

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
ABSOLUTE BROADCASTING, LLC)	File No. BLFT-20171221AAJ
)	
W253AF (W260DB) Nashua, NH)	Facility ID Number 83187
)	

**To: The Office of the Secretary (Via CDBS)
Attention: Chief, Audio Division, Media Bureau**

STATEMENT FOR THE RECORD

Comes now Absolute Broadcasting, LLC (Absolute), by its substitute communications counsel, and hereby respectfully submits this *Statement for the Record* relative to the Petition¹ of Saga Communications of New England, LLC (Saga). Saga’s Petition seeks to have the license of the captioned FM Translator station declared expired by the Commission pursuant to 47 U.S.C. §312(g). Saga contends therein that Absolute’s FM Translator Station W253AF (W260DB) (the Station) was “apparently” not placed on the air for a consecutive period in excess of 365 days, and specifically between February 22, 2018 and February 22, 2019 and therefore Saga urges that license of the Station should be declared expired (forfeit) pursuant to the terms of 47 U.S.C. §312(g). Absolute filed an Opposition to that Petition and Saga replied to Absolute’s Opposition.

1. Absolute’s Opposition noted that the Station had been returned to the air on July 2, 2018 and was taken silent again on July 11, 2018 and hence it was not off the air continuously for 365 consecutive days. Saga claims that Absolute’s Opposition failed to

¹ See, the *Petition to Declare License Expired* filed by Saga filed on or about March 8, 2019 (the Petition).

prove that the Station had been returned to the air during that period. Saga, however, failed *ab initio* to establish its allegation that the Station has not been silent for any consecutive 365-day period on a *prima facie* basis. Saga's Petition, because it did not establish that the Station was not placed on the air at any time during the period February 22, 2018 through February 22, 2019 failed to establish, *prima facie*, that the Station did not "transmit broadcast signals for any consecutive 12-month period," and Absolute therefore did not have the burden of proof that Saga incorrectly assumes it had. The Saga Petition should be dismissed because it does not contain *any evidence at all* proving the truth of the matter that Saga asserted.

2. However, to put the issue to rest once and for all, attached are two statements for the record, each executed under penalty of perjury. The first is from Thomas R. Ray III, a broadcast engineer whose engineering firm, Tom Ray Broadcast Consulting, LLC, was at all relevant times retained by Absolute to provide broadcast engineering services to Absolute. Mr. Ray notes that he personally placed the FM Translator at Nashua on the air with a two-bay antenna on July 2, 2018 and then was instructed to take the Translator off the air again on July 11, 2018. The second statement attached is from Mr. Gary Blue, an air personality and an employee of Absolute, who states under penalty of perjury that he listened to the FM Translator station on 99.9 MHz (Channel 260) on July 2, 2018 [which was rebroadcasting the signals of WGHM (AM), Nashua, New Hampshire] and thereafter, and he had occasion to confer with communications attorneys for Absolute who recommended taking the station off the air again on July 11, 2018, which was done on that date. These statements together establish that the basis for the Saga claim is premised on an incorrect assumption.

Therefore, the foregoing considered, Absolute Broadcasting, LLC hereby again respectfully requests that the *Petition to Declare License Expired* filed by Saga Communications of New England, LLC be denied; that the pending License Application for FM Translator W260DB (File No. BLFT-20171221AAJ, filed Dec. 21, 2017) be granted.

Respectfully submitted,

ABSOLUTE BROADCASTING, LLC

By: Christopher D. Imlay
Christopher D. Imlay
Its Counsel

Booth, Freret & Imlay, LLC
14356 Cape May Road
Silver Spring, MD 20904-6011
(301) 384-5525
chris@imlaylaw.com

April 24, 2019

EXHIBITS

STATEMENT OF THOMAS R. RAY III

I, Thomas R. Ray, III, President of Tom Ray Broadcast Consulting, LLC, do hereby state and affirm under penalty of perjury, as follows:

1. I am an experienced broadcast engineer. My credentials are a matter of record at the Federal Communications Commission. I formerly served as Chief Engineer of WOR Radio in New York City and formerly served as Director of Engineering of Buckley Broadcasting. I am experienced in technical regulatory issues and with AM & FM broadcast facilities maintenance and construction, as well as studio maintenance and construction.

2. My company, Tom Ray Broadcast Consulting, LLC has been retained by, and currently provides broadcast engineering and technical services to Absolute Broadcasting, LLC, the licensee of W253AF (W260DB), Nashua, New Hampshire. I provided such services to Absolute during 2018.

3. I was instructed by the management of Absolute Broadcasting, LLC to return FM translator W260DB to the air during July of 2018. I did place this FM Translator on the air on FM Channel 260 on July 2, 2018, using the facilities at Nashua, New Hampshire specified in the filed and pending license application, BLFT-20171221AAJ, which by that time had been constructed using a two-bay antenna as specified in the construction permit BPFT-20160727ADA, as modified by BMPFT-20170713AHQ. The FM Translator was at all relevant times operating normally and it had been constructed in accordance with the Construction Permit as modified. The FM Translator was rebroadcasting the signals of WGHM(AM), Nashua, New Hampshire. In my opinion the FM Translator was operating legally.

4. I was instructed to discontinue operation of the FM Translator again on July 11, 2018. It is my understanding that the discontinuance of operation on that date was on the advice of the communications counsel for the Licensee.

Further Affiant Sayeth Naught.


Thomas R. Ray, III

April 23, 2019

STATEMENT OF GARY BLUE

I, Gary Blue, do hereby state and affirm under penalty of perjury, as follows:

1. I am a broadcaster in the employ of Absolute Broadcasting, LLC, the licensee of FM Translator W253AF (W260DB), Nashua, New Hampshire. I worked for Absolute during 2018 and to the present time.
2. I have personal knowledge that FM Translator W260DB was placed on the air during July of 2018 and specifically beginning on July 2, 2018. I listened to the FM Translator on 99.9 MHz at Nashua on that date and thereafter. The translator was on the air until July 11, 2018. The FM Translator was rebroadcasting the signals of WGHM(AM), Nashua, New Hampshire during that period.
3. I had occasion to communicate by e-mail on July 11, 2018 with the communications lawyers for Absolute at the time, concerning the fact that the FM Translator was on the air, and I was advised by those attorneys that Absolute should discontinue operation of the Translator, which was accomplished on that same date, July 11, 2018.

Further Affiant Sayeth Naught.



Gary Blue

April 23, 2019

CERTIFICATE OF SERVICE

I, Christopher D. Imlay, do hereby certify that I caused to be mailed, via first class U.S. Mail, postage prepaid, a copy of the foregoing STATEMENT FOR THE RECORD to the following, this 24th day of April, 2019.

Mr. James Bradshaw *
Audio Division, Media Bureau
Federal Communications Commission
445-12th Street, S.W.
Washington, D.C. 20554
*via e-mail to James.Bradshaw@fcc.gov

Mr. Robert Gates *
Audio Division, Media Bureau
Federal Communications Commission
445-12th Street, S.W.
Washington, D.C. 20554
*via e-mail to Robert.Gates@fcc.gov

Kim Varner, Esq. *
Audio Division, Media Bureau
Federal Communications Commission
445-12th Street, S.W.
Washington, D.C. 20554
*via e-mail to Kim.Varner@fcc.gov

Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W.
Suite 301
Washington, D.C. 20016

Christopher D. Imlay

Christopher D. Imlay

*Via e-mail