



Federal Communications Commission  
Washington, D.C. 20554

December 3, 2018

In Reply Refer to:  
1800B3-ATS

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In re: **Sun Broadcasting, Inc.**  
FM Translator Station W231DC  
Fort Myers, FL  
File No. BLFT-20161024ADG  
Facility ID No. 138791

**Petition for Reconsideration**

Dear Counsel:

We have before us the Petition for Reconsideration (Petition) of Beasley Media Group Licenses, LLC (Beasley),<sup>1</sup> licensee of Station WLLD(FM), Lakeland, Florida, seeking reconsideration of the Media Bureau (Bureau) letter decision<sup>2</sup> dismissing Beasley's interference complaint (Complaint) against FM Translator Station W231DC, Fort Myers, Florida (Translator), which is licensed to Sun Broadcasting, Inc. (Sun).<sup>3</sup> For the reasons set forth below, we grant the Petition and order Sun to immediately cease operation of the Translator.

**Background.** As discussed in the *Staff Decision*, Beasley filed the Complaint on April 12, 2017, in which it alleged that the Translator, which is co-channel to WLLD, was causing interference to seven listeners of WLLD in violation of Section 74.1203 of the FCC's rules (Rules).<sup>4</sup> Three of the listeners did not cooperate with Sun's remediation efforts, and the Bureau held that Sun had fulfilled its interference remediation obligations with regard to those three listeners.<sup>5</sup> Sun stated that it had settled with four of the complainants (collectively, Settlement Complainants).<sup>6</sup> Beasley argued that the interference complaints

<sup>1</sup> WDAS License Limited Partnership (WDAS), the former licensee of the Station, filed the Petition on March 23, 2018. On March 30, 2018, the Bureau granted the application for the *pro forma* assignment of the WLLD license from WDAS to Beasley. See File No. BAL-20180111ADN. Accordingly, we will refer to the Station licensee as Beasley for the purposes of this letter.

<sup>2</sup> *Sun Broadcasting, Inc.*, Letter Order, Ref 1800B3-PPD (MB Feb. 21, 2018) (*Staff Decision*).

<sup>3</sup> Sun filed an Opposition on April 6, 2018. Beasley filed a Reply on April 17, 2018.

<sup>4</sup> *Staff Decision* at 1-2.

<sup>5</sup> *Id.* at 2-3. This aspect of the *Staff Decision* is not contested.

<sup>6</sup> *Id.* Sun did not provide details of these settlements to the Bureau. Beasley provided evidence that the Sun settlement was an offer to pay the Settlement Complainants \$50 to "help resolve" the interference complaint but that Sun did not offer the settlement in order to facilitate the purchase of new equipment to eliminate interference. See "Reply to Response of Sun Broadcasting to Bureau Letter" of Beasley at n.1 and Exh.A (filed Nov. 6, 2017). In its

submitted by the Settlement Complainants were not resolved because the monetary settlements did not eliminate the interference to WLLD and thus contravened Bureau precedent.<sup>7</sup>

In the *Staff Decision*, the Bureau held that “there is no prohibition on translator licensees offering monetary settlements to remediate a listener’s complaint.”<sup>8</sup> The *Staff Decision* further held that *Radio Power*, which Beasley had relied on to argue cash payments in response to listener complaints were not permissible, was not applicable in this proceeding and that Sun had fulfilled its remediation obligation with regard to the Settlement Complainants because those listeners had accepted Sun’s monetary offer to remediate the interference.<sup>9</sup> Thus, the Bureau dismissed the Complaint.<sup>10</sup>

In the Petition, Beasley argues that that the Bureau erred in holding that Sun had met its translator remediation obligation with regard to the Settlement Complainants.<sup>11</sup> Beasley argues that although Section 74.1203(b) does not expressly prohibit monetary payments to complainants, “it clearly does not endorse them.”<sup>12</sup> Beasley notes that the Bureau held in *Radio Power* that the plain language of Section 74.1203(b) is controlling and requires that translators suspend operations until interference has been eliminated by the application of suitable techniques.<sup>13</sup> Beasley argues that the \$50 payment Sun made to listeners is not a suitable technique within the meaning of Section 74.1203(b), does not eliminate interference, and contradicts the plain language of the rule.<sup>14</sup>

Beasley further notes that the Bureau held in *Radio Power* that “a remedy [that] is unresponsive to [the] obligation to suspend operations ‘until the interference has been eliminated’” is contrary to the plain meaning of Section 74.1203(b).<sup>15</sup> Beasley argues that Sun’s monetary payments to the Settlement Complainants are precisely the type of “nonresponsive remedy” that the Bureau expressed concern about in *Radio Power* because the payments do not eliminate interference.<sup>16</sup> Moreover, Sun’s failure to eliminate actual interference could impact potential future WLLD listeners who will not know that they should be able to receive the Station’s broadcast absent the interference from the Translator.<sup>17</sup> Beasley further questions Sun’s assertion that the monetary payments were in fact to assist listeners in obtaining better radio equipment, noting that Sun’s offer to pay a complainant \$50 did not reference the purchase of

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response, Sun states that the “offer of settlement [was intended] to assist [the Settlement Complainants] in obtaining properly functioning radio equipment,” but Sun provides no evidence that it discussed equipment replacement with the Settlement Complainants or that any of the Settlement Complainants used the money to purchase equipment that would eliminate the interference. *See* Reply of Sun Broadcasting Inc. (filed Nov. 13, 2017). The *Staff Decision* did not address this issue.

<sup>7</sup> *Staff Decision* at 2-3; *see also Radio Power, Inc., Letter Order*, 26 FCC Rcd 14385 (MB 2011) (*Radio Power*).

<sup>8</sup> *Staff Decision* at 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Beasley does not seek reconsideration of the *Staff Decision* regarding the three listeners that were not among the Settlement Complainants.

<sup>12</sup> Petition at 2.

<sup>13</sup> *Id.* at 3 (citing *Radio Power*, 26 FCC Rcd at 14386). In *Radio Power*, the licensee of a translator causing interference to a full-service station provided listeners with smartphones that had a pre-installed “iHeartradio” application that would enable them to receive the station by streaming the programming rather than receiving it over the air. The Bureau held that this was not a suitable remedy within the meaning of Section 74.1204(b).

<sup>14</sup> Petition at 3.

<sup>15</sup> *Id.* at 3-4 (citing *Radio Power*, 26 FCC Rcd at 14386).

<sup>16</sup> Petition at 4.

<sup>17</sup> *Id.*

such equipment.<sup>18</sup> Finally, Beasley argues that the acceptance of monetary payments establishes a new policy, which should be done by rulemaking, and that this policy could result in translator licensees simply paying off complainants instead of taking steps to actually eliminate interference and potentially “lead the Commission into a quagmire of novel issues.”<sup>19</sup>

In the Opposition, Sun argues that Section 74.1203 does not address or prohibit monetary settlements, and that the Commission generally favors voluntary settlements to avoid litigation and Commission involvement in private disputes.<sup>20</sup> Sun further argues that Beasley misreads *Radio Power* because that case only prohibited a translator licensee from requiring complainants to accept a subscription service as a means to remediate interference, and did not announce a broader prohibition against monetary settlements.<sup>21</sup> Sun also argues that the Bureau did not adopt a new policy in the *Staff Decision*, but merely recognized that there is no prohibition against monetary settlements to resolve interference complaints.<sup>22</sup> Finally, Sun argues that prohibiting monetary settlements of interference complaints is against the public interest because they efficiently resolve these disputes.<sup>23</sup>

In the Reply, Beasley argues that nothing in Section 74.1203 indicates that paying complainants to withdraw their complaints is a “suitable technique” for eliminating interference and reiterates that “the plain language of [Section 74.1203(b)] is controlling.”<sup>24</sup> Beasley avers that such techniques could include relocating a transmitter or reconfiguring an antenna.<sup>25</sup> Beasley also argues that the Bureau’s determination that monetary payments are acceptable means of remediating interference is a new policy because the Bureau has never held that such payments are permissible.<sup>26</sup>

**Discussion.** The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission’s original order or raises additional facts not known or existing at the time of the petitioner’s last opportunity to present such matters.<sup>27</sup> Here, Beasley has demonstrated that the *Staff Decision* erred in holding that Section 74.1203 permits monetary payments in lieu of eliminating actual interference as a means of resolving interference complaints.

As we held in *Radio Power*, “the plain meaning of Section 74.1203(a) is clear and unambiguous. The prohibition on ‘actual interference to . . . [t]he direct reception by the public of the off-the-air signal of any broadcast station’ means exactly that.”<sup>28</sup> Sun’s solution—monetary compensation to the Settlement Complainants that is not intended to achieve a technical solution<sup>29</sup>—does nothing to eliminate

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<sup>18</sup> *Id.* at 4-5.

<sup>19</sup> *Id.* at 6-7.

<sup>20</sup> Opposition at 2-3.

<sup>21</sup> *Id.* at 3-4.

<sup>22</sup> *Id.* at 4.

<sup>23</sup> *Id.* at 5.

<sup>24</sup> Reply at 2 (citing *Radio Power*, 26 FCC Rcd at 14386).

<sup>25</sup> Reply at 2-3.

<sup>26</sup> *Id.* at 3.

<sup>27</sup> 47 CFR § 1.106(c); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964), *aff’d sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 397 U.S. 967 (1966); *Davis & Elkins Coll.*, Memorandum and Order, 26 FCC Rcd 15555, 15556, para. 5 (MB 2011).

<sup>28</sup> *Radio Power*, 26 FCC Rcd at 14386 (citing 47 CFR 74.1203(a)(3) (emphasis added)).

<sup>29</sup> Sun does not argue in the Opposition or in its other filings that the settlement payments were in fact intended to facilitate the purchase of new equipment to allow Settlement Complainants to receive WLLD without interference from the Translator. Nor has Sun addressed the evidence Beasley provided demonstrating the monetary payments

the actual interference from the Translator to the Station and therefore does not cure the Section 74.1203(a)(3) violation. Thus, the *Staff Decision* erred in not addressing the fact that the Translator in fact continues to cause interference to WLLD listeners in violation of Section 74.1203(a).

Moreover, Section 74.1203(b) expressly provides that “[i]f interference cannot be properly eliminated by the application of suitable techniques, operation of the offending FM translator or booster station shall be suspended and shall not be resumed until the interference has been eliminated.”<sup>30</sup> Here again, as we held in *Radio Power*, “we find that the plain language of the rule is controlling,”<sup>31</sup> and Sun’s attempted remedy does not adhere to the requirement that the Translator suspend operations “until the inference has been eliminated.”<sup>32</sup> Thus, the *Staff Decision* erred in holding that Sun’s monetary compensation fulfilled its remedial obligation.

Sun’s settlement approach—as opposed to a technical solution that eliminates interference as required by Section 74.1203—poses difficulties similar to those that the Bureau cited in *Radio Power*. There, the Bureau noted that the proposed alternative to remediation failed to take into account future listeners of the station receiving interference.<sup>33</sup> Likewise, Sun’s settlement does not account for future potential WLLD listeners that will receive interference from the Translator. Also as in *Radio Power*, the Translator and WLLD are co-channel stations, and we noted there that a non-technical remediation of co-channel interference would result in a “a considerable likelihood that the Commission will face a never-ending series of potential complaints.”<sup>34</sup>

Because Sun has failed to properly eliminate interference to WLLD listeners from the Translator, it has not met its obligations under Section 74.1203(b), and operation of the Translator violates Section 74.1203(a). Accordingly, Sun must suspend Translator operations immediately.<sup>35</sup>

**Conclusion/Actions.** For the reasons set forth above, IT IS ORDERED that the Petition for Reconsideration filed by WDAS License Limited Partnership on March 23, 2018, IS GRANTED.

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were offered to listeners without any discussion of addressing or eliminating interference. *See* Reply to Response of Sun Broadcasting to Bureau Letter at Exh. A; Reply to Opposition Interference Complaint at Exh. A (filed May 12, 2017). Accordingly, we need not address whether monetary payments specifically designated for such equipment or otherwise intended to eliminate actual interference would satisfy the requirements of Section 74.1203.

<sup>30</sup> 47 CFR § 74.1203(b).

<sup>31</sup> *Radio Power*, 26 FCC Rcd at 14386.

<sup>32</sup> 47 CFR § 74.1203(b).

<sup>33</sup> *Radio Power*, 26 FCC Rcd at 14386.

<sup>34</sup> *Radio Power*, 26 FCC Rcd at 14387.

<sup>35</sup> Please note that any request by Sun to operate the Translator with reduced or temporary facilities on this same channel will only be granted upon a demonstration that the proposed facilities will not cause interference at all of the listening locations provided by the remaining listeners.

IT IS FURTHER ORDERED that pursuant to Sections 74.1203 and 0.283 of the Rules,<sup>36</sup> Sun Broadcasting Inc. IS HEREBY ORDERED TO CEASE OPERATION OF STATION W284BQ IMMEDIATELY.

Sincerely,



Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>36</sup> 47 CFR §§ 74.1203, 0.283