

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

27 October 2020

Application of)
)
FORT MYERS BROADCASTING COMPANY)
For FM Translator License) FCC File No. 0000120834
Call Sign W239CL, Golden Gate, FL) Facility ID 139116

To: Marlene H. Dortch, Secretary
Federal Communications Commission
Attn: Media Bureau, Audio Division

REPLY TO OPPOSITION

Sumarrase, Inc. (“Sumarrase”) hereby replies to Fort Myers Broadcasting Company's (“FMBC”) Opposition to Petition for Reconsideration (“Opposition”) submitted October 15, 2020.¹ FMBC creates smoke out of groundless procedural arguments, an unfounded and incorrect description of the construction and operation of WSGD-LP, and a bizarre claim that W239CL's prior interference to WSGD-LP precludes Sumarrase from complaining now. FMBC has also presented new, troubling information regarding its installed versus disclosed antenna patterns that discredits the reliability of its statements.

I. The petition is timely a Petition for Reconsideration.

FMBC's first claim is that Sumarrase was required to complain in a Petition for Reconsideration earlier, perhaps to a construction permit application or while the license

¹ FCC Pleading No. 0000124701.

application was pending.² It is plainly obvious that “actual interference” cannot be identified until an interfering translator is on the air. It is also obvious that listener complaints dated between September 11 and September 20, 2020, could not have been presented during the permitting stage that concluded with a grant on March 13, 2020. Finally, it is also well known that Petitions to Deny do not lie against license applications. It is thus entirely appropriate that Sumarrase has interjected when it did.

II. WSGD-LP is the earlier authorization for interference consideration.

FMBC also objects that the Sumarrase objection does not satisfy Section 74.1203(a)(3).³ In particular, FMBC claims that WSGD-LP is not the prior authorized station. Stations become authorized when a construction permit is granted. Sumarrase filed an application for substantially the existing facility on November 13, 2013.⁴ The application for the construction permit was granted on February 9, 2015. On November 9, 2017, Sumarrase requested a modification to its permit to operate from a higher elevation on the same tower. Because the Bureau specifies an ERP that will not extend a low power FM station's 60 dBu contour beyond 5.6 km, the elevation change from 48 meters to 60 meters HAAT with a corresponding reduction in power had a minimal consequence as the station had been and remained a maximum facility.

On the other hand, W239CL's current operation was authorized on March 13, 2020, when a modification application submitted February 28, 2020 was granted. Prior authorizations were substantially different being from different sites. Indeed, FMBC's attempt to claim a 2007 authorization from an authorization before a 250-mile window move is disingenuous and without merit. FMBC has not demonstrated that the Bureau has ever previously permitted a secondary

² Opposition at 1 citing 47 C.F.R. § 1.106.

³ Opposition, at 2 citing 47 C.F.R. § 74.1203(a)(3).

⁴ BNPL-20131113AHH.

station to change location and overcome an existing station, either primary or secondary, based on an earlier authorization being older.

III. WSGD-LP was properly constructed and is properly operated.

FMBC makes serious, unfounded allegations that Sumarrase improperly constructed and then then operated an unauthorized facility.⁵ First, FMBC accuses Sumarrase of operating a non-type-certified transmitter. In fact, Sumarrase operates an RVR TEX 300 transmitter. The transmitter has been removed from service temporarily while the unit was being repaired. Copies of the Grant of Equipment Authorization showing its type certification as well as the repair invoice are attached in Exhibit R-1.

While it was being repaired, a first temporary replacement was borrowed and installed to be able to continue service. During a second repair attempt, it was discovered that this transmitter had settings that differed from what was set at installation and that this transmitter, too, was now experiencing an operating fault. A second temporary transmitter was installed and again set for proper operation while awaiting a final RVR transmitter repair.

Only after the filing of FMBC's untimely Petition for Reconsideration, pleading file number 0000105766 submitted February 11, 2020, did Sumarrase become aware of who was entering its facilities. Sumarrase knows that FMBC misrepresented a need to landlord American Tower Corporation to gain unsupervised access to Sumarrase's facility, and Sumarrase invites the FCC to confirm this fact with American Tower.

FMBC makes a lot of hay about operation with improper power and that prior operation with excessive power should invalidate the listener complaints.⁶ Sumarrase would agree if that

⁵ Opposition, at 3-4.

⁶ id.

was true, but it is not the case here. Sumarrase initially filed for its construction permit specifying a single bay Shively 6812B antenna system. In an amendment that was denied, two bays were proposed in order to satisfy second-adjacent interference requirements. In the 2017 modification, the engineer used the free-space distance equation to determine that the facility met the requirements for a second-adjacent waiver. A “SHI 6812-1” mentioned in the technical exhibit was not required for construction since it was not necessary to meet interference requirements and because construction permits for LPFM stations do not specify the exact antenna model.

When it came time to order the antenna, a 2-bay antenna was ordered without the understanding that the more complex antenna was no longer required. The vendor offered a substitute RVR ACP1 2-bay antenna in stock. Sumarrase's consulting engineer was not aware of the actual order and substitution, and the Shively 6812B-1 was inadvertently specified with its corresponding TPO on the forthcoming license application filed to cover the construction permit.

Along with the antenna substitution, the antenna vendor included a calculation for transmitter power that would result in meeting 22W ERP. The invoice for the antenna and the transmitter power calculations received with that invoice are attached as Exhibit R-2. Sumarrase has always understood that a power of 25 W is appropriate, and it has operated its transmitter with a setting that fluctuates between 22 and 23W as reported on its built-in metering.

Recently in an attempt to mitigate interference and upon learning that the information regarding the substituted antenna was not communicated properly in its license application, Sumarrase has attempted to conform as closely as possible to the single bay requested on the license application by operating through a single bay with an updated TPO of 47 W to remain at 22 W ERP. Interference mitigation through this adjustment has not been successful.

Importantly, WSGD-LP has always operated with 22W ERP from its authorized height. Only during the brief periods suspiciously corresponding to the unauthorized site accesses by FMBC, and most certainly not by Sumarrase's doing, was WSGD-LP ever over power. Thus FMBC's questions regarding construction, fraud, and over-powered transmissions are unfounded and the offered conclusions are wrong.

IV. W239CL's interference must be measured by listeners.

FMBC has submitted engineering data to show that its actual facility, differing from its disclosed facility, to make a claim that interference is reduced to WSGD-LP's signal.⁷ One problem with this claim is that a prediction of coverage using Section 73.313 is not perfect. If it was, then there would never be any interference complaints for stations operating as authorized.

Another problem with this claim is that when the Commission updated its translator interference rules, it left the question of whether actual interference existed to be determined by listeners. A valid complaint package requires a minimum number of complaints. Meeting this threshold confirms the existence of a “real and consistent interference problem.”⁸ The engineering data is moot, although it should be noted that the interference package remains valid by still exceeding a minimum number of required complaints in locations with greater than a -20 dB U/D ratio. A sufficient number of listeners has determined that interference has changed for the worse.

V. A reduction of interference is irrelevant.

That FMBC has reduced interference is of no value. Sumarrase did not sit idle with the FMBC's previously licensed facility. Sumarrase complained loudly to FMBC, and the need to

⁷ *id.*, at 4-5.

⁸ *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Report and Order, 34 FCC Rcd 3457 at 3465, ¶ 15.

formally complain was on track to be mitigated when FMBC filed application file number 0000092800 on January 21, 2020.

In that application, FMBC requested a channel change to a non-adjacent channel “in order to mitigate interference to the licensed operation of LPFM station WSGB-LP on channel 239 (95.7 MHz) at Lehigh Acres, FL (BLL-20180104AAH, Facility ID 194387) pursuant to the FM translator interference Report And Order (MB Docket 18-119, effective date August 13, 2019).”⁹ FMBC made no allegations of WSGD-LP overpowered operations. Instead it attested that it was interfering. The obligation to eliminate the admitted interference has not suddenly gone away, and any replacement facility must also not interfere with WSGD-LP.

VI. FMBC is abusing process and the rules to protect future translator improvement.

In its reply, FMBC overlays a pattern from the actual antenna it installed to the pattern it disclosed on its permit and license applications.¹⁰ As can be seen in this newly presented information, the patterns aren't even close! If FMBC wants to speak to fictitious applications, its own construction permit and license applications must be examined.

FMBC did not meet the requirements of Section 73.316(c)(1) when it filed its permit application, nor did it meet Section 73.316(c)(2) when it filed its license application.¹¹ Tabulated values in the applications¹² protect a future expansion of the translator into areas where it does not yet provide service, perhaps by modifying later to a non-directional antenna if FMBC can bully WSGD-LP out of existence.

9 See FCC File No. 0000092800 application at “TECHNICAL SUMMARY,” ¶ 1.

10 Opposition, at Exhibit 1, Figure 1.

11 47 C.F.R. § 73.316(c)(1) and (2) via 47 C.F.R. § 74.1235(i).

12 See FCC File Nos. 0000106772 and 0000120834 at “Directional Antenna Relative Field Value.”

If the Petition for Reconsideration is not granted for interference reasons, it should be granted because the patterns FMBC offered have no factual basis. The Bureau should find that FMBC intentionally concealed the intended service area of the translator resulting either in a violation of Section 73.316 or, at a minimum, an abuse of process to tabulate grossly different patterns than it knew it was using.

For the reasons above, the Bureau should expeditiously GRANT Sumarrase's Petition for Reconsideration.

Respectfully Submitted,

Dwayne Williams

Dwayne Williams
President; *Sumarrase, Inc.*

3507 Lee Blvd., Suite 254
Lehigh Acres, FL 33971

Exhibit R-1

Transmitter Documentation

TCB

TCB

**GRANT OF EQUIPMENT
AUTHORIZATION**

**Certification
Issued Under the Authority of the
Federal Communications Commission
By:**

**Elite Electronic Engineering, Inc.
1516 Centre Circle
Downers Grove, IL 60515**

**Date of Grant: 10/21/2005
Application Dated: 10/21/2005**

**R.V.R. USA
7782 NW 46 St.
Miami, FL 33166**

Attention: Andres Serrano , Manager

NOT TRANSFERABLE

EQUIPMENT AUTHORIZATION is hereby issued to the named GRANTEE, and is VALID ONLY for the equipment identified hereon for use under the Commission's Rules and Regulations listed below.

**FCC IDENTIFIER: RHDTEX-300LCD
Name of Grantee: R.V.R. USA
Equipment Class: Licensed Broadcast Station Transmitter
Notes: 300 Watt Exciter**

<u>Grant Notes</u>	<u>FCC Rule Parts</u>	<u>Frequency Range (MHZ)</u>	<u>Output Watts</u>	<u>Frequency Tolerance</u>	<u>Emission Designator</u>
	73, 74	88.0 - 108.0	300.0	500.0 Hz	300KF8E

Audio Wave Technologies

Rick Jones
7881 NW 57 Ave
Miami, Florida, 33178
USA

INVOICE

Bill To Dwayne Williams

Suga 95.7 FM
3507 Lee Blvd Ste 254
Lehigh Acres, Florida, 33971
USA

Invoice # 14201
Invoice Date 04.05.2018
Due Date 05.07.2018

Item Description	Qty	Rate	Amount
Repair RVR Tex300 Transmitter Exciter	1	674.86	674.86
Subtotal \$ 674.86			674.86
Total			\$674.86

Notes

It was great doing business with you.

Terms & Conditions

Please make the payment by the due date.

Exhibit R-2

Antenna and TPO Documentation



7782 NW 46th St # 20
 Doral FL 33166 USA
 T: 800 313-7592 - F:(305) 599-3908
 Toll Free: (305) 599-3100
 www.7bd.com - sales@7bd.com

SALES ORDER	
36466	11/17/2017

Customer	Contact	Ship To
THALIA SANCHEZ THALIA SANCHEZ 603 ROOSVELT AVE. LEHIGH ACRES, FL. 33936 USA	THALIA SANCHEZ THALIA SANCHEZ	THALIA SANCHEZ THALIA SANCHEZ 603 ROOSVELT AVE. LEHIGH ACRES, FL. 33936 USA

Account	Terms	Due Date	Account Rep.	Via
120636	Cash	12/17/2017	Rolando Roca	
Quotation	PO #	Reference	Page	Printed
			1/1	11/17/2017 4:57 pm

L	Item	Description	Qty	Ship	Price	UM	Discount	Amount
1	<u>TRANSMISSION SITE EQUIPMENT'S</u>							
2	ACP1716-94108	ACP1-716 94-108 MHZ CIRCULAR BROADBAND ANTENNA OMNI INOX PENETRATOR TYPE 7/16 INPUT MAX 2 KW	2	0	\$ 745.00	EA	\$ 0.00	\$ 1,490.00
3	COAX271671612	COAXIAL CABLE 1/2 " 3 MT W 7/16 " CONNECTORS	2	0	\$ 150.00	EA	\$ 0.00	\$ 300.00
4	PD2716716-O	POWER DIVIDER 1 X 2 I/O 7/16 "	1	0	\$ 470.00	EA	\$ 0.00	\$ 470.00
5	BDCC12-4-50	HELIAX EC4-50 1/2 " FOAM DIELECTRIC COAXIAL CABLE LOW LOSS HIGH PERFORMANCE	250	0	\$ 1.95	EA	\$ 0.00	\$ 487.50
6	CONNM12-EU	N MALE CONNECTOR FOR 1/2 " COAXIAL CABLE, O-RING TYPE	1	0	\$ 25.00	EA	\$ 0.00	\$ 25.00
7	CON716M12-EU	7/16 DIN MALE CONNECTOR FOR 1/2 " COAXIAL CABLE, O-RING TYPE	1	0	\$ 45.00	EA	\$ 0.00	\$ 45.00
8	OCW51900-B	O.C.WHITE 51900-B PROBOOM ELITE STANDARD MIC ARM W/12" CAST ALUMINUM RISER 29" REACH.BK/CHROME	1	0	\$ 155.00		\$ 0.00	\$ 155.00
9	EVRE20:REPOP	ELECTROVOICE POP FILTER FOR RE20 AND RE-27 MICROPHONE 0212	2	0	\$ 67.00	EA	\$ 0.00	\$ 134.00
10	CCF	CREDIT CARD FEE	1	0	\$ 170.00		\$ 0.00	\$ 170.00

BANK INFO: Bank of America N.A. 222 Broadway, New York, NY 10038 Acct # 898052327642; Swift # BOFAUS3N; ABA # 026009593 Beneficiary: Broadcast Depot Corp. TERMS & CONDITIONS: - This document is valid for 30 days. Prices are subject to change without any notification. - Freight not included. (Unless notified). - IF TAX EXEMPT, Certificate of exemption required before shipping. - No returns after 30 days, freight is Non-refundable. - All returns are subject to a 10-20% Restocking fee. - We only accept returns on stocking items in "as new" condition. - All credit card orders will incur a 10% re-stock charge for returns. - Custom Products cannot be returned or refunded.	<u>Tax Details</u>	Taxable	\$ 3,276.50
	FL: 7.0%	Total Tax	\$ 217.46
		Exempt	
		Freight	0.00
		Total	\$ 3,493.96
		Payment Disc	\$ 0.00
		Paid	\$ 0.00
Approved by		Balance	\$ 3,493.96

TPO Calculation

v1.9

Metric System

Circular Polarization Antenna

ERP (per polarization): watts

Antenna Gain: dBd

Antenna Power Input (pol): 15.57 watts

Frequency: MHz

Coaxial Cable Loss: dB/100m

Coax:

Coaxial Cable Length: 70 m

Loss in Coaxial Cable: 1.470 dB

Other Losses: dB

Total Feeder Loss: 0.4 dB

Total Losses: 1.970 dB

Power Loss: 8.94 watts

Power per polarization: 24.51 watts

TPO (for circular polarization): 49.03 watts

NOTES:

Antenna Type:

ACP1, 2 bays

Certificate of Service

I, Dwayne Williams, certify that a true and correct copy of the foregoing Reply to Opposition was sent, this 27th day of October, 2020, by first-class, postage paid mail to the following:

Fort Myers Broadcasting Company (Licensee)
Attn: Mark Gilson
2824 Palm Beach Blvd.
Fort Myers, FL 33916

Belisle Law Firm PA (Legal Representative to Licensee)
Attn: Joseph A. Belisle, III
PO Box 970620
Miami, FL 33197

By: *Dwayne Williams*
Dwayne Williams