretary, FCC (filed Apr. 22, 2019) (Reply to Response); Response of SSI to FCC Questions About Supplement to Renewed Interference Complaint (filed Nov. 13, 2019) (Reply to Staff).

Background. SSI filed the Complaint on October 31, 2018.² The Complaint included responses to a questionnaire from four individuals who indicated that they experienced interference when listening to the Station.³ On December 7, 2018, WRPX filed the Response to Complaint, asserting that WRPX reached out to the four respondents and resolved what it viewed as legitimate complaints within the service contour identified by SSI in the Complaint.⁴ Subsequently, on April 22, 2019, SSI filed the Reply to Response with letters from the two respondents whose interference complaints SSI said still were unresolved.⁵

In May 2019, the Commission revised its rules relating to FM translator interference complaints and the complaint resolution process.⁶ In the *FM Translator Interference Order*, the Commission stated that complaints still pending as of the effective date of the new rules would be decided under those rules, and if necessary, parties would be given an opportunity to submit supplemental materials to address the new rules.⁷ The new rules became effective on August 13, 2019.⁸

On August 22, 2019, we notified SSI that the Complaint lacked some of the information required by the Commission's new rules.⁹ Among other things, we noted the Complaint did not state that SSI attempted a private resolution with WRPX and the Complaint did not include the required minimum number of valid listener complaints, as defined in sections 74.1203(a)(3) and 74.1201(k) of the Commission's rules.¹⁰ We informed SSI that failure to submit the required information would result in our dismissal of the Complaint.¹¹

² Complaint.

³ *Id.*, Exh. 1, Documentation of 4 Remaining Listener Complaints.

⁴ Response to Complaint. WRPX filed the Response to Complaint after the Bureau directed WRPX to resolve the listener complaints in accordance with the Commission's rules at the time. See *Letter from James D. Bradshaw, Senior Deputy Chief, Audio Division, FCC Media Bureau (MB), to James A. Koerner, Counsel for WRPX* (Nov. 7, 2018). In May 2019, the Commission revised its rules relating to FM translator interference complaints and the complaint resolution process. *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Report and Order, 34 FCC Rcd 3457 (2019) (*FM Translator Interference Order*).

⁵ Reply to Response, Attach., Letters from Barbara Bartz and Karen Adams.

⁶ *FM Translator Interference Order*, 34 FCC Rcd 3457.

⁷ *Id.* at 3482, para. 49.

⁸ *Media Bureau Announces August 13, 2019, Effective Date of Amended Rules for FM Translator Interference*, MB Docket No. 18-119, Public Notice, 34 FCC Rcd 7004 (MB 2019).

⁹ *Letter from James Bradshaw, Senior Deputy Chief, Audio Division, MB, to Peter Tannenwald, Counsel for SSI* (Aug. 22, 2019) (Complaint Deficiency Letter). Specifically, we noted that the following information was missing from the Complaint: (1) detailed information on the Station's protected contour and the population located therein; (2) the required minimum number of valid listener complaints, as determined by the population located within the Station's protected contour and defined in section 74.1201(k) of the Commission's rules; (3) a statement that the Station is operating within its licensed parameters; (4) a statement that the Station has used commercially reasonable efforts to inform the Translator of the claimed interference and attempted private resolution; and (5) U/D data demonstrating that at each listener location the ratio of undesired to desired signal strength exceeds -20 dB for co-channel situations, -6 dB for first-adjacent channel situations, or 40 dB for second or third adjacent channel situations, calculated using the Commission's standard contour prediction methodology. Complaint Deficiency Letter at 1-3.

¹⁰ *Id.* at 2-3.

¹¹ *Id.* at 3.

In response to our letter, SSI filed the Supplement on October 21, 2019.¹² The Supplement included an exhibit with 47 completed listener complaint forms.¹³ According to SSI, the 47 listener complaint forms exceed the required minimum number of listener complaints for the largest population tier under the Commission's rules.¹⁴

Discussion. Based on our review of SSI's submissions,¹⁵ we conclude that the Supplemented Complaint is not a valid and complete interference claim package. We conclude that the Supplemented Complaint lacks the required statement that SSI attempted to resolve the matter privately with WRPX.¹⁶ Pursuant to section 74.1203(a)(3) of the Commission's rules, a valid and complete interference claim package must include, among other things, "a statement that the complaining station has used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted a private resolution."¹⁷ As discussed above, we provided an opportunity for SSI to supplement its Complaint in order to meet this requirement after the rule became effective.¹⁸ Rather than including a statement that SSI attempted a private resolution of the dispute, the Supplement discusses SSI's attempt to resolve its previous interference claim filed against the Translator in August 2017.¹⁹ We already addressed SSI's prior claim in a previous letter decision ordering the Translator to cease operations under the FCC license it held at the time.²⁰ We find that the Supplemented Complaint's statement about an attempted private resolution relates to a separate claim that has already been adjudicated, rather than the complaint at issue in this proceeding.²¹ Therefore, we conclude that the Supplemented Complaint does not include the required statement that SSI attempted to resolve the current interference dispute privately prior to filing a formal interference claim with the Commission.²²

¹² The Bureau afforded SSI thirty days to file the required information. Complaint Deficiency Letter at 3. On September 20, 2019, the Bureau granted SSI's unopposed request for extension of time until October 21, 2019, to respond to the Complaint Deficiency Letter. *See* E-mail from Kim Varner, Attorney-Advisor, Audio Division, MB, to Peter Tannenwald, Counsel for SSI, et al. (Sep. 20, 2019, 7:56 EDT); Letter from Peter Tannenwald and Michelle A. McClure, Counsel for SSI, to Marlene H. Dortch, Secretary, FCC (filed Sept. 17, 2019).

¹³ Supplement, Exh. 1, Documentation of 47 Listener Complaints (Listener Complaint Forms).

¹⁴ Supplement at 2. On November 7, 2019, staff requested that SSI identify any information on the reports that an individual other than the listener completed before or after the listener executed the report. *See E-mail from Kim Varner, Attorney-Advisor, Audio Division, MB, to Peter Tannenwald, Counsel for SSI, et al.* (Nov. 7, 2019, 10:40 EST). On November 13, 2019, SSI filed the Reply to Staff and included a declaration from SSI's chief engineer describing how he helped listeners complete the 47 listener complaint forms. Declaration of Patrick Wahl, Exh. 1 to Reply to Staff.

¹⁵ Complaint; Reply to Response; Supplement; Reply to Staff.

¹⁶ *See* Complaint; Supplement.

¹⁷ 47 CFR § 74.1203(a)(3)(iv).

¹⁸ Complaint Deficiency Letter.

¹⁹ Declaration of Patrick Wahl, Exh. 3 to Supplement, Decl. ¶ 4 (stating that Wahl contacted WRPX to request remediation "prior to filing of Stewards' [previous] interference complaint against WRPX on August 24, 2017," and that "WRPX declined to take remedial steps at that time").

²⁰ W279DD, Hudson, WI, File No. BLFT-20160502ABR, Letter Order (MB June 11, 2018). The Translator's current authorization specifies the use of a different antenna from the previous license at issue in our 2018 letter decision. *See* W279DD, Facility ID No. 141819, File No. BLFT-20180801ABO.

²¹ *See supra* note 20.

²² 47 CFR § 74.1203(a)(4)(iv); *Translator Interference Order*, 34 FCC Rcd at 3469, para. 23. *See also FM Translator Interference Order*, 34 FCC Rcd at 3470, para. 24 ("[G]iven the streamlined procedures that are imposed

In addition, we conclude that the Supplemented Complaint does not include the required minimum number of valid listener complaints, as defined in sections 74.1203(a)(3) and 74.1201(k) of the Commission's rules.²³ Rather than stating that the respondent "listens over-the-air" to the desired station as specifically required by section 74.1201(k), each signed listener complaint form simply states that the respondent "listen[s] to WWIB on 103.7 at least twice a month."²⁴ We find that this general statement does not contain the specific language required by the Commission's rules to consider each of these forms a valid listener complaint.²⁵ Because none of the signed forms is a valid listener complaint, we conclude that SSI has not submitted the required minimum number of valid listener complaints.

Conclusion. For the reasons discussed above, we conclude that the Supplemented Complaint is not a valid and complete interference claim package and therefore should be dismissed.

Accordingly, IT IS ORDERED that the Renewed Interference Complaint filed by Stewards of Sound, Inc., on October 31, 2018, as supplemented by subsequent filings discussed herein, IS DISMISSED.

Sincerely,

/s/

James D. Bradshaw
Senior Deputy Chief
Audio Division
Media Bureau

by this *Report and Order*, translators and complaining station should have the opportunity to resolve the matter privately prior to filing a formal interference claim with the Commission.”).

²³ 47 CFR §§ 74.1201(k), 74.1203(a)(3); Complaint Deficiency Letter at 2. If a Complaining Station has elected to submit 25 or more listener complaints in lieu of providing specific population information, it will be reviewed by Commission staff as requiring 25 rule compliant showings from listeners. *See e.g., K247CP, Houston, TX*, File No. BLFT-20180815AAD, Letter Order at 2, n. 3 (MB Nov. 1, 2019).

²⁴ Listener Complaint Forms. We also note that one of the respondents failed to include his telephone number on his complaint, as required by the Commission's rules. *Id.* at 2 (the complaint form for Jeff Aebly).

²⁵ *FM Translator Interference Order*, 34 FCC Rcd 3466, para. 17 (requiring “a statement that the complainant listens to the desired station using an *over-the-air* signal at least twice a month” (emphasis added)). *See also W236CZ, Columbus, OH*, File No. BLFT-20170608AAP, Letter Order at 4-5 (MB Jan. 10, 2020) (dismissing an interference complaint for, *inter alia*, failure to report over-the-air listening).