

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In re 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: Audio Division, Media Bureau

OPPOSITION TO APPLICATION FOR REVIEW

Fort Myers Broadcasting Company (“FMBC”), licensee of W239CL, Golden Gate, FL, by its attorneys, hereby opposes the Application for Review filed by Sumarrase, Inc. (“Sumarrase”) on July 24, 2023,¹ concerning the Audio Division’s (“Division”) dismissal of Sumarrase’s Petition for Reconsideration (the “Petition”) in the above-captioned matter.² The Division did not err in dismissing the Petition and upholding the grant of the above-referenced license application for FM Translator Station W239CL.

¹ Application for Review, Sumarrase, Inc., *Application of Fort Myers Broadcasting Company for FM Translator License, Call Sign W239CL, Golden Gate, FL*, FCC File No. 0000120834, Pleading File No. 0000218417 (filed July 24, 2023) (“Application for Review”).

² Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, FCC, to Jennifer A. Johnson, Esq., and Dwayne Williams, W239CL, Golden Gate, FL, Fort Myers Broadcasting Company, Application for License, Petition for Reconsideration/Interference Complaint, DA 23-542 (June 23, 2023) (“Dismissal Letter”).

There is no basis in the record for the assertions that Sumarrase raises in its Application for Review. *First*, the Division rightfully dismissed Sumarrase’s Petition as procedurally defective. The Division clearly explains whether and when the FCC will consider a petition for reconsideration. Notably, the Division states that “[i]f the petitioner is not a party to the proceeding, it must state with particularity the manner in which its interests are adversely affected and *show good reason why it was not possible to participate in the earlier stages of the proceeding.*”³ Sumarrase was not a party to the proceeding because, despite having six months to do so, it did not file an objection to the W239CL modification application or otherwise seek to participate in that proceeding. Accordingly, Sumarrase was required to provide “good reason” as to why it did not participate during that period, but, as FMBC stated previously,⁴ Sumarrase’s Petition did not explain why it failed to object to the W239CL modification application while that application was pending over the sixth-month period from February 2020 to August 2020. Sumarrase’s Application for Review further fails to present such an explanation. Sumarrase argues that the Division “dismissed the Petition with ignorance of 74.1203,” but Sumarrase failed to meet the threshold requirement of section 1.106. Accordingly, the Division did not err when it determined that the Petition was deficient because the petitioner did not “show good reason why it was not possible to participate in the earlier stages of the proceeding.”

Second, the Division did not err in determining that it would deny Sumarrase’s Petition even if it were to consider it on its merits. The Petition raised alleged claims of interference, but

³ Dismissal Letter at 3 (emphasis added); 47 C.F.R. § 1.106(b)(1).

⁴ Opposition to Petition for Reconsideration, Fort Myers Broadcasting Company, *Application of Fort Myers Broadcasting Company for FM Translator License, Call Sign W239CL, Golden Gate, FL*, FCC File No. 0000120834, Pleading File No. 0000124701 at 1 (filed October 15, 2020) (“FMBC Opposition”).

such claims of interference are not actionable unless they meet the criteria set forth in 47 C.F.R. § 74.1293.⁵ These criteria include “[a] statement that the complaining station is operating within its licensed parameters.”⁶ As the Division notes, a station is only entitled to protection from interference “*if* operating according to its licensed parameters.”⁷ Sumarrase openly admits that it has operated WSGD-LP with an unauthorized two-bay antenna instead of the single-bay antenna specified on the WSGD-LP license.⁸ Sumarrase’s failure to repair this deficiency has resulted in it operating at a variance from its licensed parameters.⁹ The Division notes the possibility that this variance has potentially led to the alleged interference between WSGD-LP and W239CL—a possibility that FMBC firmly believes to be the explanation for any alleged interference. Regardless, given Sumarrase’s failure to operate in accordance with its licensed parameters, the Division was correct in determining that the Petition would fail on its merits.

Third, FMBC and Sumarrase did not receive unequal treatment; Sumarrase’s failure to succeed on its Petition is the result of the defects in its arguments and filings, and not unfair treatment from the Division.

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⁵ Dismissal Letter at 4.

⁶ 47 C.F.R. § 74.1293(a)(3)(iii).

⁷ Dismissal Letter at 4 (emphasis in original).

⁸ *Id.* at 5; Reply to Opposition, Sumarrase, Inc., *Application of Fort Myers Broadcasting Company for FM Translator License, Call Sign W239CL, Golden Gate, FL*, FCC File No. 0000120834, Pleading File No. 0000125099 at 4 (filed Oct. 27, 2020).

⁹ Dismissal Letter at 5. Indeed, FMBC has previously noted that WSDG-LP has previously operated at several different levels of transmitter power output (“TPO”)—specifically, at 140w, 150w, and even 549w TPO—well above its authorized level of 73w TPO. FMBC Opposition at 3-4.

The Division faithfully followed FCC rules and precedent in dismissing Sumarrase's Petition. Accordingly, the Commission should dismiss the Application for Review.

Respectfully submitted,

/s/ Jennifer Johnson

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August 8, 2023

Certificate of Service

I, Jocelyn G. Jezierny, certify that a true and correct copy of the foregoing Notice was sent, this 8th day of August, 2023, by first-class, postage paid mail to the following:

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/s/ Jocelyn Jezierny
Jocelyn G. Jezierny

* Courtesy copy sent via email.