

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	File No. BLFT-20171221AAJ
)	Facility ID No. 83187
ABSOLUTE BROADCASTNG, LLC)	
)	
W253AF (W260DB), Nashua, NH)	
)	

To: The Secretary
Attn: Chief, Audio Division, Media Bureau

RENEWED PETITION TO DECLARE LICENSE EXPIRED
WITH CORRECTED CERTIFICATE OF SERVICE

Saga Communications of New England, LLC, ("Saga"), licensee of FM Translator W260CF, Manchester, New Hampshire, hereby files the attached pleading to which is attached a Corrected Certificate of Service.

The service copy to Christopher D. Imlay, Esq., Counsel for Absolute Broadcasting, LLC, was inadvertently not mailed on August 14, 2019, due to oversight by the law firm's staff member. Undersigned counsel emailed a copy of the "Renewed Petition to Declare License Expired" to Mr. Imlay on August 14, 2019. The service copy was placed in the mail on August 15, 2019. Mr. Imlay was advised, by telephone, of this inadvertent failure to mail a copy of the pleading.

Respectfully submitted,

**SAGA COMMUNICATIONS OF
NEW ENGLAND, LLC**

By:  

Gary S. Smithwick
Its Attorney

Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, NW
Suite 301
Washington, DC 20016

202-363-4560

August 15, 2019

**COPY OF
RENEWED PETITION TO DECLARE LICENSE EXPIRED**

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	File No. BLFT-20171221AAJ
)	Facility ID No. 83187
ABSOLUTE BROADCASTNG, LLC)	
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W253AF (W260DB), Nashua, NH)	
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To: The Secretary
Attn: Chief, Audio Division, Media Bureau

RENEWED PETITION TO DECLARE LICENSE EXPIRED

Saga Communications of New England, LLC, ("Saga"), licensee of FM Translator W260CF, Manchester, New Hampshire, hereby, renews its request that the Commission declare the license of FM Translator W253AF (new call sign: W260DB), Nashua, New Hampshire, to **have expired as a matter of law pursuant to Title 47 USC §312(g).**¹ W260DB was licensed to Absolute Broadcasting, LLC. ("Absolute") to rebroadcast Absolute's WGHM(AM), Nashua, NH. In support whereof, the following is shown:

To briefly summarize, this proceeding arose from an Interference Complaint and an Informal Objection to the captioned license application, both of which Saga filed February 12, 2018. Saga showed that Absolute's translator was causing intolerable interference to the reception of W260CF, which rebroadcasts programs of co-owned WMLL(FM)-HD2, Bedford, NH.

¹ The translator is licensed as "W253AF," however, the above-captioned application for license ("Application") covers a construction permit (BMPFT-20170713AHQ) to change the operating channel from 253 (98.5 MHz) to 260 (99.9 MHz). To avoid confusion, the offending translator is referred to herein as "W260DB."

Absolute responded on February 22, 2018, reporting that it had taken W260DB off the air.² Saga stated it appeared that W253AF had been off the air since February 22, 2018; and as a result, the underlying license for W260DB apparently expired on February 22, 2019.

On March 21, 2019, the Audio Division sent an email to former counsel for Absolute requesting that Absolute respond to Saga's allegations by April 1, 2019; specifically, to state whether the station resumed operations on channel 253 during the period between February 22, 2018, and February 22, 2019.

On April 2, 2019, Absolute late-filed a "Statement for the Record" claiming that the translator was placed back on the air on July 2, 2018, and taken off the air again on July 11, 2018. Absolute supported its Statement with declarations from engineer Thomas R. Ray III, and Absolute employee Gary Blue. Both declared that W260DB was placed on the air July 2, 2018, and taken off the air once again on July 11, 2018.

On May 3, 2019, Saga filed a "Counterstatement for the Record" arguing that even if W260DB went back on the air after February 22, 2018, it did so with an unauthorized antenna, which the Commission equates with being off the air. Saga also showed that Absolute is in violation of Section 74.1251(b)(2) and that Absolute violated Section 74.1263(c) of the Rules on multiple occasions by failing to notify the Commission of the discontinuance of service by W260DB.

² Under Section 73.1740(a)(4) of the Rules, Absolute was required to notify the Commission that W260DB was off the air by March 4, 2018, and request special temporary authority to remain silent by March 24, 2018. Saga can find no evidence that a Notice of Suspension of Operation or Request for Special Temporary Authority to Remain Silent is on file with the Commission.

Again, a search of the Commission's records does not disclose that Absolute has ever filed a Notice of Suspension of Operations or a Notice of Resumption of Operations for the translator.

But, assuming *arguendo*, that Absolute placed the translator back on the air on July 2, 2018, and took it off the air on July 11, 2018, more than a year has elapsed since July 11, 2018. Saga can find no evidence that the translator went back on the air after July 11, 2018. Thus, it now appears irrefutable that the license has automatically expired.

In light of the foregoing, Saga renews its request that the Audio Division declare the license of W253AF expired, dismiss the pending license application as moot; cancel the underlying construction permit and delete the call letters.

Respectfully submitted,

**SAGA COMMUNICATIONS OF
NEW ENGLAND, LLC**

By: 

Gary S. Smithwick
Its Attorney

Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, NW
Suite 301
Washington, DC 20016

202-363-4560

August 14, 2019

EXHIBIT 1

COPY OF ABSOLUTE "STATEMENT FOR THE RECORD"

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

In the Matter of)	
)	
ABSOLUTE BROADCASTING, LLC)	File No. BLFT-20171221AAJ
)	
W253AF (W260DB) Nashua, NH)	Facility ID Number 83187
)	

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

STATEMENT FOR THE RECORD

Comes now Absolute Broadcasting, LLC (Absolute), by its substitute communications counsel, and hereby respectfully submits this *Statement for the Record* relative to the Petition¹ of Saga Communications of New England, LLC (Saga). Saga's Petition seeks to have the license of the captioned FM Translator station declared expired by the Commission pursuant to 47 U.S.C. §312(g). Saga contends therein 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 and therefore Saga urges that license of the Station should be declared expired (forfeit) pursuant to the terms of 47 U.S.C. §312(g). Absolute filed an Opposition to that Petition and Saga replied to Absolute's Opposition.

1. Absolute's Opposition noted that the Station had been returned to the air on July 2, 2018 and was taken silent again on July 11, 2018 and hence it was not off the air continuously for 365 consecutive days. Saga claims that Absolute's Opposition failed to

¹ See, the *Petition to Declare License Expired* filed by Saga filed on or about March 8, 2019 (the Petition).

prove that the Station had been returned to the air during that period. Saga, however, failed *ab initio* to establish its allegation that the Station has not been silent for any consecutive 365-day period on a *prima facie* basis. Saga's Petition, because it did not establish that the Station was not placed on the air at any time during the period February 22, 2018 through February 22, 2019 failed to establish, *prima facie*, that the Station did not "transmit broadcast signals for any consecutive 12-month period," and Absolute therefore did not have the burden of proof that Saga incorrectly assumes it had. The Saga Petition should be dismissed because it does not contain *any evidence at all* proving the truth of the matter that Saga asserted.

2. However, to put the issue to rest once and for all, attached are two statements for the record, each executed under penalty of perjury. The first is from Thomas R. Ray III, a 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. Mr. Ray notes that he personally placed the FM Translator at Nashua on the air with a two-bay antenna on July 2, 2018 and then was instructed to take the Translator off the air again on July 11, 2018. The second statement attached 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. These statements together establish that the basis for the Saga claim is premised on an incorrect assumption.

Therefore, the foregoing considered, Absolute Broadcasting, LLC hereby again 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.

Respectfully submitted,

ABSOLUTE BROADCASTING, LLC

By: Christopher D. Imlay
Christopher D. Imlay
Its Counsel

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

April 24, 2019

EXHIBITS

STATEMENT OF THOMAS R. RAY III

I, Thomas R. Ray, III, President of Tom Ray Broadcast Consulting, LLC, do hereby state and affirm under penalty of perjury, as follows:

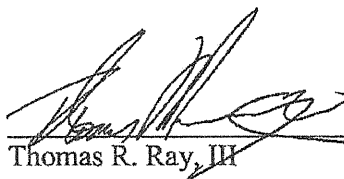
1. I am an experienced broadcast engineer. My credentials are a matter of record at the Federal Communications Commission. I formerly served as Chief Engineer of WOR Radio in New York City and formerly served as Director of Engineering of Buckley Broadcasting. I am experienced in technical regulatory issues and with AM & FM broadcast facilities maintenance and construction, as well as studio maintenance and construction.

2. My company, Tom Ray Broadcast Consulting, LLC has been retained by, and currently provides broadcast engineering and technical services to Absolute Broadcasting, LLC, the licensee of W253AF (W260DB), Nashua, New Hampshire. I provided such services to Absolute during 2018.

3. I was instructed by the management of Absolute Broadcasting, LLC to return FM translator W260DB to the air during July of 2018. I did place this FM Translator on the air on FM Channel 260 on July 2, 2018, using the facilities at Nashua, New Hampshire specified in the filed and pending license application, BLFT-20171221AAJ, which by that time had been constructed using a two-bay antenna as specified in the construction permit BPFT-20160727ADA, as modified by BMPFT-20170713AHQ. The FM Translator was at all relevant times operating normally and it had been constructed in accordance with the Construction Permit as modified. The FM Translator was rebroadcasting the signals of WGHM(AM), Nashua, New Hampshire. In my opinion the FM Translator was operating legally.

4. I was instructed to discontinue operation of the FM Translator again on July 11, 2018. It is my understanding that the discontinuance of operation on that date was on the advice of the communications counsel for the Licensee.

Further Affiant Sayeth Naught.


Thomas R. Ray, III

April 23, 2019

STATEMENT OF GARY BLUE

I, Gary Blue, do hereby state and affirm under penalty of perjury, as follows:

1. I am a broadcaster in the employ of Absolute Broadcasting, LLC, the licensee of FM Translator W253AF (W260DB), Nashua, New Hampshire. I worked for Absolute during 2018 and to the present time.
2. I have personal knowledge that FM Translator W260DB was placed on the air during July of 2018 and specifically beginning on July 2, 2018. I listened to the FM Translator on 99.9 MHz at Nashua on that date and thereafter. The translator was on the air until July 11, 2018. The FM Translator was rebroadcasting the signals of WGHI(AM), Nashua, New Hampshire during that period.
3. I had occasion to communicate by e-mail on July 11, 2018 with the communications lawyers for Absolute at the time, concerning the fact that the FM Translator was on the air, and I was advised by those attorneys that Absolute should discontinue operation of the Translator, which was accomplished on that same date, July 11, 2018.

Further Affiant Sayeth Naught.



Gary Blue

April 23, 2019

CERTIFICATE OF SERVICE

I, Christopher D. Imlay, do hereby certify that I caused to be mailed, via first class U.S. Mail, postage prepaid, a copy of the foregoing STATEMENT FOR THE RECORD to the following, this 24th day of April, 2019.

Mr. James Bradshaw *
Audio Division, Media Bureau
Federal Communications Commission
445-12th Street, S.W.
Washington, D.C. 20554
*via e-mail to James.Bradshaw@fcc.gov

Mr. Robert Gates *
Audio Division, Media Bureau
Federal Communications Commission
445-12th Street, S.W.
Washington, D.C. 20554
*via e-mail to Robert.Gates@fcc.gov

Kim Varner, Esq. *
Audio Division, Media Bureau
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5028 Wisconsin Avenue, N.W.
Suite 301
Washington, D.C. 20016

Christopher D. Imlay
Christopher D. Imlay

*Via e-mail

CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, a secretary in the law office of Smithwick & Belendiuk, P.C., do hereby certify that a copy of the foregoing “Renewed Petition to Declare License Expired” was mailed this 14th day of August, 2019, by First Class, U.S. Mail, postage prepaid, to the following:


Albert Schuldiner, Esq.
Chief, Audio Division
Media Bureau
Federal Communications Commission
Washington, DC 20554 (by hand and electronic mail)

Michael Wagner, Esq.
Assistant Chief, Audio Division
Media Bureau
Federal Communications Commission
Washington, DC 20554 (by hand and electronic mail)

Mr. James D. Bradshaw
Assistant Chief, Audio Division
Media Bureau
Federal Communications Commission
Washington, DC 20554 (by hand and electronic mail)

Mr. Robert Gates
Engineer
Media Bureau
Federal Communications Commission
Washington, DC 20554 (by hand and electronic mail)

Christopher D. Imlay
Booth, Freret & Imlay, LLC
14356 Cape May Road
Silver Spring, MD 20904-6011


Sherry L. Schunemann

CORRECTED CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, a secretary in the law office of Smithwick & Belendiuk, P.C., do hereby certify that a copy of the foregoing “Renewed Petition to Declare License Expired With Corrected Certificate of Service” was mailed this 15th day of August, 2019, by First Class, U.S. Mail, postage prepaid, or as noted, to the following:


Albert Schuldiner, Esq.
Chief, Audio Division
Media Bureau
Federal Communications Commission
Washington, DC 20554 (by electronic mail)

Michael Wagner, Esq.
Assistant Chief, Audio Division
Media Bureau
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Sherry L. Schunemann