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October 28, 2019

Via E-mail and U.S. Mail
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Mr. Albert Shuldiner, Chief
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Media Bureau
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Victoria McCauley, Esquire
Attorney, Audio Division
Media Bureau
Federal Communications Commission
445-12th Street, S.W.
Washington, D.C. 20554

Re: W253AF, Nashua, New Hampshire; Facility ID No. 83187;
Response of Absolute Broadcasting, LLC to Operational Status
Inquiry Letter dated September 18, 2019 (1800B3-VM).

Greetings.

The undersigned, communications counsel for Absolute Broadcasting, LLC (Absolute), the licensee and permittee of FM Translator Station W253AF, Nashua, New Hampshire (the Translator), hereby respectfully submits the response of Absolute to the Operational Status Inquiry Letter (the Letter) of the Audio Division dated September 18, 2019. The letter calls for a response to the inquiry contained therein within thirty (30) days of the date of the letter. This response is untimely relative to the date of the letter. However, neither the licensee, nor any representative of the licensee, nor undersigned counsel had received or was aware of the letter until October 16, 2019 when Mr. Robert Gates of the Audio Division staff sent a copy of it by e-mail to a principal of Absolute, who immediately forwarded it to undersigned counsel. Upon inquiry, Ms. McCauley was kind enough to extend the response date to the letter to and including Monday, October 28, 2019 so this response is timely under the circumstances.

The letter states that Absolute has represented that the Translator is “licensed (sic) and operating”¹ but that information has been provided to the Commission which indicates that the station is silent now and may have been off the air for an extended period of time. Therefore, the letter calls upon Absolute to clarify the status of the station. The letter also asks whether the translator station has been silent, or failed to operate with authorized facilities, for more than a year. Finally, the letter asks for specific documentation of the circumstances of the translator’s operational status for all periods of time between February 22, 2018 to the present time.

Absolute is pleased to have the opportunity to set the record straight with respect to this FM Translator, since heretofore, Saga Communications of New England, LLC² has made some false allegations concerning the status of the station in several pleadings filed with the Audio Division beginning in March of this year. Because Absolute has, in the context of responding to those pleadings, addressed the issue of the operational status of the Translator, Absolute attaches hereto and incorporates herein the contents of the April 2, 2019 *Opposition to Petition to Declare License Expired*; the April 24, 2019 *Statement for the Record*; and the August 29, 2019 *Opposition to Renewed Petition to Declare License Expired*, all filed by Absolute via CDBS.

To recap the status of this FM Translator, the following events occurred: Absolute obtained a construction permit (BPFT-20160727ADA) to move FM Translator W253AF to Nashua, New Hampshire from Bennington, Vermont, so that it could serve as a fill-in translator for WGHM(AM), Nashua, New Hampshire (which is also licensed to Absolute). Absolute subsequently filed an application to modify that construction permit to permit operation of the Station on Channel 260 on July 13, 2017.³ That modification application was granted on July 25, 2017. The Translator was built at Nashua in accordance with the modified construction permit, at the coordinates specified in the construction permit (42-45-34 North and 71-28-37 West) with the 2-bay antenna facilities that were specified in the application.⁴ In December of 2017, Absolute began program tests on the Nashua Translator on Channel 260 as per the modified Construction Permit, and Absolute filed an application for a license to cover that modified Construction Permit on December 21, 2017.⁵ On February 12, 2018, Saga filed an informal

¹ That statement is not, as will be shown herein, accurate with respect to Absolute’s representations to the Commission. The Translator has been on the air periodically but it is silent now. The translator was earlier licensed, but the pending form 350 license to cover, BLFT-20171221AAJ, is still pending and has not been adjudicated by the Commission.

² It is noted that Gary Smithwick, Esquire, counsel for Saga Communications of New England, LLC was copied on the Commission’s September 18, 2019 Operational Status Inquiry Letter, but the Letter does not call for a copy of this response to be sent to Saga. Undersigned counsel will serve Attorney Smithwick with a copy of this response should the Commission so instruct, but not otherwise.

³ Form 349 Application for Modification of Construction Permit, File No. BMPFT-20170713AHQ, Facility ID No. 83187 (filed Jul. 13, 2017 and granted July 25, 2017).

⁴ The antenna ultimately installed at the Nashua site was and is an NIC Model BLD-1/P. That model can be configured either as a one-bay or a two-bay antenna, or any other number of bays. In this case, as finally installed by Absolute at Nashua, the antenna is a two-bay array of Nicom Model BLD-1/P antennas spaced 0.75 wavelengths apart. The translator has not been operated with other than a two-bay antenna.

⁵ Form 350 Application for License to Cover, File No. BLFT-20171221AAJ, Facility ID No. 83187 (filed Dec. 21, 2017 and presently pending) (the “License to Cover”).

objection to the application for the license to cover and filed a related interference complaint, including listener complaints alleging interference.⁶ Absolute ceased operations of the Nashua Translator *in response to the complaint and objection*, on or about February 22, 2018, on advice of prior counsel. Absolute filed on February 21, 2018 an amendment to the pending application for license to cover the previous, granted, application for modification of the construction permit, to clarify the antenna characteristics of the permitted, constructed facility at Nashua.

On July 2, 2018, on advice of prior counsel, Absolute again placed the Station on the air at Nashua on Channel 260, again according to the operating parameters specified in the granted Construction Permit (as modified) and as specified in the (pending) license to cover the Construction Permit, for program tests. It was taken off the air again on July 11, 2018, also at the advice of prior counsel. Thus, the Station was off the air between February 22, 2018 and July 1, 2018; and it was again off the air from July 12, 2018 through June 17, 2019. But in between those silent periods, the station was on the air; on Channel 260; conducting program tests authorized pursuant to its granted construction permit;⁷ with facilities in complete accord with the Construction Permit; and after filing (and appropriately amending) its application for license to cover the construction permit. It was taken off the air again on July 11, 2018, (though it didn't have to do so), because of Absolute's consideration for the pending allegations of interference made by Saga. Because the interference allegations had not been adjudicated by the Commission, and out of due consideration for that ongoing process, Absolute did not wish to leave the Station on the air indefinitely in July of 2018.

As is discussed in the attached, April 24, 2019 *Statement for the Record* filed by Absolute, two statements executed under penalty of perjury were submitted to the Commission to establish that the Translator was placed on the air on July 2, 2018 and taken off the air again on July 11, 2018. The first, from Thomas R. Ray III, a well-respected 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, notes that he personally placed the FM Translator at Nashua on the air with a two-bay antenna on July 2, 2018. Mr. Ray then was instructed to take the Translator off the air again on July 11, 2018. The second statement 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.

⁶ Interference Complaint, File No. BLFT-20171221AAJ, Facility ID No. 83187 (filed Feb. 12, 2018); Informal Objection, File No. BLFT-20171221AAJ, Facility ID No. 83187 (filed Feb. 12, 2018). These two pleadings filed by Saga have been responded to by Absolute, the pleading cycle is long closed, and neither the Complaint nor the Informal Objection has, to date, been resolved by the Commission.

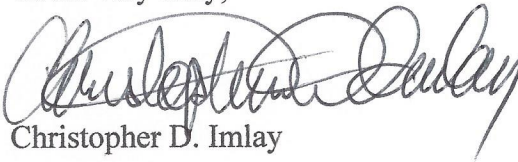
⁷ The Station was returned to the air in July of 2018 pursuant to program test authority. Condition #3 of the modified Construction Permit BMPFT-20170713AHQ states that: "Prior to commencing program test operations, FM Translator or FM Booster permittee must have on file at the Commission, FCC Form 350, Application for an FM Translator or FM Booster Station License, pursuant to 47 C.F.R. Section 74.14." Since that license application was filed, and since the operation in July of 2018 was pursuant to the operating parameters of the granted construction permit, the authority to place the Station on the air was clear.

It was hoped in July of 2018 that the Commission might adjudicate the Saga interference claim and the informal objection to the license application filed shortly thereafter, so that the Translator could be permanently returned to the air, but that did not happen. So, it was necessary for Absolute to return the Translator to the air prior to July 11, 2019 in order to avoid a Section 312(g) forfeiture. So, as is stated in detail in the attached, August 29, 2019 *Opposition to Renewed Petition to Declare License Expired*, Absolute placed the Translator on the air again at 0710 EDT on June 17, 2019 and it was operated in accordance with the construction permit parameters, rebroadcasting the signals of the primary AM station WGHM (AM), Nashua, New Hampshire, until June 25, 2019 when it was again intentionally taken off the air due to the pendency of the interference allegations long ago made by Saga. The details of the Station's return to the air in June of 2019 were discussed in detail in an Exhibit to the August 29, 2019 Opposition, the Statement of Thomas R. Ray III, and in two exhibits submitted. Mr. Ray states that he was instructed by the management of Absolute Broadcasting, LLC to return the Translator to the air during June of 2019; that he did place the Translator on the air on FM Channel 260 on June 17, 2019, using the facilities at Nashua, New Hampshire specified in the filed and pending license application, BLFT-20171221AAJ, which were long ago constructed. Mr. Ray attached the transmitter log for the translator for the period June 17, 2019 through June 25, 2019 when, at the request of the management of Absolute Broadcasting, LLC he personally took the translator off the air again. The log established the commencement time and the end time that the translator was operated pursuant to the construction permit. Also attached were screen shots of the transmitter screen of the Translator for several days of its operation between June 17 and June 20, 2019. Mr. Ray states that the FM Translator was at all relevant times operating normally and was rebroadcasting the signals of WGHM (AM), Nashua, New Hampshire; and that in his opinion the FM Translator was operating legally.

From the foregoing, it is apparent that there has been no time since the FM Translator was first constructed at Nashua, well prior to February 22, 2018 until the present time that the Translator was off the air for any 12-month period. The evidence of the location, effective radiated power and antenna height above ground level is in the pending license application and in the relevant statements of Mr. Tom Ray. Attached are five photographs recently taken of the translator antenna showing the tower, transmitting equipment and the two-bay antenna installed. There are no personnel records, invoices, bills, checks etc. because this is an FM Translator and not a primary station. In addition, because of the inordinately long time that the interference complaint (which Absolute continues to allege is baseless) has been pending, the Translator has been off the air for the majority of the time between February 22, 2018 and the present time, so there is little accounting data available. The Translator Log for the period June 17 through 25, 2019 are attached separately.

Should additional information be called, for, please contact the undersigned counsel.

Yours very truly,

A handwritten signature in black ink, appearing to read "Christopher D. Imlay", written in a cursive style with a large loop at the end.

Christopher D. Imlay

Attachments
(as stated)