



**Federal Communications Commission
Washington, D.C. 20554**

June 27, 2019

In Reply Refer to: 1800B3-KV

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In re: W296DF, Lake Bluff, IL
File Nos. BPFT-20160811AAO, and
BLFT-20170414AAC
Facility ID No. 141545

**Interference Complaint and
Petition to Deny**

Dear Counsel:

We have before us the following: (1) a "Complaint of Interference and Operating without a License" (First Complaint) filed on March 27, 2017, by Polnet Communications, Ltd. (Polnet), licensee of FM Translator Station W296DA(FM), Vernon Hills, Illinois, Channel 296, alleging interference from FM Translator Station W296DF (W296DF or Station) licensed to MB Capital Management, LLC (MBCM or

Licensee);¹ (2) a license application (License Application) filed on April 14, 2017, by MBCM² covering a construction permit to operate on Channel 296, at Lake Bluff (Permit);³ and (3) a “Petition to Deny” (Petition) the License Application, filed on April 26, 2017, by Polnet.⁴ For the reasons set forth below, we grant the Complaint; grant the Petition to the extent indicated herein and otherwise deny it; dismiss the License Application and require MBCM to immediately cease operation of FM Translator Station W296DF.

Background. On August 30, 2016, Commission staff granted the Permit to operate the Station on Channel 296 at Lake Bluff with an expiration date of August 30, 2019.

On March 27, 2017, Polnet filed the First Complaint, arguing that the Station should be ordered to cease operations and the Media Bureau (Bureau) should investigate whether the Permit and underlying license should be forfeited. Polnet alleges that “[t]he unauthorized operation of W296DF is causing actual interference to the signal of W296DA.”⁵ Polnet states that although the Permit prohibits operation under program test authority prior to filing a covering license, “[o]n March 10, 2017, Polnet began to receive reports of interference by [its] listeners”⁶ Polnet reports that an investigation revealed the interference originated from “a station operating on 107.1 from the tower specified in the W295CG license and construction permit . . . [the station identifies as] ‘the Hound at 106.3 is W272DJ, Lake Bluff, Chicago WOJO HD2 Evanston.’ W272DJ at 106.3 is the previous station identification for W295CG.”⁷ In support, Polnet attaches six listener complaints, each dated March 22, 2017, and reporting interference to their W296DA reception.⁸

On April 14, 2017, MBCM filed the License Application to implement the move to channel 296 authorized under the Permit.

¹ The Station is licensed to operate as W295CG, Lake Bluff, Illinois, Channel 295 (File No. BLFT-20160808AAN). Under review herein, however, is Polnet’s allegation that the Station’s operation as a permittee on Channel 296, Lake Bluff, Illinois is causing interference to its station. Therefore, we will refer to the Station as W296DF.

² File No. BLFT-20170414AAC.

³ File No. BPFT-20160811AAO.

⁴ Also before us are the following associated filings: (1) an “Opposition to Interference Complaint” (Complaint Opposition) filed on April 21, 2017, by MBCM; (2) a “Second Interference Complaint and Reply to Opposition” filed on April 25, 2017, by Polnet (Second Complaint); (3) an unopposed “Request for Additional Time” (First Request) filed on May 11, 2017, by MBCM; (4) an unopposed “Request for Additional Time” (Second Request) filed on May 22, 2017, by MBCM; (5) a “Letter to James Bradshaw” filed on May 22, 2017, by MBCM (MBCM Letter); (6) an “Opposition to Petition to Deny” (Petition Opposition) filed on June 22, 2017, by MBCM; and (7) a “Third Interference Complaint” (Third Complaint) filed on October 31, 2018, by Polnet.

⁵ First Complaint at 1. Polnet observes that the Permit contains a condition prohibiting program test operations prior to the filing of a covering license application, on FCC Form 350, but although no application had been filed, the Station was operating on Channel 296 and causing actual interference to W296DA. *Id.*

⁶ *Id.*

⁷ *Id.* See also “Declaration of Kent Gustafson,” (dated Mar. 27, 2017) (Gustafson Declaration), Exh. 1. *Id.*

⁸ Specifically, listeners: Izabela Foster experienced interference at home (Lake Villa, IL) and driving on “59/132 [and] Fox Lane”; Tadeusz Cymerman experienced interference at home (Lake Villa, IL) and driving on “132/S. Milwaukee Avenue, Lake Villa”; Andy Wesniewski experienced interference at home (Lake Villa, IL) and driving on “Grand Avenue & 94 Gurnee”; Jelanta Mil experienced interference at home (Lake Villa, IL) and driving on “E. Rollins Rd./83 Round Lake Park”; Bronislaw Strich experienced interference at home (Lake Villa, IL) and driving on “E. Main St./120 Mainesville”; and Wojciedr Bazas experienced interference at home (Lake Villa, IL) and driving on “Grand Ave. /45 Lake Villa.” Exhibit 2. , *Id.* Collectively, these listener complainants will be referred to as the “First Complainants.”

On April 20, 2017, the Bureau sent MBCM a letter directing it to resolve the complaints of interference within 30 days or suspend the Station's operations.⁹ The *Bureau Letter* required MBCM to submit a detailed report for each complainant which included: "(1) the name and address of each complainant; (2) specific devices receiving the interference (*i.e.* type of device, manufacturer's name, model number, and serial number); and (3) any assistance provided by MBCM for each device allegedly receiving the interference and whether such interference persists."¹⁰

On April 21, 2017, MBCM responded that grant of Polnet's then-pending application¹¹ to move W296DA to channel 284 would render the interference complaints moot. It also stated that if the "staff desires for MB Capital to address the complaints of interference, please let [it] . . . know."¹²

On April 25, 2017, Polnet filed a Second Complaint attaching 14 new listener complaints, dated April 19 – 22, 2017, each reporting interference to their W296DA reception.¹³ Polnet also asserted that its then-pending modification application did not relieve MBCM of its obligation to resolve the interference complaints.

On April 26, 2017, Polnet filed a Petition arguing that the License Application should be denied and Permit rescinded because the Station: (1) is causing interference to certain W296DA listeners; (2) engaged in unauthorized operations by operating for "over a month" prior to filing the License Application; and (3) continues to misidentify itself.¹⁴

On May 8, 2017, the Bureau dismissed the Polnet Modification Application.¹⁵

On May 18, 2017, MBCM reported that the Station went silent on April 29, 2017, due to "technical difficulties" and requested Special Temporary Authority (STA) to remain silent.¹⁶ On May 22, 2017, MBCM declared that its STA request to remain silent rendered the interference complaints moot. It further opined that it "is looking into the interference and when the station goes back on the air, it will

⁹ See Letter from James D. Bradshaw, Deputy Chief, Audio Division, Media Bureau, to MB Capital Management, LLC (Apr. 20, 2017) (*Bureau Letter*).

¹⁰ *Id.* at 1.

¹¹ See File No. BPFT-20170410AFV (Polnet Modification Application).

¹² Complaint Opposition at 1.

¹³ Specifically, listeners: Sylvia Kuzdzal experienced interference at home (Algonquin, IL) and driving on "176/60 Mundelein"; Anna Claude experienced interference at home (Algonquin, IL) and driving on "Dundee Rd./14 Barrington"; Jan Marcinkowski experienced interference at home (Lake Villa, IL) and driving on "Gurnee I-94"; Jack Krupka experienced interference at home (Lake Villa, IL) and driving on "Gurnee I-94"; Anna Krupka experienced interference at home (Lake Villa, IL) and driving on "Gurnee I-94"; Ela Lielonke experienced interference at home (Edgewood, IL) and driving on "Libertyville I-94"; Teresa Nauvecka experienced interference at home (Round Lake Hts, IL) and driving on "Round Lake Rd/45"; Pawel Nauvecka experienced interference at home (Round Lake Hts, IL) and driving on "Round Lake Rd/45"; Moueh Naurvecka experienced interference at home (Round Lake Hts, IL) and driving on "Round Lake Rd/45"; Paulina Nowak experienced interference at home (Schaumburg, IL) and driving on "12/134 McHenry"; Piotr Balaweider experienced interference at home (McHenry, IL) and driving on "Big Hollow Rd./12 McHenry"; Anna Krukowska experienced interference at home (McHenry, IL) and driving on "Wilson Rd./13th Long Lake"; Ewa Zarakowski experienced interference at home (Lake Villa, IL) and driving on "Grand Ave./45"; and Tomasz Zarakowski experienced interference at home (Lake Villa, IL) and driving on "132/Grand Ave." Exhibit 1. *Id.* Collectively, these listener complainants will be referred to as the "Second Complainants."

¹⁴ Polnet reports that "today, [the Station] identified itself as '[t]he Hound at 107.1 is W292DJ Lake Bluff, Chicago.'" Petition at 3.

¹⁵ See "Broadcast Actions," Rep. No. 48983 (dated May 11, 2017).

¹⁶ See File No BLSTA-20170518AAB.

address the complaints, if upon returning to the air, the complaints are still material.”¹⁷ On June 20, 2017, the Bureau granted the STA.¹⁸

Also, on June 20, 2017, MBCM responded that the Petition should be dismissed pursuant to Section 319(c) of the Communications Act of 1934, as amended, (Act)¹⁹ because it “has a protected interest in the grant of its License Application.”²⁰ MBCM also reported analyzing the Station’s “technical operation in the hopes of addressing the complaints [and]. . . that it will be able to eliminate, with a modification, all interference concerns.”²¹

On April 14, 2018, MBCM notified the Commission that on March 1, 2018, the Station “returned to the air with its licensed facilities.”²²

On October 31, 2018, Polnet filed a Third Complaint declaring that the Station apparently resumed operations on “its permitted facilities, for which its license application remains pending.”²³ Polnet reports that “[i]n early March . . . [it] again began to receive reports of interference by listeners . . . [It] attempted to contact MBCM multiple times . . . but received no response.” In support, Polnet attaches 13 new listener complaints, dated June 21 – August 13, 2018, each reporting interference to their W296DA reception.²⁴ Polnet also alleges that the Station is “operating outside of its permitted operating parameters . . . [because it] does not serve as a fill-in translator for WPPN, which operates on Channel 294 [as it proposed in the Permit] . . . and instead simulcasts WLEY 107.9, which operates on Channel 300.”²⁵

Discussion. Procedural. As an initial matter, neither the Act, nor the Rules provides for the filing of a petition to deny a license application.²⁶ Therefore, we will treat the Petition as an informal objection under Section 73.3587 of the Rules.²⁷ Informal objections, like petitions to deny, must allege

¹⁷ MBCM Letter at 1.

¹⁸ See Letter from Lisa Scanlan, Assistant Chief, Audio Division, Media Bureau to MB Capital Management (dated Jun. 20, 2017). The STA was granted for 180 days and extended, per File No. BLESTA-20171211ABJ, on January 10, 2018.

¹⁹ 47 U.S.C. § 319(c).

²⁰ Petition Opposition at 2.

²¹ *Id.* at 2.

²² See Exhibit 3, “Resumption of Operations” (dated Apr. 14, 2018). (Resumption Notice)

²³ Third Complaint at note 2.

²⁴ Specifically, listeners: Konrad Janda experienced interference at home (Lincolnshire, IL) and unspecified driving locations; Evelyn Birdeli experienced interference at home (Round Lake, IL); Monike Moriveli experienced interference at home (Hawthornwoods, IL); Iwone Molinairie experienced interference at home (Round Lake, IL); Agnes Drag experienced interference “near my house” (Round Lake, IL); Anassia Wvadysvaw experienced interference at home (Gurnee, IL); Mavoorrata Swidrak experienced interference at home (Wauconda, IL); Chatqoneta Nomywr experienced interference at home (Libertyville, IL); Merte Kulerr experienced interference at home (Greenview, IL) and unspecified driving locations; Marzena Jonak experienced interference at unspecified work and driving locations; Beata Penar experienced interference at home (Riverwoods, IL); Danuta Grochowska experienced interference at home (Mettawa, IL); and Stanislaw Grochowski experienced interference “near my house” (Mettawa, IL). Exhibit 2. *Id.* Collectively, these listener complainants will be referred to as the “Third Complainants.”

²⁵ *Id.* at 2.

²⁶ See 47 U.S.C. § 309(c); 47 C.F.R. §§ 73.3580(a)(3), 73.3584(a). See also, e.g., *Clear Channel Broadcasting Licenses, Inc.*, Letter, 21 FCC Rcd 8677 n 1 (MB 2006).

²⁷ *Id.* § 73.3587.

properly supported facts that, if true, would establish a substantial and material question of fact that grant of the application would be inconsistent with the public interest.²⁸

Substantive. Section 319(c) of the Act²⁹ imposes a stringent standard on challenges to license applications. So long as “all the terms, conditions, and obligations set forth in the application and permit have been fully met,” MBCM is entitled, as an applicant for a license to cover a construction permit, to a high degree of protection and a presumption that the public interest determination made during the underlying construction permit proceedings continues in effect unless circumstances have arisen that would make operation of the Station against the public interest.³⁰

Section 74.1203(a)(3)³¹ of the Rules states that an FM translator station will not be permitted to continue to operate if it causes any actual radio signal interference to the direct reception by the public of the off-the-air signals of any authorized broadcast station.³² The rule places no geographic or temporal limitation on complaints, and we have long held that mobile receivers, such as automobile radios, should not be subject to interference resulting from the operation of an FM translator or booster station.³³ The FM translator rules strictly prohibit interference by these secondary service stations, and an interfering FM translator station must remedy the interference or suspend operation.³⁴

The Commission has interpreted “direct reception by the public” to limit actionable complaints to those that are made by *bona fide* listeners.³⁵ Thus, it has declined to credit claims of interference³⁶ or lack of interference³⁷ from station personnel involved in an interference dispute. More generally, the Commission requires that a complainant “be ‘disinterested,’ *e.g.*, a person or entity without a legal stake in the outcome of the translator station licensing proceeding.”³⁸ The staff has routinely required a complainant to provide his or her name, address, location(s) at which FM translator interference occurs, and a statement that the complainant is, in fact, a listener of the affected station. Moreover, as is the case with other types of interference complaints,³⁹ the staff has considered only those complaints of FM translator interference where the complainant cooperates in efforts to identify the source of interference

²⁸ See, *e.g.*, *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990).

²⁹ 47 U.S.C. § 319(c).

³⁰ See 47 U.S.C. § 319(c) (requiring the Commission to issue a license where a construction permit has been granted and it appears that the terms of such permit have been met, and “that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest . . .”); *Focus Cable of Oakland, Inc.*, Memorandum Opinion and Order, 65 FCC 2d 35, 39-40, para. 11 (1977).

³¹ 47 CFR § 74.1203(a)(3).

³² An FM translator station creating actual radio signal interference to any authorized broadcast station is obligated to eliminate the interference, regardless of the location where the impaired signal reception occurs.

³³ See, *e.g.*, *Forus FM Broad. of New York, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 7880, 7882, para. 16 (MB 1992) (because of the secondary nature of FM booster stations, and the resulting requirement that they provide interference-free service, such stations will not be permitted to cause interference to mobile receivers).

³⁴ 47 CFR § 74.1203(b).

³⁵ See *Ass’n for Cmty. Educ., Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12688, para. 16 (2004) (*Ass’n for Cmty. Educ.*).

³⁶ See *id.*

³⁷ See *Living Way Ministries, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 15070, 15077, n.46 (2008).

³⁸ *Ass’n for Cmty. Educ.*, 19 FCC Rcd at 12688 n.37.

³⁹ See, *e.g.*, *Jay Ayer and Dan J. Alpert*, Letter Order, 23 FCC Rcd 1879, 1883 (MB 2008) (requiring complainants to cooperate fully with the station’s efforts to resolve interference and cautioning that the failure to do so could lead to a finding that the station has fulfilled its interference remediation obligations).

and accepts reasonable corrective measures.⁴⁰ Accordingly, when the Commission concludes that a *bona fide* listener has made an actionable complaint⁴¹ of uncorrected interference from an FM translator, it will notify the station that “interference is being caused” and direct the station to discontinue operations.⁴²

The issue before us is whether MBCM has eliminated the actual interference caused by the Station to the 33 listeners (First, Second and Third Complainants) who filed complaints in this proceeding. After the Station went silent, on April 29, 2017, MBCM twice pledged to address listener complaints upon resuming Station operations.⁴³ On March 1, 2018, the Station returned to the air. To date, however, MBCM has failed to address the listener complaints as directed by the *Bureau Letter*.

Therefore, based on the record, we find that MBCM failed to resolve any of the 33 listener complaints and the Station must suspend operations. We further find that circumstances have arisen that would make operation of the Station against the public interest and will dismiss the License Application.⁴⁴

Conclusion. Based on the above, IT IS ORDERED, that the Interference Complaints, filed on March 27, 2017, April 25, 2017, and October 31, 2018, by Polnet Communication, Ltd. ARE GRANTED.

IT IS FURTHER ORDERED that the Petition Deny, filed on April 26, 2017, by Polnet Communication, Ltd. IS GRANTED TO THE EXTENT INDICATED AND OTHERWISE DENIED.

IT IS FURTHER ORDERED pursuant to Sections 74.1203 and 0.283 of the Rules,⁴⁵ based on the above, MB Capital Management, LLC, IS HEREBY ORDERED TO CEASE OPERATION OF STATION W296DF IMMEDIATELY.

⁴⁰ See *Radio Power, Inc.*, Letter Order, 26 FCC Rcd 14385, 14385-86 (MB 2011) (listing grounds that translator licensee claimed are sufficient to conclude that complainant has failed to reasonably cooperate and finding that a listener may reasonably reject a non-broadcast technology to resolve interference claim).

⁴¹ Because only a complaint from a *bona fide* listener of the desired station can force a translator station to suspend operation, Polnet’s engineering statements in the Gustafon Declaration, submitted in the First Complaint do not meet that criterion. See, e.g., *Ass’n for Cmty. Educ.*, 19 FCC Rcd at 12688, para. 16 (station’s engineer locating the points on a map where the translator had interfered with the stations’ signal as he drove around the full-service station’s coverage area listening to the car radio did not meet that criterion) and *Valley Broad., Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 4317, 4319, para. 26 (MB 1992) (tests for booster interference were conducted under Special Field Test Authority by a neutral party, using a mobile receiver and a stationary receiver. The application was granted with the *caveat* that if the booster station resulted in listener interference complaints, the permittee would be required to discontinue its operation until all complaints had been resolved). Likewise, the referenced statements presented by Polnet are not probative because Section 74.1203(b) does not allow us to rely on such showings.

⁴² See 47 CFR § 74.1203(e); see also *Amendment of Part 74 of the Commission’s Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7230, para. 131 (1990), *modified*, 6 FCC Rcd 2334 (1991), *recon. denied*, 8 FCC Rcd 5093 (1993); *Ass’n for Cmty. Educ.*, 19 FCC Rcd at 12688, para. 15.

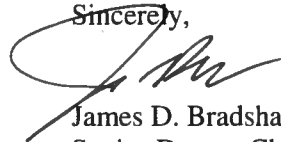
⁴³ See *supra* notes 17 and 21.

⁴⁴ Because we are directing the Station to cease operations and dismissing the License Application, we do not need address Polnet’s other allegations concerning Station operations. See *supra* notes 5, 7, and 25.

⁴⁵ 47 CFR §§ 74.1203 and 0.283.

IT IS FURTHER ORDERED, pursuant to Section 73.3566(a)⁴⁶ of the Rules that the pending License Application (BLFT-20170414AAC) filed by MB Capital Management, LLC, on April 14, 2017, for Station W296DF, Lake Bluff, Illinois IS DISMISSED.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Bradshaw', is written over the word 'Sincerely,'.

James D. Bradshaw
Senior Deputy Chief
Audio Division
Media Bureau

⁴⁶ 47 CFR § 73.3566(a).