

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

In the Matter of

ABSOLUTE BROADCASTING, LLC

W253AF (W260DB) Nashua, NH

)  
)  
)  
)  
)  
)

File No. BLFT-20171221AAJ

Facility ID Number 83187

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

**OPPOSITION TO PETITION TO DECLARE LICENSE EXPIRED**

Comes now Absolute Broadcasting, LLC (Absolute), by its substitute communications counsel, and hereby respectfully submits its Opposition to the pleading<sup>1</sup> submitted by Saga Communications of New England, LLC (Saga) on or about March 8, 2019, seeking to have the license of the captioned FM Translator station declared expired by the Commission pursuant to 47 U.S.C. §312(g). The information in this Opposition has been specifically requested by a member of the Commission's staff in the Media Bureau, and the Opposition is timely filed pursuant to that request.<sup>2</sup> Saga contends 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. If that is so, says Saga, the license of the Station<sup>3</sup> should be declared expired (forfeit) pursuant to the terms of 47 U.S.C.

---

<sup>1</sup> See, the *Petition to Declare License Expired* filed by Saga (the Petition).

<sup>2</sup> The instant Opposition was requested not later than April 1, 2019. Hence, it is timely filed.

<sup>3</sup> The Station was first licensed in 1998 at its original location in Bennington, Vermont. BLFT-19980824TA.

§312(g).<sup>4</sup> Furthermore, Saga argues, if the Station *was* returned to the air during some period of time between those dates, it would have been with unauthorized facilities and as such, the time during which the Station was placed on the air would not effectively toll the 365-day statutory forfeiture period. Saga's pleading, however, fails to establish its allegations on a *prima facie* basis; it is incorrect as a matter of fact with respect to the continued silent status of the Station during the period in question; and its assumptions with respect to the constructed facilities at the current construction permit location and the operating parameters at which the station was operated during the period in question are based on Saga's error. In fact, the Station has not been silent for any consecutive 365-day period. It was placed on the air by Absolute *with authorized facilities* on July 2, 2018, on advice of prior counsel, and then taken off the air again on July 11, 2018, per the advice of prior communications counsel, pending Commission adjudication of the interference allegations lodged in February of 2018 by Saga. The bottom line here is that this latest pleading filed by Saga is a "Hail Mary" in Saga's continuing, anticompetitive, scorched-earth effort to keep Absolute's translator off the air at all costs. Saga's interference allegations that underlie its Interference Complaint;<sup>5</sup> its Informal Objection<sup>6</sup> to the pending license application<sup>7</sup> filed by Absolute; and its Informal Objection to the February 18, 2018 Application filed by Absolute to modify the Construction Permit for

---

<sup>4</sup> That statute reads as follows:

**(g) Limitation on silent station authorizations**

If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness. Any broadcast license revoked or terminated in Alaska in a proceeding related to broadcasting via translator, microwave, or other alternative signal delivery is reinstated.

<sup>5</sup> See, the *Interference Complaint* filed by Saga on or about February 12, 2018, more than a year ago.

<sup>6</sup> See, the *Informal Objection* filed by Saga on or about February 12, 2018.

<sup>7</sup> See, BLFT-20171221AAJ (accepted for filing December 22, 2017 and presently pending).

the Station<sup>8</sup> have been effectively debunked by Absolute heretofore, and the interference claim underlying those filings by Saga are unlikely to achieve the result that Saga hoped for. Hence, this latest filing by Saga. For its Opposition thereto, Absolute states as follows:

**I. Saga's Petition Fails to Establish Facts in Support of Statutory Forfeiture of the Absolute Translator Station License.**

1. Saga's Petition argues that the Station was "apparently" silent from February 22, 2018 until some date after February 22, 2019, and that therefore, the Station's license is expired by operation of law. Its argument for that premise is its statement that "Monitoring of the Absolute Translator reveals that W260DB is currently off the air and apparently (sic) has been off the air since February 22, 2018."<sup>9</sup> Its sole source for that conclusion, however, is a declaration from Peter Stohrer, Chief Engineer for Saga, who, Saga argues, "declares that since February 22, 2018, he has periodically (sic) monitored 99.9 MHz (W260DB's operating frequency) and has heard no transmissions each time he monitored it."<sup>10</sup> Mr. Stohrer's declaration, Exhibit 2 to the Petition, states that he "periodically" monitored the frequency 99.9 MHz in the vicinity of Tower Structure 1236652 in Nashua, New Hampshire and did not, between February 22, 2018 and February 25, 2019 hear any transmissions from the "apparatus" on the tower. The Stohrer declaration also states that he also monitored 98.5 MHz at Bennington, Vermont on a single date, March 5, 2019, and heard no transmissions on that one date. The 98.5 MHz frequency was the original licensed frequency (per BLFT-19980824TA) and Bennington,

---

<sup>8</sup> See, BMPFT-20180221AAB (accepted for filing February 21, 2018 and presently pending).

<sup>9</sup> Petition, at 2.

<sup>10</sup> Id., at 2. See also the Declaration of Peter Stohrer, Exhibit 2.



Vermont was the original licensed location of the Station before it obtained a construction permit<sup>11</sup> to move the Station to Nashua and operate on Channel 260.

2. The foregoing is the sum total of the evidence provided by Saga underlying its conclusion that the Station has not been on the air for a continuous period of 365 days. The evidence offered is obviously, woefully insufficient to establish Saga's premise. There is no indication of what dates engineer Stohrer monitored the Station at the Nashua location, and more importantly, what dates he did not monitor the Station. There is no indication how many days and times the "periodic" monitoring occurred. There is no allegation that facilities were not constructed at the location permitted by the Construction Permit at Nashua, New Hampshire. As to the former location and channel, Mr. Stohrer alleges that he monitored the 98.5 MHz channel at Bennington, Vermont only on one occasion - March 5, 2019 - which is completely irrelevant since it is outside the one-year period that Saga places at issue. The Petition, because it does not establish that the Station was not placed on the air at any time during the period February 22, 2018 through February 22, 2019 fails to establish, *prima facie*, that the Station did not "transmit broadcast signals for any consecutive 12-month period." For this reason alone, the Petition should be dismissed. It does not contain any evidence at all proving the truth of the matter asserted.

**II. The Station Was in Fact Placed on the Air for a Significant Period of Time During the Period February 22, 2018 and February 22, 2019 and It Has Not Been Silent for any Consecutive 365-day Period.**

3. Absolute obtained a construction permit (BPFT-20160727ADA) to move FM Translator W253AF to Nashua, New Hampshire from Bennington, Vermont, in order for

---

<sup>11</sup> See, BPFT-20160727ADA, as modified by BMPFT-20170713AHQ.



that the facility 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.<sup>12/</sup> That modification application was granted on July 25, 2017. The Station was built at Nashua in accordance with the modified construction permit, and in December of 2017, Absolute began program tests on the Nashua Translator Station 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.<sup>13/</sup> On February 12, 2018, Saga filed an informal objection to the application for the license to cover and filed a related interference complaint, including listener complaints alleging interference.<sup>14/</sup> Absolute ceased operations of the Nashua Translator in response to the complaint and objection, on or about February 22, 2018, on advice of counsel.

4. 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. More on that subject *infra*.

5. On July 2, 2018, on advice of counsel, Absolute again placed the Station on the air at Nashua on Channel 260, again according to the operating parameters specified in

---

<sup>12/</sup> 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).

<sup>13/</sup> 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").

<sup>14/</sup> 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.

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 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 the present time. 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,<sup>15</sup> 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. Accordingly, the assumption made by Saga that the Station was silent for a 365-day period is mistaken; the Station was not off the air for a consecutive period of 365 days; and there is no basis for declaring the license of the Station forfeit pursuant to 47 U.S.C. §312(g).

### **III. The Station was Not Placed on the Air with Unauthorized Facilities in July of 2018.**

6. Saga, clearly unsure whether or not the Absolute Translator Station was or was not placed on the air during the one-year period between February 22, 2018 and February 22, 2019 attempts to hedge on its guess either way by arguing that, even if the Station

---

<sup>15</sup> 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.

was placed on the air for some period during the alleged 365-day interval, it would have had to have been with unauthorized facilities, which Saga argues does not count for purposes of tolling the 365-day license forfeiture period of 47 U.S.C. §312(g). Its sole factual basis for this claim is, again, the self-serving engineering statement of Saga's employee Peter Stohrer. According to the Petition, Saga contends that "Mr. Stohrer photographed the antenna structure (footnote omitted) used by W260DB and the photograph depicts a two-bay antenna mounted on the [Nashua] antenna structure. Operation with a two-bay antenna is unauthorized."<sup>16</sup> Therefore, it argues, if the Station was returned to the air with a two-bay antenna, that operation was unauthorized and the period of time the Station was on the air does not toll the 365-day license forfeiture provision. Indeed, Mr. Stohrer's statement includes the following: "Exhibit 2-A is a photograph I took of ASRN 1236652 on February 25, 2019. It depicts a two-bay antenna which appears to be an NIC Model BLD-2/P antenna. W253AF/W260DB is authorized to use a one-bay antenna (NIC Model BLD-1/P)."

7. The flaw in the argument asserted by Saga, which is fatal to its argument, is the false assumption that the NIC Model BLD-1/P is necessarily a one-bay antenna. It is not. The number "1" in the model reference does not reflect a one-bay antenna. The NIC Model BLD-1/P can be configured as a one-bay or a two-bay antenna, or any other number of bays. In this case, as finally built by Absolute at Nashua, the antenna that was finally installed on the tower was a two-bay array of Nicom Model BLD-1/P antennas.

---

<sup>16</sup> Petition, at 2. The Petition also states that "W260DB was authorized to operate with a one-bay (sic) NIC Model BLD-1/P antenna (citing BMPFT-20170713AHQ). Saga notes that on August 16, 2018, Absolute amended the captioned license application to change transmitter power output and the type of antenna from the authorized one-bay (sic) to a two-bay NIC Model BLD-2/P antenna which is specified in the still-pending construction permit application File No. BMPFT-20180221AAB." As is discussed *infra*, Saga is mistaken about the characteristics of the NIC Model BLD-1/P antenna. The model number does not indicate the number of bays of the antenna array installed (i.e. the numbers "1" and "2" do not delineate, for Nicom antennas, the number of bays).



Two bays were necessary in order to obtain a vertical radiation pattern that would protect a second adjacent facility on the ground. That is the essential benefit, and necessary reason, for employing two bays. The engineering statement attached to the Absolute application for the modified construction permit for the Station [which, again, was granted by the Commission in July of 2017 (BMPFT-20170713AHQ, modifying BPFT-20160727ADA)] and which is a matter of public record that Saga either was or should have been aware of, includes the following:

The antenna is a two bay 0.75 wavelength spaced Nicom BLD-1/P with the center of radiation at 58 meters AGL. The array produces a vertical radiation pattern that prevents the 114.6 dBu F(50,10) interfering contour from reaching the ground within 207 meters of the antenna site. The antenna vertical pattern is illustrated and field values tabulated in Figures 3 and 4.

The (granted) modification application for the underlying construction permit specified a NIC Model BLD-1/P antenna, as explained in the engineering statement filed with the application. Following is an excerpt from Section 10 of the Tech Box (Section III) from that application:

**Transmitting Antenna:**

Before selecting Directional "Off-the-Shelf", refer to "Search for Antenna Information" under [CDBS Public Access](http://licensing.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm) ([http://licensing.fcc.gov/prod/cdbs/pubacc/prod/cdbs\\_pa.htm](http://licensing.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm)). Make sure that the Standard Pattern is marked Yes and that the relative field values shown match your values. Enter the Manufacturer (Make) and Model exactly as displayed in the Antenna Search.

☒ Nondirectional ☐ Directional Off-the Shelf ☒ Directional composite

Manufacturer NIC Model BLD-1/P

Rotation: 160 degrees ☐ No Rotation

Degrees	Value	Degrees	Value	Degrees	Value	Degrees	Value	Degrees	Value	Degrees	Value
0	1	10	0.99	20	0.978	30	0.956	40	0.927	50	0.882
60	0.8	70	0.733	80	0.646	90	0.543	100	0.43	110	0.324
120	0.24	130	0.183	140	0.158	150	0.163	160	0.157	170	0.165
180	0.161	190	0.165	200	0.157	210	0.163	220	0.158	230	0.183
240	0.24	250	0.324	260	0.43	270	0.543	280	0.646	290	0.733
300	0.808	310	0.882	320	0.927	330	0.956	340	0.978	350	0.99
Additional Azimuths											

To be fair, the model designators of this antenna manufacturer are not intuitive, nor a model of clarity.<sup>17</sup> Other antenna manufacturers specify in their model numbers the number of bays of the antenna.<sup>18</sup> That is not the case with Nicom.<sup>19</sup> However, the antenna that was finally installed on the tower was a two-bay array of Nicom Model BLD-1/P antennas spaced 0.75 wavelengths apart. The first photograph submitted by Mr. Stohrer, which appears to be the tower at Nashua with the W260DB antenna attached, shows both bays as he indicates. If the photograph is accurate (which is impossible to tell from the rather poor photocopy of the Petition received by undersigned counsel) is that which was permitted by the granted, modified construction permit and actually installed on the tower. It is also the antenna that was used during the operation of the Station in July of 2018.

---

<sup>17</sup> In fact, originally, Absolute's engineers installed a one-bay NIC BLD-1/P antenna on the Nashua tower in the belief that a one-bay antenna was called for, and they filed its Form 350 application showing one bay. Upon being informed by Commission staff that it could not process the Form 350 because a two-bay antenna had been specified by Absolute in the construction permit application, Absolute installed the second bay and amended its pending Form 350 license application to so specify. In July of 2018 when the Station was placed on the air, both bays of the NIC BLD-1/P antenna had been installed on the tower in full accordance with the modified Construction Permit and as per the amended Form 350 application. The engineer for Absolute was advised by a member of the Commission's engineering staff to not refer to the antenna as a "BLD-1/P." Absolute's engineer was advised that, if a Field Inspector saw the designation "BLD-1/P" and observed two bays, it could cause confusion, or even create an issue. Rather than enter into a debate about the matter, though Absolute's engineer used the term "an array consisting of two BLD-1/P bays," Absolute filed a second minor modification application to refer to the antenna (apparently, in hindsight, quite inappropriately, though it was in an effort to be responsive to advice provided by a member of the Audio Division's engineering staff) as a "BLD-2/P." It is not clear in fact that such an antenna type actually exists. It is Absolute's intention, on the advice of undersigned substitute communications counsel, to dismiss the pending minor modification application as unnecessary.

<sup>18</sup> Normally, when a multi-bay antenna can be configured with odd spacing, there is a separate model designation for each spacing configuration. The designation would normally indicate both the number of bays, and the spacing. Shively, for example, refers to a two-bay half-wave spaced 6812 array as a "6812-2-HW". Nicom, however, does not distinguish model numbers.

<sup>19</sup> See Exhibit A, attached; a letter from Nicom USA noting that an array composed of BLD-1/P antennas is still BLD-1/P.



8. Absolute has not installed a NIC Model BLD-2/P antenna, which is specified in its still pending and unadjudicated modification application (BMPFT-20180221AAB, to which Saga has, completely irrelevantly, objected). See footnote 17, *supra*. Mr. Stohrer's conjecture to the contrary is mistaken. But the difference between the NIC BLD-2/P (if in fact there is such an antenna) and the installed two-bay array of BLD-1/P antennas has nothing to do with the number of bays installed, and the mistaken supposition to the contrary by Saga dooms its instant Petition.

**IV. Absolute Has Heretofore Debunked Saga's Interference Allegations and it is Timely for the Commission to Dismiss them and Saga's Two Informal Objections Premised Solely on the Interference Complaints.**

9. A review of the prior pleading cycle and the facts ascertainable from them leads inescapably to the conclusion that there is no substance to the interference complaints initially filed by Saga with respect to the absolute FM Translator. The matter is now more than a year old and should be adjudicated now. There are numerous reasons why Saga has failed to make its case with respect to interference, but a general summary is as follows.

10. Absolute, with the exception of the period July 2 through 11, 2018 has had the FM Translator Station off the air following the listener complaints. Absolute's representatives contacted the individual complainants after taking the Station silent, to determine whether they continued to receive interference. The responses from those complainants tended to establish that any interference they were actually receiving was from either the K-LOVE FM translator in Lawrence, Massachusetts or some other source that was not the Absolute translator. Absolute also established that its Nashua translator protected the Saga translator to the same extent as though the Saga translator was in fact a



full-power class B FM station and all of the interference claimed occurred outside the 54 dBu service contour of the Saga FM translator. These facts alone should be sufficient to cause the dismissal of the interference complaints.

11. However, the most important fact is that Saga's interference complaints were based on a configuration of its FM translator antenna that are no longer applicable and were never consistent with its authorized parameters. After the interference complaints were filed, Absolute's consulting engineer went to the Saga translator transmitter site and found that Saga or someone else had installed an unauthorized antenna in a configuration proximate to the Saga translator antenna such that, in effect, whether or not by Saga's intent, parasitic directional elements had been added to the Saga translator antenna which would have caused the Saga translator to become highly directional, and thus to be audible in geographic areas where it would not otherwise (i.e. had it been operated in accordance with licensed parameters) have been heard at all. Saga, realizing that its non-directional antenna had for whatever reason been converted into a directional one, took the unauthorized parasitic elements down. By then, the Absolute translator was off the air other than during July 2-11 inclusive, of 2018. That modification by Saga should have nullified the *entire roster of complaints*. Because the facilities of the alleged victim translator were not as authorized when the complaints were allegedly received, there is now nothing in the record that would sustain the group of complaints originally submitted by Saga (based, as they were, on Saga facilities that were only later returned to licensed parameters). Because the Saga Informal Objection to the Absolute License application was based on nothing more than the alleged interference complaints, both the Saga interference complaints and the Saga informal objection should be immediately

dismissed, because the original complaints were based on Saga facilities that were unauthorized and subsequently changed. The record does not contain information sufficient to allow the former complaints to be the basis for denying the license application.

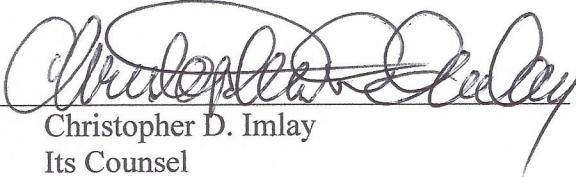
12. Saga's interference complaints were premised on Saga's antenna facilities that have been changed since the complaints were received, and Saga has done nothing to determine what the effect is of Saga's subsequent dismantling of the parasitic elements of the antenna erected immediately proximate to Saga's translator antenna on the alleged interference. Had Saga been acting in good faith, it would have offered to do subsequent testing after the unauthorized antenna was removed. They did not do that. Therefore, the interference complaint is based on circumstances no longer appertaining, and the informal objection is based on no more than the pendency of the interference complaint. So the whole house of cards should be leveled by the Commission, and the Absolute license application granted now. At the present time, there are no valid, outstanding complaints; the facilities authorized by the Absolute Construction Permit as modified are proper, fully constructed and in full compliance with all Commission rules and authorizing documents; and there remains now no reason why the license application should not be granted forthwith.

Therefore, the foregoing considered, Absolute Broadcasting, LLC hereby 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; and that the Interference Complaint filed by Saga and its Informal Objections

filed with response to the Absolute license application and the pending Minor Modification application each be denied.

Respectfully submitted,

**ABSOLUTE BROADCASTING, LLC**

By:   
Christopher D. Imlay  
Its Counsel

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

April 1, 2019



# **EXHIBIT A**



NicomUsa, Inc.  
1690 Cactus Rd  
San Diego, CA 92154, USA  
PH: 619-671-9500  
FAX: 619-671-9575  
[support@nicomusa.com](mailto:support@nicomusa.com)

March 29, 2019

To Whom It May Concern:

This letter is to certify that the Nicom designation for an array comprised of our BLD-1/P vertical dipoles is "BLD-1/P".

If more than one bay is employed, or the spacing is different from conventional full wave, it should be so stated in an engineer exhibit, but the model number of the bays is still "BLD-1/P".

This certification is being issued upon the request of Mr. Jackson for whatever purpose it may serve.

Thank you for your attention to this matter

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'D' and 'P' followed by a horizontal line.

Dario Piagentini  
Vice President  
NicomUsa, Inc