



**Federal Communications Commission
Washington, D.C. 20554**

February 21, 2018

In Reply Refer to:
1800B3-PPD

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In re: W231DC, Fort Myers, FL
File No. BLFT-20161024ADG
Facility ID No. 138791

Interference Complaint

Dear Counsel:

This refers to the interference complaint filed by WDAS License Limited Partnership (WDAS) on April 12, 2017 (Complaint). For the reasons set forth below, we dismiss the Complaint.

Background. In its Complaint, WDAS alleges that W231DC, licensed to Sun Broadcasting, Inc. (Sun), is interfering with the reception of WLLD(FM), Lakeland, Florida and includes complaints from seven listeners.¹ On May 2, 2017, Sun filed an Opposition to Interference Complaint, where it stated it had settled with four of the complainants and despite its efforts, it was unable to contact a fifth complainant.² Sun also acknowledged it had not resolved two of the complaints.³ Thus, Staff requested Sun to address the unresolved listener complaints.⁴

¹ Complaint at Attach. B.

² Opposition to Interference Complaint at 5-6 (May 2, 2017). Sun seeks confidential treatment of its Opposition to Interference Complaint and its October 23, 2017, Response of Sun Broadcasting to Bureau Letter (Redacted Response). We will dismiss this request as moot because our decision can be based solely on the redacted versions of both pleadings.

³ *Id.* at 5 and n. 12-13.

⁴ Letter from James D. Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau, to Sun Broadcasting, Inc. at 1 (Sept. 21, 2017) (*Staff Letter*).

In response to the *Staff Letter*, Sun states that it had previously settled with four of the complainants (collectively referred to as Settlement Complainants), one complainant (Complainant One) did not cooperate with remediation efforts, and two of the complainants (Complainants Two and Three) did not respond to Sun's efforts to contact them.⁵ Thus, according to Sun, it has fulfilled its remediation obligations.⁶ Sun also states that it conducted an independent investigation, which concluded that Complainants One, Two, and Three could receive WLLD without interference.⁷ However, WDAS argues that interference reported by Settlement Complainants is still not resolved because monetary settlements to Settlement Complainants do not "equat[e] to the elimination of interference [thus] these settlements contravene law."⁸ Sun maintains all seven listener complaints are resolved because the monetary settlements were "to aid the [Settlement Complainants] in obtaining improved radio reception agreement" and Complainants One, Two, and Three were "either unreachable or unwilling to substantiate their claims of interference."⁹

Discussion. Section 74.1203(a) provides, in pertinent part, that an FM translator station "will not be permitted to continue to operate if it causes any actual interference to...the direct reception by the public of off-the-air signals of any authorized broadcast station...."¹⁰ The rule places no geographic or temporal limitation on complaints, and we have long held that mobile receivers, such as automobile radios, should not be subject to interference resulting from the operation of an FM translator or booster station.¹¹ The rule also specifies that signal strength is not a relevant factor.¹² The FM translator rules strictly prohibit interference by these secondary service stations, and an interfering FM translator station must remedy the interference or suspend operation.¹³

The Commission has interpreted "direct reception by the public" to limit actionable complaints to those that are made by *bona fide* listeners.¹⁴ Generally, the Commission requires that a complainant "be 'disinterested,' e.g., a person or entity without a legal stake in the outcome of the translator station licensing proceeding."¹⁵ The staff has routinely required a complainant to provide his name, address, location(s) at which FM translator interference occurs, and a statement that the complainant is, in fact, a listener of the affected station. Moreover, as is the case with other types of interference complaints,¹⁶ the staff has considered only those complaints of FM translator interference where the complainant

⁵ Redacted Response at 3-4.

⁶ *Id.* at 12-13.

⁷ *Id.* at 7, 10, and 12.

⁸ Reply to Response of Sun Broadcasting to Bureau Letter at 1-2 (Nov. 6, 2017), citing *Radio Power, Inc.*, Letter Order, 26 FCC Rcd 14385 (MB 2011) (*Radio Power*).

⁹ Reply of Sun Broadcasting, Inc. at 1-2 (Nov. 13, 2017).

¹⁰ 47 CFR § 74.1203(a).

¹¹ See, e.g., *Forus FM Broad. of New York, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 7880, 7882, para. 16 (MB 1992) (because of the secondary nature of FM booster stations, and the resulting requirement that they provide interference-free service, such stations will not be permitted to cause interference to mobile receivers).

¹² 47 CFR § 74.1203(a)(3) (specifying that interference occurs "whenever reception of a regularly used signal is impaired ... regardless of the ... the strength of the signal so used").

¹³ *Id.* at § 74.1203(b).

¹⁴ See *Association for Cmty. Educ., Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12688, para. 16 (2004) (*Association for Cmty. Educ.*).

¹⁵ *Id.* at 12688 n.37.

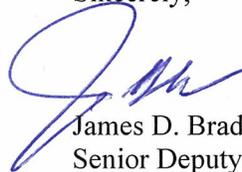
¹⁶ See, e.g., *Jay Ayer and Dan J. Alpert*, Letter Order, 23 FCC Rcd 1879, 1883 (MB 2008) (requiring complainants to cooperate fully with the station's efforts to resolve interference and cautioning that the failure to do so could lead to a finding that the station has fulfilled its interference remediation obligations).

cooperates in efforts to identify the source of interference and accepts reasonable corrective measures.¹⁷ Accordingly, when the Commission concludes that a *bona fide* listener has made an actionable complaint of uncorrected interference from an FM translator, it will notify the station that “interference is being caused” and direct the station to discontinue operations.¹⁸

The issue before us is whether W231DC has failed to eliminate actual interference to co-channel station WLLD(FM). Here, Complainant One has not cooperated with Sun’s offer to remediate the interference, and Complainants Two and Three have not responded to Sun’s offers of remediation. Because these Complainants have not cooperated with Sun’s remediation efforts, we have determined that Sun has fulfilled its interference remediation obligations. Moreover, there is no prohibition on translator licensees offering monetary settlements to remediate a listener’s complaint. *Radio Power* is not applicable here. In *Radio Power*, we determined that complainants “may reasonably reject a non-broadcast technology delivered on a subscription basis to offset interference to [an off-the-air] signal....”¹⁹ Here, Settlement Complainants accepted Sun’s monetary offer to remediate the interference, fulfilling Sun’s obligation to provide remediation. Because we have determined that Sun has fulfilled its remediation obligations for all seven complainants, we will dismiss WDAS’s Complaint.²⁰

Conclusion. Based on the above, IT IS ORDERED, that WDAS License Limited Partnership’s April 12, 2017, interference complaint is DISMISSED and Sun Broadcasting, Inc.’s request for confidential treatment (in part) of its Opposition to Interference Complaint and its Response of Sun Broadcasting to Bureau Letter are DISMISSED.

Sincerely,



James D. Bradshaw
Senior Deputy Chief
Audio Division
Media Bureau

¹⁷ See *Radio Power*, 26 FCC Rcd at 14385-86 (listing grounds that are sufficient to conclude that complainant has failed to reasonably cooperate and finding that a listener may reasonably reject a non-broadcast technology to resolve interference claim).

¹⁸ See 47 CFR § 74.1203(e); see also *Amendment of Part 74 of the Commission’s Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7230, para. 131 (1990), *modified*, 6 FCC Rcd 2334 (1991), *recon. denied*, 8 FCC Rcd 5093 (1993); *Association for Cmty. Educ.*, 19 FCC Rcd at 12688, para. 15.

¹⁹ *Radio Power*, 26 FCC Rcd at 14384.

²⁰ See *Joseph C. Chautin, III, Esq.*, Letter, 22 FCC Rcd 5364, 5364 (MB 2007) (actual translator interference is based on listener complaints indicating that the signal that the complainant regularly receives is being impaired by the signal radiated by the FM translator station).