



Federal Communications Commission
Washington, D.C. 20554

February 14, 2008

DA 08-366

In Reply Refer to:

1800B3-JWR

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Mr. Jay Ayer
8 Finn Road
Harvard, Massachusetts 01451

Dan J. Alpert, Esq.
2120 N. 21st Rd.
Arlington, Virginia 22201

In re: WBNW(AM), Concord, MA
Facility ID No. 3013
File No. BR-20051201BDT
Application for Renewal of License

Informal Objection

Dear Mr. Ayer and Counsel:

This letter concerns the captioned application (the "Application") filed by Money Matters Radio, Inc. ("MMR"), to renew the license of Station WBNW(AM), Concord, Massachusetts. Also on file is the informal objection (the "Objection") filed by Jay Ayer ("Ayer") on March 1, 2006.¹ For the reasons set forth below, we deny the Objection and grant the Application.

Background. Ayer states that the "strong" nighttime signal from WBNW(AM) interferes with his reception of other AM stations, and that he has complained to WBNW(AM) and the Commission in the past about this situation. Ayer states that "the WBNW(AM) transmitter is near [his] home." Although WBNW(AM)'s license requires the station to reduce its transmitted power in the evening, he contends that he can detect no reduction in power at sunset. In its response, MMR states that the Station operated in accordance with its license authorization, including reduced nighttime power, and that Ayer's Objection is without merit.

MMR submits an affidavit under penalty of perjury from Douglas Lane ("Lane"), Contract Engineer for Station WBNW(AM), in which he declares that:

Station WBNW(AM) has, and has always had, equipment in place to ensure reduction of power at night in the manner prescribed by the station's FCC authorization. WBNW(AM)'s pattern change times are programmed into a Sine Systems RFC-1 remote control unit, which reduces power from 5 kW to 1 kW nightly. Moreover, the Sine Systems RFC-1 unit is protected from power failures (*i.e.*, that would reset the internal clock) by a Tripp Lite UPS uninterruptible power supply. The operator on duty takes periodic transmitter readings to verify compliance with FCC licensed operations, and I personally make periodic site visits and take periodic readings to verify that the Sine System unit that is in-place is at all times functioning correctly.

¹ MMR filed an Opposition on October 2, 2006.

It is my opinion that WBNW(AM) is exercising all means possible and all means appropriate to insure that they are operating within FCC guidelines and operational parameters. In response to the informal objection filed against the station, I have verified the functionality of the WBNW(AM) equipment, reviewed the station logs, and re-checked the integrity of the WBNW(AM) signal. Based on the forgoing, I can definitively state: (1) the Sine Systems RFC-1 unit is functioning properly; (2) other than very isolated instances, there have been no instances where the Sine Systems RFC-1 system has malfunctioned, and it certainly has not failed to function for extended periods as suggested by the party filing the informal objection; (3) Station WBNW(AM) is operating on 1120 kHz as authorized by its FCC license and is not causing impermissible interference to the protected contours of any other licensed AM broadcast station, and it is certainly not interfering with the ability for any listener to receive the protected signal of any other station that lawfully serves (*i.e.*, is licensed and is intended to serve) the WBNW(AM) service area at night; and (4) I further have verified that Station WBNW(AM) is not emitting any spurious signal which is or could interfere with the ability of any listener to listen to any station whose protected signal or contour also serves the Station WBNW(AM) service area.

Discussion. Pursuant to Section 309(e) of the Communications Act of 1934, as amended (the “Act”), informal objections, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with Section 309(k) of the Act,² which governs our evaluation of an application for license renewal. Specifically, Section 309(k)(1) provides that we are to grant the renewal application if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission’s Rules (the “Rules”); and (3) there have been no other violations which, taken together, constitute a pattern of abuse.³ If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under Section 309(e) of the Act—or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”⁴

Ayer has failed to raise a *prima facie* case that WBNW(AM) has operated at variance with its authorization. We base this conclusion primarily upon the detailed and unrebutted declaration of the station’s Contract Engineer.⁵ Further, WBNW(AM) has not changed its technical facilities since it received its initial covering license in 1990,⁶ and the alleged interference only occurs during

² See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 note 10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

³ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

⁴ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁵ Compare, *Bloomfield Hills School District*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 14055, 14060 (MB 2007) (apparent violation of Section 73.3527 found where licensee provided no evidence to rebut objector’s declaration under penalty of perjury).

⁶ See Application No. BL-19890814AD, granted on January 16, 1990.

WBNW(AM)'s nighttime hours of operation. Accordingly, it appears that the reception problems Ayer experiences are not the result of actionable "blanketing" interference.⁷

Therefore, we find that Ayer's alleged interference is not the result of WBNW(AM)'s violations of Commission regulations or other improper activity. However, although it has no legal obligation to do so, we encourage the Licensee to work with Mr. Ayer in attempting to resolve the disruption to his radio reception that may be, in some part, attributable to the lawful operations of WBNW(AM). As an Appendix to this letter, for the benefit of Mr. Ayer and the Licensee, we have formulated a list of the five most common blanketing interference situations and outlined a broadcast station's responsibilities in each case. The present case is similar to those described in Situation 4 in the Appendix.

Conclusion/Actions. We find that Ayer does not have adequate or specific factual allegations sufficient to warrant further inquiry regarding renewal of WBNW(AM)'s license. Furthermore, pursuant to Section 309(k) of the Act, we find neither evidence of serious violations of the Act or the Commission's Rules nor of other violations that, when considered together, evidence a pattern of abuse. Further, we find that Station WBNW(AM) served the public interest, convenience, and necessity during the subject license term. Accordingly, for the reasons set forth above, pursuant to Section 309(k) of the Communications Act of 1934, as amended, and Sections 0.61 and 0.283 of the Commission's rules,⁸ the informal objection filed by Jay Ayer IS DENIED, and the application (File No. BR-20051201BDT) filed by Money Matters Radio, Inc. for renewal of license for Station WBNW(AM) Concord, Massachusetts IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Money Matters Radio, Inc.

⁷ For one year after the commencement of transmissions with new or modified facilities, all radio stations are required to take remedial action to resolve blanketing interference complaints occurring within the immediate vicinity of the antenna site. A station's specific blanketing interference radius is defined by the Rules. For AM stations, the vicinity in which AM radio licensees are responsible for alleviating blanketing interference as the geographical area within the 1 V/m signal contour. See 47 C.F.R. §§ 73.88, 73.318.

⁸ 47 U.S.C. § 309(k); 47 C.F.R. §§ 0.61, 0.283.

APPENDIX

We have formulated here a list of the five most common blanketing interference situations. The situations vary depending on the following:

- Whether or not the complaint was filed within the first year of operation.
- Whether the complainant is located inside or outside the blanketing contour.
- Whether the device experiencing interference is covered under the blanketing interference rule.

Situation # 1

The station is financially responsible for resolving complaints of interference to electrical devices covered under Section 73.318 if the complaint is filed within the first year of program test authority and the complainant is located **inside** the station's blanketing contour. See *FM Broadcast Station Blanketing Interference* ("Blanketing Interference"), FCC 84-514, 57 RR 2d 126 (1984) at paragraph 15.

Situation # 2

The station is not financially responsible for resolving complaints of interference to electrical devices covered under Section 73.318 if the complaint is filed within the first year of program test authority and the complainant is located **outside** of the station's blanketing contour. However, the station is expected to cooperate with the complainant by providing effective technical assistance in determining the cause of the problem and advice on corrective measures. See *Blanketing Interference supra* at paragraph 17.

Situation # 3

The station is not financially responsible for resolving complaints of interference to electrical devices covered under Section 73.318 if the complaint is filed **after** the first year of program test authority and the complainant is located **inside** the station's blanketing contour. The station is required to provide effective technical assistance to the complainant. This entails the providing of information on the cause of the interference and also providing information on proper corrective measures. See *Blanketing Interference, supra*, at paragraph 20.

Situation # 4

The station is not financially responsible for resolving complaints of interference to electrical devices covered under Section 73.318 if the complaint is filed **after** the first year of program test authority and the complainant is located **outside** of the station's blanketing contour. However, in similar past cases, to promote goodwill within the station's community, licensees have taken steps to assist in alleviating interference complaints.

Situation # 5

The station is not financially responsible for resolving complaints of interference to electrical devices not covered under Section 73.318. However, in similar past cases, to promote goodwill within the station's community, licensees have taken steps to assist in alleviating interference complaints.

Effective Technical Assistance

47 CFR Section 73.318(d) states, "[f]ollowing the one year period of full financial obligation to satisfy blanketing complaints, licensees shall provide technical information or assistance to complainants on

remedies for blanketing interference." The rule requires that the station provide information and assistance sufficiently specific to enable the complainant to eliminate all blanketing interference and not simply that the station attempt to correct the problems. Effective technical assistance entails providing specific details about proper corrective measures to resolve the blanketing interference. For example, providing complainants with diagrams and descriptions which explain how and where to use radiofrequency chokes, ferrite cores, filters, and/or shielded cable. In addition, effective technical assistance also includes the recommendation on replacement equipment that would work better in the high radiofrequency fields. Also, effective technical assistance does not mean referring the complainant to the equipment manufacturer.

Complaint Report

The Commission intends that broadcast stations take very seriously their responsibility to resolve blanketing interference. Accordingly, the station must respond to **all** the complaints that have been filed and must submit a detailed report of the steps taken to resolve the complaints within 60 days from the date of the staff letter advising the station of its obligations under Section 318 of the Rules. The report must contain the following information for each complaint:

1. Date of the complaint
2. The affected devices (i.e., the manufacturer, model number and serial number);
3. Whether or not the complainant is within the blanketing contour;
4. The dates and description of the assistance provided; and
5. Whether or not the interference has been resolved.

The report must include a map showing the following:

1. The station's transmitter site;
2. The 1V/m blanketing contour; and
3. The locations of the complainants.

The station must determine which of the five situations described above apply and take the appropriate aggressive actions required by Section 73.318 to fulfill its obligations. The complainants will be expected to cooperate fully with the station's efforts to resolve the interference problems; their failure to do so could lead to a finding that the station has fulfilled its obligations pursuant to Section 73.318. Excessive postponements of appointments by either party will be viewed as an obstructive tactic in delaying the resolution of the blanketing interference. These requirements are in place to insure that all parties cooperate fully and immediately. Any further complaints received by the FCC will be forwarded to the station for investigation. We will respond separately to the station's report, which explains how each individual complaint was resolved.