



Federal Communications Commission  
Washington, D.C. 20554

March 11, 2021

**DA 21-291**

In Reply Refer To:

1800B3-KV

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In re: WYPH-LP, Manchester, Connecticut  
New River Community Church  
Facility ID No. 193136  
File No. BLL-20170807AAT

Petition for Reconsideration; Supplement to  
Interference Complaint; and Interference  
Complaint.

Dear Counsel:

We have before us a “Petition for Reconsideration” (New River Petition) filed on October 28, 2020, by New River Community Church (New River), licensee of WYPH-LP, Manchester, Connecticut (WYPH-LP).<sup>1</sup> The New River Petition seeks reconsideration of the Media Bureau’s (Bureau) September

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<sup>1</sup> Also before us are the following associated pleadings: an “Opposition to Petition for Reconsideration” (Petition Opposition) filed on November 12, 2020, by Red Wolf Broadcasting Corporation (Red Wolf); a “Reply to Opposition to Petition for Reconsideration” (Petition Reply) filed on November 16, 2020, by New River; and a supplement titled “Statement for the Record,” filed on December 18, 2020, by New River (Statement).

28, 2020, decision (*Letter Decision*).<sup>2</sup> In the *Letter Decision*, the Bureau concluded that WYPH-LP failed to eliminate interference to second-adjacent channel station WDRC-FM, Hartford, Connecticut, or demonstrate that WYPH-LP was not the source of the interference, as required by section 73.807(e)(2)(ii)<sup>3</sup> of the Commission’s rules (Rules) and the Bureau’s *Cease Operations Letter*.<sup>4</sup>

Also before us are: (1) Red Wolf’s “Supplement” (Red Wolf Supplement), filed on October 28, 2020,<sup>5</sup> to the interference complaint discussed in the *Cease Operations Letter*;<sup>6</sup> and (2) an interference complaint filed by Saga Communications of New England (Saga), licensee of WAQY(FM), Springfield, Massachusetts, on December 1, 2020 (Saga Complaint).<sup>7</sup> For the reasons discussed below, we grant in part and otherwise deny the New River Petition, we deny the Red Wolf Supplement, and we dismiss the Saga Complaint.

**Background.** WYPH-LP is licensed to operate pursuant to a granted second-adjacent channel waiver and is short-spaced to second-adjacent channel stations WDRC-FM and WAQY(FM). Section 73.807(e)(1)<sup>8</sup> of the Rules authorizes waiver of the second-adjacent channel minimum distance separation requirements<sup>9</sup> for LPFM stations if the LPFM station demonstrates “that its proposed operations will not result in interference to any authorized radio service.”<sup>10</sup> Upon receipt of a *bona fide* complaint of interference caused by an LPFM station operating pursuant to a second-adjacent channel waiver, the Commission notifies the LPFM station, which must suspend operations until the interference is eliminated or it is demonstrated that the LPFM station is not the interference source.<sup>11</sup> A *bona fide* complaint is defined as being “from a disinterested listener and must include the listener’s name and address, and the location at which the interference occurs.”<sup>12</sup>

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<sup>2</sup> See *Letter from James D. Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau, to New River, et. al.* (dated Sep. 28, 2020) (*Letter Decision*).

<sup>3</sup> 47 CFR § 73.807(e)(2)(ii).

<sup>4</sup> See *Letter from James D. Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau, FCC, to New River, et. al.* (dated Apr. 23, 2020) (*Cease Operations Letter*). WDRC-FM is licensed to Red Wolf Broadcasting Corporation (Red Wolf).

<sup>5</sup> In addition, we received the following responsive pleadings: an “Opposition to Supplement” (Supplement Opposition) filed on November 9, 2020, by New River; and a “Reply” (Supplement Reply) filed on November 18, 2020, by Red Wolf.

<sup>6</sup> “Interference Complaint” filed on January 10, 2020, by Red Wolf (Red Wolf Complaint).

<sup>7</sup> New River did not file a response to the Saga Complaint, but rather stated “that the arguments raised in the Complaint have already been substantively addressed by the Church.” See *Email from Christopher D. Imlay, Esq. to James D. Bradshaw, Senior Deputy Chief Audio Division, Media Bureau, et al.* (dated Dec. 2, 2020).

<sup>8</sup> 47 CFR § 73.807(e)(1).

<sup>9</sup> See 47 CFR § 73.807(a) – (c).

<sup>10</sup> 47 CFR § 73.807(e)(1).

<sup>11</sup> 47 CFR § 73.807(e)(2); see *Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15432, para 85 (2012) (*LPFM Sixth Report and Order*) and 47 CFR § 73.807(e)(2)(ii). See also, e.g., *New LPFM Stations at Birmingham, Alabama, LPFM MX Group 2*, Memorandum Opinion and Order, 31 FCC Rcd 5163, n.10 (2016) (LPFM station operating pursuant to a second-adjacent channel waiver must suspend operations upon Commission notification and cannot resume operations until elimination of interference or demonstration that LPFM station is not the interference source).

<sup>12</sup> *LPFM Sixth Report and Order*, 27 FCC Rcd at 15432, para 84.

On January 28, 2016, New River filed an application for a modified construction permit.<sup>13</sup> New River requested a waiver pursuant to section 73.801(e)(1) because WYPH-LP would be short-spaced to second-adjacent channel stations WDRC-FM and WAQY(FM).<sup>14</sup> On February 9, 2016, the Bureau granted the second-adjacent channel waiver and issued a construction permit.<sup>15</sup> On August 7, 2017, New River filed an application for a license to cover (License) the permitted facilities, which the Bureau granted on August 10, 2017.<sup>16</sup>

On January 10, 2020, Red Wolf filed the Red Wolf Complaint alleging that WYPH-LP's operations were causing interference to the over-the-air reception of WDRC-FM.<sup>17</sup> Section 73.807(e)(2)(ii) stipulates that "[a]n LPFM station that receives a waiver under paragraph (e)(1) of this section shall suspend operation immediately upon notification by the Commission that it is causing interference to the reception of an existing or modified full-service FM station."<sup>18</sup> Accordingly, on April 23, 2020, the Bureau ordered WYPH-LP to cease operations until New River had remediated the interference caused to the over-the-air reception of WDRC-FM.<sup>19</sup> On April 29, 2020, New River responded that the Red Wolf Complaint was meritless and requested that the Bureau "vacate" the *Cease Operations Letter*.<sup>20</sup> On September 28, 2020, the Bureau issued the *Letter Decision* concluding that New River could not resume operation of WYPH-LP because New River failed to eliminate the interference or demonstrate that WYPH-LP was not the source of the interference.<sup>21</sup>

*New River Petition.* On October 28, 2020, New River filed the New River Petition arguing that the Bureau erred in the *Letter Decision* and that the Bureau should have dismissed the Red Wolf Complaint as meritless. New River argues that the Bureau erred in finding the listener complaints were *bona fide* because Red Wolf actively "solicited and scripted"<sup>22</sup> the listener complaints. New River also asserts that the Bureau applied different evidentiary standards when it accepted Red Wolf's listener complaints but rejected New River's purported text message between a listener complainant and an unidentified New River church congregant discussing the listener's interference complaint.<sup>23</sup> New River

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<sup>13</sup> File No. BPL-20160128BFG (Permit).

<sup>14</sup> See Exhibit 11, Permit. New River also noted that under its original license (File No. BLL-20140423ABG), WYPH-LP was short-spaced to WDRC-FM and WAQY(FM).

<sup>15</sup> See *Broadcast Actions*, Public Notice, Report No. 48670 (MB Feb. 12, 2016).

<sup>16</sup> File No. BLL-20170807AAT. See *Broadcast Actions*, Public Notice, Report No. 49049 (MB Aug. 15, 2017).

<sup>17</sup> See *supra* note 6.

<sup>18</sup> 47 CFR § 73.807(e)(2)(ii).

<sup>19</sup> See *Cease Operations Letter* at 2.

<sup>20</sup> See "Response to Interference Complaint and Request to Vacate Cease Operation Order." (New River Complaint Response).

<sup>21</sup> See *Letter Decision* at 7.

<sup>22</sup> New River Petition at 9. According to New River, Red Wolf had ulterior motives in filing the complaint because if WYPH-LP is removed from channel 273, Red Wolf's unbuilt FM translator construction permit on channel 273, Meriden Connecticut, could, when constructed, "cover the City of Hartford and the City of Manchester." *Id.* at 7.

<sup>23</sup> *Id.* at 10, n.10. New River claims that the Bureau rejected the text message for not being authenticated but did not place a similar burden on Red Wolf. *Id.*

further contends that the Bureau erred in rejecting as not from an independent party the interference tests performed by New River's engineering consultant.<sup>24</sup>

New River asserts that the Bureau should consider the findings of New River's engineering consultant and conclude that those findings demonstrate there is no interference from WYPH-LP to WDRC-FM in the areas specified by Red Wolf.<sup>25</sup> Alternatively, New River proposes that on-off testing be conducted by a third party engineer, either with or without Red Wolf's participation,<sup>26</sup> and that the test results be submitted to the Bureau for consideration in determining whether WYPH-LP is the source of the interference to WDRC-FM.<sup>27</sup>

On November 12, 2020, Red Wolf opposed the New River Petition, arguing that it should be dismissed as repetitious because New River repeated arguments that "were sufficiently considered and addressed by the Bureau."<sup>28</sup> Red Wolf claims that "New River is not happy with results in this proceeding, but this does not give it the right to blame Red Wolf and the FCC for its failure to resolve interference based on the FCC's established procedures."<sup>29</sup> Regarding New River's on-off testing proposal, Red Wolf states that "it is willing to participate in such testing pursuant to the parameters established by the FCC."<sup>30</sup> However, Red Wolf asserts that because New River installed "the wrong antenna [on the WYPH-LP tower site]," on-off testing would not be of any value "[u]ntil this violation is corrected."<sup>31</sup>

On November 16, 2020, New River filed the Petition Reply reiterating that Red Wolf's listener complaints are not *bona fide* and that the interference tests performed by New River's engineering consultant should be accepted, or alternatively, on-off testing should be performed. Regarding Red Wolf's willingness to participate in on-off testing, New River alleges that Red Wolf "has *never* agreed to [participate in testing]."<sup>32</sup> New River declares that "Red Wolf's refusal to participate in a timely course of on-off testing in this case, and the bad faith exhibited by Red Wolf to date should lead to adverse inferences."<sup>33</sup> Lastly, New River requests that "WYPH-LP be permitted to return to the air" so that

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<sup>24</sup> *Id.* at 12. New River argues that *Iglesia Jesucristo Es Mi Refugio, Inc., (Iglesia)*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 16310, 16319 (MB 2010), cited by the Bureau as finding that a petitioner's engineering consultant is not a disinterested witness, is inapplicable because *Iglesia* did not involve interference tests, but rather hearsay. New River Petition at 12. New River declares that the Bureau's failure to consider the results of New River's interference testing means that New River has "no chance of providing an engineering rebuttal because no one retained by [New River] . . . can prepare and submit a response." *Id.* at 17.

<sup>25</sup> New River Petition at 12-17.

<sup>26</sup> New River reports that to date Red Wolf has not agreed New River's private requests for joint interference testing. *Id.* at 3, n.3, 18.

<sup>27</sup> *Id.* at 19. New River requests that the Bureau impose a "firm, and short, time frame" for completion and submission of the testing; authorize WYPH-LP to resume operations during the testing; and pledge to evaluate the testing results substantively. *Id.*

<sup>28</sup> Petition Opposition at 2.

<sup>29</sup> *Id.* at 1-2.

<sup>30</sup> *Id.* at 4.

<sup>31</sup> *Id.*

<sup>32</sup> Petition Reply at 5 (emphasis original).

<sup>33</sup> *Id.* at note 7.

“[New River] Church services can resume being broadcast to and received by the congregation of the Church during the pandemic.”<sup>34</sup>

On December 18, 2020, New River filed the Statement alleging that Red Wolf had recently tried to oust WYPH-LP from its tower site by attempting to lease “the entire [WYPH-LP] tower for ‘FM purposes.’”<sup>35</sup> New River declares that this demonstrates Red Wolf’s “bad faith scheme to cause WYPH-LP to lose its license and free up Channel 273, so that Red Wolf can let out the antenna pattern of its FM Translator construction permit [and] . . . cover the City of Hartford and its urbanized surroundings.”<sup>36</sup>

*Red Wolf Supplement.* On the same day that New River filed its petition, Red Wolf supplemented its interference complaint, alleging that when WYPH-LP was broadcasting, it “operat[ed] with the wrong antenna and such operation violates section 73.807(e)(1) of the FCC’s rules.”<sup>37</sup> Red Wolf claims that the Bureau issued a second-adjacent channel waiver based on New River’s certification in the Permit application that “WYPH-LP would install a Nicom BKG-77, 4-bay half wavelength antenna (Nicom Antenna). However [after the Permit was granted], WYPH-LP installed a Shively 6812B-2, 2-bay half wavelength antenna (Shively Antenna).”<sup>38</sup> Red Wolf declares that WYPH-LP’s operations with the Shively Antenna cause actual interference to Red Wolf’s station WDRC-FM and to Saga’s station WAQY(FM).<sup>39</sup> In support, Red Wolf attached a technical showing prepared by Red Wolf’s consulting engineer.<sup>40</sup>

On November 9, 2020, New River opposed the Red Wolf Supplement, arguing that it should be dismissed or denied because Red Wolf did not demonstrate that the new allegations in the supplement were based on information that was unavailable to Red Wolf when it filed its complaint.<sup>41</sup> New River declares that it is “three years too late”<sup>42</sup> for Red Wolf to object to WYPH-LP’s licensed facilities because New River disclosed in the granted License application that it installed the Shively Antenna at the WYPH-LP tower site.<sup>43</sup> New River also objects to the technical showing in the Red Wolf Supplement, because it was prepared by Red Wolf’s consulting engineer, who New River asserts is not an independent party, and because Red Wolf’s technical showing addressed only predicted interference, which New River asserts is irrelevant to Red Wolf’s Complaint alleging actual interference.

On November 18, 2020, Red Wolf filed the Supplement Reply reiterating that New River’s installation of the Shively Antenna at the WYPH-LP tower site was unauthorized and causes actual interference to WDRC-FM and WAQY(FM). Regarding New River’s objection to Red Wolf’s technical

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<sup>34</sup> *Id.* at 7.

<sup>35</sup> Statement at 2.

<sup>36</sup> *Id.* at 2.

<sup>37</sup> Red Wolf Supplement at 1.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 2 and note 1.

<sup>40</sup> Technical Exhibit, *Id.*

<sup>41</sup> Supplement Opposition at 3.

<sup>42</sup> *Id.* at 8.

<sup>43</sup> *Id.* at 6.

showing in its supplement, Red Wolf argues that section 73.807(e)(1) of the Rules permits the “use methods of predicting interference to demonstrate [that] no ‘actual interference’” will occur.<sup>44</sup>

*Saga Complaint.* On December 1, 2020, Saga filed an interference complaint alleging that if WYPH-LP is allowed to resume operations, then “interference is expected to be caused to [Saga’s station] WAQY as a result of [WYPH-LP’s] unauthorized antenna.”<sup>45</sup> In support, Saga attached a technical showing prepared by Saga’s consulting engineer, purportedly demonstrating the alleged interference from WYPH-LP to WAQY(FM).<sup>46</sup> Saga also claims that “New River incorrectly certified [in the License application] that ‘no cause or circumstance has arisen since grant of the underlying construction permit which would result in any statement or representation contained in the construction permit application now being incorrect.’”<sup>47</sup> Saga requests that WYPH-LP not be allowed to resume operations until the Shively Antenna is replaced with the Nicom Antenna.<sup>48</sup>

**Discussion.** *New River Petition.* We affirm our conclusion in the *Letter Decision* that New River failed to demonstrate that WYPH-LP was not the source of interference to WDRC-FM and that WYPH-LP cannot resume operations, except as noted below, until New River eliminates the interference or demonstrates that WYPH-LP is not the source the interference.<sup>49</sup> We disagree with New River’s claims that the Bureau erred by finding that the listener complaints were *bona fide* and by declining to consider the interference tests performed by New River’s engineering consultant. As discussed in the *Letter Decision*, New River failed to submit any evidence that the listener complaints do not meet the Commission’s criteria for *bona fide* complaints of interference from an LPFM station.<sup>50</sup> Contrary to New River’s assertions, Red Wolf’s announcements on WDRC-FM concerning the interference and its use of standardized interference complaint forms do not demonstrate that the listener complainants are not disinterested, *i.e.*, persons “without a legal stake in the outcome of the . . . proceeding.”<sup>51</sup> We also reject New River’s claim that the *Letter Decision* applied different evidentiary standards to Red Wolf’s listener complaints and New River’s purported text message from one of the complainants to an unidentified New River Church congregant. Unlike the purported text message, which was not validated by either party, each listener complaint was validated by the listener complainant with a signature and address of the

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<sup>44</sup> Supplement Reply at 2.

<sup>45</sup> Saga Complaint at 2.

<sup>46</sup> Exhibit 1.0, *Id.*

<sup>47</sup> *Id.* at 3 (emphasis original).

<sup>48</sup> *Id.* at 1

<sup>49</sup> *Letter Decision* at 7.

<sup>50</sup> As stated above, a *bona fide* complaint is defined as being “from a disinterested listener and must include the listener’s name and address, and the location at which the interference occurs.” *LPFM Sixth Report and Order*, 27 FCC Rcd at 15432, para 84.

<sup>51</sup> *LPFM Sixth Report and Order*, 27 FCC Rcd at 115431-32, para. 83. We reject as mere speculation New River’s assertion that Red Wolf had ulterior motives in filing its complaint. Even if we accepted this speculative assertion as true, in the circumstances presented here we would still affirm the *Letter Decision*’s finding that Red Wolf submitted *bona fide* listener complaints, for the reasons discussed above.

listener.<sup>52</sup> Moreover, as noted in the *Letter Decision*, even if we accepted the purported text message, it does not indicate that the listener disavowed the complaint as New River alleged.<sup>53</sup>

As for New River's interference showings, the Bureau correctly declined to consider these because they were not performed in the manner proscribed for demonstrating that WYPH-LP is not the source of the interference caused to the over-the-air reception of WDRC-FM as set forth in the Rules and *LPFM Sixth Report and Order*. As discussed in the *LPFM Sixth Report and Order*,<sup>54</sup> "an LPFM station may demonstrate that it is not the source of the interference at issue by conducting an 'on-off' test" and "the full-service station(s) involved [is required] to cooperate in these tests."<sup>55</sup> Here, there is no evidence New River sought to include Red Wolf in the testing performed by New River's engineering consultant. Nor is there any evidence that the testing consisted of "on-off" tests as New River's engineering consultant reported only listening to the WDRC-FM signal at cited interference locations and "watching the RBDS data decoded in a broadcast."<sup>56</sup>

As noted above, however, New River may demonstrate that WYPH-LP is not the source of the interference caused to the over-the-air reception of WDRC-FM by conducting on-off tests.<sup>57</sup> Furthermore, we require Red Wolf to cooperate with New River in conducting the on-off testing.<sup>58</sup> We further note that WYPH-LP is authorized to conduct brief test transmissions for testing purposes.<sup>59</sup> Accordingly, we will require that New River and Red Wolf jointly engage in on-off testing to determine the source of the interference caused to over-the-air reception of WDRC-FM.<sup>60</sup> To facilitate a timely review, we will also require that the test results be submitted to the Bureau within 90 days of the date of this letter decision. Once we receive the test results, we will independently review them to determine if they demonstrate that WYPH-LP is the source of the interference caused to the over-the-air reception of WDRC-FM.

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<sup>52</sup> See 47 CFR § 1.52 ("A party who is not represented by an attorney shall sign and verify the document and state his address.").

<sup>53</sup> *Letter Decision* at 6.

<sup>54</sup> 47 CFR § 73.807(e)(2)(ii); *LPFM Sixth Report and Order*, 27 FCC Rcd at 15432, para 85.

<sup>55</sup> *LPFM Sixth Report and Order*, 27 FCC Rcd at 15432, para 85 (concluding that an LPFM station may demonstrate that it is not the source of second-adjacent channel interference by conducting an on-off test, and requiring that full-service stations cooperate in such tests as required for third-adjacent channel LPFM interference testing, citing, *inter alia*, 47 CFR § 73.810); see 47 CFR § 73.810(b)(1) (stating that "the LPFM and affected stations must cooperate" in an on-off test when required to determine whether the third-adjacent channel interference is traceable to the LPFM station).

<sup>56</sup> "Tom Ray Broadcasting, LLC, Letter" (dated Jan. 26, 2020), Exhibit B at 1, New River Complaint Response.

<sup>57</sup> See 47 CFR § 73.807(e)(2)(ii) ("The LPFM station shall not resume operation until such interference has been eliminated or it can demonstrate to the Commission that the interference was not due to emissions from the LPFM station."); *LPFM Sixth Report and Order*, 27 FCC Rcd at 15432, para 85.

<sup>58</sup> *LPFM Sixth Report and Order*, 27 FCC Rcd at 15432, para 85.

<sup>59</sup> 47 CFR § 73.807(e)(2)(ii) ("Short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.").

<sup>60</sup> As discussed below, see *infra* para. 0, we find that the Saga Complaint is not *bona fide* complaint of interference. Should Saga subsequently file a new complaint of interference that is found to be *bona fide*, we would likely require that Saga participate in similar on-off testing if New River seeks to demonstrate that WYPH-LP is not the source of interference pursuant to section 73.807(e)(2)(ii).

*Red Wolf Supplement.* In its supplement Red Wolf essentially seeks reconsideration of the Bureau's grant of the WYPH-LP License. The time period for filing a petition for reconsideration of the Bureau's grant of the WYPH-LP License expired thirty days after the August 14, 2017, public notice announcing said grant.<sup>61</sup> Section 405(a) of the Communications Act of 1934, as amended (the Act), provides that "petitions for reconsideration must be filed within thirty days from the date upon which public notice is given of the action . . . complained of."<sup>62</sup> Absent extraordinary circumstances, the Commission may not waive or extend this statutory 30-day filing period for petitions for reconsideration.<sup>63</sup>

The Commission has held that indirect challenges to Commission decisions adopted in proceedings in which the right to review has expired are considered impermissible collateral attacks and are properly denied.<sup>64</sup> Accordingly, we will deny the Red Wolf Supplement as an impermissible collateral attack of the Bureau's now final WYPH-LP License grant. Notwithstanding the finality of the WYPH-LP License grant, however, we remind New River that it must ensure the accuracy of its application certifications and all other information submitted to the Commission.<sup>65</sup>

*Saga Complaint.* We have reviewed the Saga Complaint and find that it is not a *bona fide* complaint of interference. Here, WYPH-LP has been operating as licensed with the Shively Antenna from August 2017 until April 2020, when the Bureau ordered WYPH-LP to suspend operations pursuant to section 73.807(e)(2) of the Rules.<sup>66</sup> Notwithstanding this lengthy period of time, Saga failed to submit any valid listener complaints as required to establish a *bona fide* complaint of interference.<sup>67</sup> In addition, we also reject Saga's objection to New River's use of the Shively Antenna for the same reasons we reject Red Wolf's similar objection, as discussed above. Therefore, we dismiss the Saga Complaint.<sup>68</sup>

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<sup>61</sup> See *supra* note 14.

<sup>62</sup> 47 U.S.C. § 405(a).

<sup>63</sup> See *Reuters Ltd. v. FCC*, 781 F.2d 946, 95 (D.C. Cir. 1986) ("[W]e conclude that the Commission acted beyond its lawful authority when it entertained the belated petition for reconsideration."). See also *Metromedia Inc.*, Memorandum Opinion and Order, 56 FCC 2d 909, 909-10 para. 2 (1975) (Commission may not waive 30-day filing period to accept a petition for reconsideration filed one day late); *Fortuna Systems Corp.*, Order on Reconsideration, 3 FCC Rcd 5122, 5123 para. 9 (CCB 1988). Specifically, the courts have held that the Commission may not accept untimely reconsideration petitions in the absence of extremely unusual circumstances. See, e.g., *Virgin Islands Tel. Corp. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993).

<sup>64</sup> See, e.g., *Lighthouse Christian Center*, 32 FCC Rcd. 6444, at 6446, para. 8 (we find this indirect challenge to our grant of the 2001 Permit Application constitutes an impermissible collateral attack and is properly denied.) (*Lighthouse*). See also *MCI Telecommunications Corp. v. Pacific Northwest Bell Telephone Co.*, Memorandum Opinion and Order, 5 FCC Rcd 216, 228 n.38 (1990), *recon. denied*, 5 FCC Rcd 3463 (1990), *appeal dismissed sub nom. Mountain States Tel. and Tel. Co. v. FCC*, 951 F.2d 1259 (10th Cir. 1991) (*per curiam*).

<sup>65</sup> 47 CFR §§ 1.17, 1.65. As Red Wolf and Saga each acknowledge, New River disclosed that it substituted the Shively Antenna for the Nicom Antenna in an engineering statement attached to License Application. See "Engineering Statement", Attachment 5, License Application; Attachment 2, Red Wolf Supplement; and Saga Complaint at 2-3.

<sup>66</sup> 47 CFR § 73.807(e)(2); *Cease Operations Letter* at 2.

<sup>67</sup> See *LPFM Sixth Report and Order*, 27 FCC Rcd at 15432, para. 84.

<sup>68</sup> See, e.g., *Lighthouse*, 32 FCC Rcd at 6444, para. 6 and note 5 (MB 2017) (rejecting a second-adjacent channel interference claim that did not include listener complaints).



**Conclusion.** Accordingly, IT IS ORDERED that pursuant to section 155(c)(5) of the Communications Act of 1934, as amended, and section 1.106 of the Commission's rules,<sup>69</sup> the "Petition for Reconsideration" filed on October 28, 2020, by New River Community Church, IS GRANTED IN PART to the extent it requests that we order New River and Red Wolf to engage in on-off testing jointly to determine the source of the interference to over-the-air reception of WDRC-FM, and IS OTHERWISE DENIED.

IT IS FURTHER ORDERED that within ninety (90) days of the date of this decision, New River Community Church and Red Wolf Broadcasting Corporation will jointly engage a third party engineer to perform on-off testing to determine if WYPH-LP is the source of the interference caused to WDRC-FM and jointly submit the results of such testing to the Bureau for review.

IT IS FURTHER ORDERED that the "Supplement" filed on October 28, 2020, by Red Wolf Broadcasting Corporation, IS DENIED.

IT IS FURTHER ORDERED that the "Complaint" filed on December 1, 2020, by Saga Communications of New England IS DISMISSED.

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>69</sup> 47 U.S.C. § 155(c)(5); 47 CFR § 1.106.