



Federal Communications Commission
Washington, D.C. 20554

August 31, 2015

Emmanuel Broadcasting Corporation
177 Henderson Road
Decatur, AL 35603
Attention: James R. Henderson

Re: Petition for Eligible Entity Status WMJN-LP, Somerville, Alabama (Facility ID No. 10593), FCC
File No. BLTDL-20150126ABT

Dear Licensee:

This is with respect to the Petition for Eligible Entity Status (“Petition”) filed by Emmanuel Broadcasting Corporation (“Licensee”), licensee of low power television (“LPTV”) station WMJN-LP, Somerville, Alabama (“Station”).¹ The Petition states that the Station is a Class A station and should be deemed an “eligible facility” for purposes of the incentive auction. For the reasons below we deny the Petition.

Background. Class A television stations have been accorded primary spectrum-use status pursuant to the Community Broadcasters Protection Act of 1999 (“CBPA”).² To qualify for Class A status, the CBPA provides that during the 90 days preceding enactment of the statute, a low power television station must have: (1) broadcast a minimum of 18 hours per day; (2) broadcast an average of at least three hours per week of programming produced within the market area served by the station; and (3) been in compliance with the Commission’s Rules (the “Rules”) for low power television stations.³ In addition, beginning on the date of its application for a Class A license and thereafter, the CBPA requires that a station must be “in compliance with the Commission’s operating rules for full power television stations.”⁴ Class A licensees must continue to meet the eligibility requirements to retain their Class A status.⁵ A licensee who is unable to continue to meet the minimum operation requirements for Class A television stations or that elects to revert to LPTV status is required to notify the Commission in writing and request such change in status.⁶

The Station was initially licensed as a Class A station on July 19, 2001, by the former licensee First Cullman Broadcasting, Inc. (“First Cullman”).⁷ On November 13, 2012, the subsequent owners of the Station and principals of the current Licensee, Mr. James Henderson and Ms. Carol Henderson, filed an application for renewal of the Station’s license. Under Section 1, Question 6 of the license renewal application, Mr. and Mrs. Henderson indicated that the Station’s class of service was LPTV, not Class A.⁸

¹ Petition for Eligible Entity Status filed by Emmanuel Broadcasting Corporation (Jul. 1, 2015)(“Petition”).

² Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594 – 1501A-598 (1999), *codified at* 47 U.S.C. § 336.

³ 47 U.S.C. § 336(f)(2)(A)(i).

⁴ 47 U.S.C. § 336(f)(2)(A)(ii).

⁵ *Id.*; 47 C.F.R. § 73.6001(b),(c).

⁶ 47 C.F.R. § 73.6001(d).

⁷ File No. BLTTA-20010712ADX.

⁸ FCC File No. BRTTL 20121113AID.

On November 1, 2013, the Commission granted the Station's license renewal application and, as requested, issued it a LPTV license.⁹ Following issuance of the Station's LPTV license in 2013, all subsequent applications filed by Mr. and Ms. Henderson and the Licensee have been filed on LPTV forms. For example, on January 26, 2014, the Licensee filed a license to cover of a digital construction permit on a FCC Form 347, an LPTV license application.¹⁰ The Commission granted the Station a new digital LPTV license on January 29, 2015.¹¹

On June 9, 2015, the Media Bureau ("Bureau") issued a Public Notice ("*Eligibility PN*") that included an Appendix containing a list of each station facility eligible for protection in the repacking process and for relinquishment in the reverse auction (i.e., "eligible facility").¹² WMJN-LP was listed in the Commission's database as a LPTV station and, as a result, was not included in the Appendix.¹³ On June 30, 2015, the Licensee filed a Petition requesting that the Station be deemed an eligible facility for purposes of the incentive auction. The Petition contends that the Station became a licensed Class A station in July 2001, has been operating as a Class A station, and has met all Class A requirements.¹⁴ The Petition goes on to state that it is not aware of any Commission action to revoke its Class A status, and the Licensee contends that it never "acted to terminate [its] Class A status."¹⁵

Subsequently, on July 19, 2015, the Video Division ("Division") sent the Licensee a letter requesting additional information and documents in support of the Licensee's claim that the Station has continued to comply with all required Class A eligibility requirements ("*Division Letter*").¹⁶ Specifically, the Division Letter requested information pertaining to why the Licensee had failed to establish an online public file through the Commission-hosted website ("online public file" or "electronic public file")¹⁷ and

⁹ FCC Daily Digest, Broadcast Actions, Public Notice, Report No. 48110 (Nov. 6, 2013). License authorization available at: http://licensing.fcc.gov/prod/cdbs/pubacc/Auth_Files/1524692.pdf.

¹⁰ FCC File No. BLDTL-20150126ABT.

¹¹ FCC Daily Digest, Broadcast Action Report No. 48418, Public Notice, p. 7 (Feb. 3, 2015). License authorization available at: http://licensing.fcc.gov/prod/cdbs/pubacc/Auth_Files/1669163.pdf.

¹² *Media Bureau Announces Incentive Auction Eligible Facilities and July 9, 2015 Deadline for Filing Pre-Auction Technical Certification Form*, Public Notice, DA 15-679 (rel. Jun. 9, 2015).

¹³ *See, e.g., Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6673, para. 238; 6674, para. 241 (2014)(finding that mandatory repacking protection of low power television stations is not mandated by the Spectrum Act and declining to exercise discretionary authority to protect low power television facilities) ("*Incentive Auction R&O*"), *aff'd on recon.*, Second Order on Reconsideration, FCC 15-69, paras. 64-71 (rel. Jun. 19, 2015).

¹⁴ Petition at 1.

¹⁵ *Id.*

¹⁶ Letter from James Henderson to Barbara A. Kreisman, Chief, Video Division, Media Bureau (Jul. 24, 2015). In establishing the Class A television service, the Commission applied to Class A licensees all the requirements that apply to full power television stations except those that could not apply for technical or other reasons. *See* 47 C.F.R. §§ 73.6026 and 73.3001 *et seq*; *see also In the Matter of Establishment of a Class A Television Service*, MM Docket No. 00-10, Report and Order, 15 FCC Rcd 6355, 6366, paras. 24-25 (2000)("Class A R&O"), *modified*, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 8244, 8254-56, paras. 25-31 (2001)("Class A MO&O on Recon").

¹⁷ *See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MM Docket Nos. 00-168 and 00-44, Second Report and Order, 27 FCC Rcd 4535 (2012); 47 C.F.R. § 73.3526(b).

why since Mr. and Ms. Henderson acquired the station all applications have been filed using LPTV forms, not Class A forms.¹⁸ The Division also requested that the Licensee establish an electronic public file and upload all required information and documents.¹⁹

The Licensee responded to the letter on July 27, 2015, and uploaded documents to the Commission-hosted online public file website, as requested by the Division (“Letter Response”).²⁰ In its response, the Licensee concedes that Mr. and Ms. Henderson, the principals of the Licensee, are “not skilled in FCC requirements and procedures and made mistakes in filing procedures...”²¹ The response alleges that searching the Station’s call-sign in FCC TV Query shows that the Station continues to be listed as a Class A station and, as a practical matter, the Station has continued to operate as a Class A station.²² Upon examination of the documents uploaded to the Station’s online public file, staff discovered that the Licensee had only uploaded documents dating back to the start of 2015. On July 30, 2015, Division staff contacted Mr. Henderson and requested that all public file documents dating back to the acquisition of the station by Mr. and Ms. Henderson be uploaded to the Station’s online public file. Additional documents were placed in the Station’s online public file as requested by staff.

Discussion. While the Licensee contends in the Petition that it never “acted to terminate [its] Class A status,”²³ the Licensee’s submission of its 2012 license renewal application is evidence to the contrary. Upon review of the Station’s 2012 license renewal application, staff concluded that the Licensee’s response to Section I, Question 6 identifying the station’s Class of service as LPTV,²⁴ was a notice to the Commission under Section 73.6001(d) of the Rules that the Licensee was electing to revert the Station to LPTV status.²⁵ Indeed, the Licensee certified in the renewal application that it “request[s] an authorization in accordance with this application.”²⁶ We find that grant of the Station’s license renewal on November 1, 2013 as a LPTV station, as requested by the Licensee, established the Station’s class of service. Subsequent actions by the Licensee confirm the Station’s status as LPTV. After grant of the Station’s LPTV license, all applications filed by the Licensee have been on LPTV forms. At no time has the Licensee challenged any LPTV authorization issued by the Commission. Moreover, Class A stations were required to establish an online public file between August 2012 and February 2013.²⁷ The Station did not successfully establish an online public file until after receiving the Division Letter.

While the Station may have continued to operate consistent with some Class A requirements, the Station became licensed as a LPTV station following grant of the 2013 license renewal. The

¹⁸ Division Letter at 3-4.

¹⁹ *Id.* at 4.

²⁰ Letter from James Henderson to Barbara A. Kreisman, Chief, Video Division, Media Bureau (Jul. 24, 2015)(“Letter Response”).

²¹ Letter Response at 1.

²² *Id.*

²³ Petition at 1.

²⁴ FCC File No. BRTTL 20121113AID.

²⁵ *See* 47 C.F.R. § 73.6001(d).

²⁶ FCC File No. BRTTL 20121113AID, Section II.

²⁷ *See supra* n.17. *See e.g., Effective Date Announced for Online Publication of Broadcast Television Public Inspection Files*, Public Notice, 27 FCC Rcd 7478 (2012)(announcing effective date of electronic public file rule);

Licensee received a copy of the LPTV license and notification of grant of the LPTV license was published in the Commission's Daily Digest. At no time since the Station was issued a LPTV license did Mr. and Ms. Henderson or the Licensee file a Petition for Reconsideration of any Commission action classifying the Station as LPTV. Section 405 of the Act²⁸ and Section 1.106(f) of the Rules²⁹ require parties to seek reconsideration no later than thirty days after public notice of the action for which reconsideration is sought.³⁰ The U.S. Court of Appeals for the D.C. Circuit has held that the Commission lacks authority to waive or extend the statutory thirty-day filing period for petitions for reconsideration unless the petitioner can show that its failure to file in a timely manner resulted from "extraordinary circumstances indicating that justice would thus be served."³¹ The Commission does not have authority to waive or extend, even by as little as one day, the statutory thirty-day filing period for petitions for reconsideration, absent extraordinary circumstances. The Licensee does not allege, much less establish, that such circumstances exist here.

The Licensee states in its Letter Response that any failures to comply with the Rules or file appropriate applications were the result of a misunderstanding and/or misinterpretation of its obligations as a licensee.³² The Licensee's lack of knowledge of the Rules, including the requirement that a petition for reconsideration must be filed within thirty days,³³ the requirement to establish/maintain an online public file,³⁴ and when to file appropriate forms,³⁵ is at best ignorance of the law, which the Commission does not consider a mitigating circumstance.³⁶ Commission licensees have an underlying obligation to have knowledge of pertinent Commission's Rules.³⁷

²⁸ 47 U.S.C. § 405(a).

²⁹ 47 C.F.R. § 1.106(f).

³⁰ *Christian Family Network, Inc.*, Letter Decision, 24 FCC Rcd 7170, 7173 (Aud. Div. 2009) (30-day petition for reconsideration period applies to cancellation of license).

³¹ See *Gardner v. FCC*, 530 F.2d 1086, 1091-92 (D.C. Cir. 1976). See also, e.g., *Virgin Islands Telephone Corporation v. FCC*, 989 F.2d 1231 (D.C. Cir. 1993); *Metromedia, Inc.*, 56 FCC 2d 909 (1975) (distinguishing *Gardner* and finding that the Commission may not waive the thirty day filing period to accept a petition for reconsideration filed one day late); *Ole Brook Broadcasting, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 20644 (2000).

³² See generally Letter Response.

³³ Letter Response at 2.

³⁴ *Id.* at 2.

³⁵ *Id.* at 1-2.

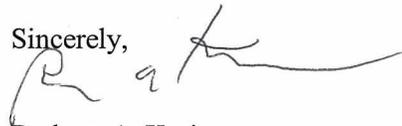
³⁶ See e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (explaining that the Commission does not consider ignorance of the law to be a mitigating circumstance).

³⁷ See *Discussion Radio Incorporated*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 7433 (2004) (a Commission licensee is charged with knowledge of the full range of its obligations pursuant to the Act, the Rules, and its authorization). See also 47 C.F.R. § 0.406.

Based on the facts and circumstances before us, we find that WMJN-LP is a LPTV station having requested voluntary downgrade in its 2012 license renewal application.³⁸ The Commission has definitively determined that LPTV stations are not eligible for mandatory protection in the repacking process and has declined to use its discretion to extend protection to LPTV stations.³⁹ We note that in its Letter Response, the Licensee states that “it would be in the best interest of our community if we are allowed to stay on the air to serve them, and we respectfully ask that you approve this request.”⁴⁰ The Licensee’s claims that there are no full power stations in the Station’s county, the Station provides unique local programming not provided by other “larger stations,” and the Licensee has invested over \$50,000 to convert the Station to digital operations are immaterial to the Station’s class of service.⁴¹ Our decision here does not diminish the value the Station has been providing to its local community. Moreover, we note that the Commission, recognizing the important services provided by LPTV stations such as WMJN-LP, has adopted a number of measures to mitigate the potential impact of the repacking process on LPTV stations, and has initiated a separate proceeding to consider additional measures.⁴²

Accordingly, the Petition for Eligible Entity Status filed by Emmanuel Broadcasting IS **DENIED.**

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

³⁸ The Licensee contends in its Letter Response that the Commission’s TV Query online system lists the Station as a Class A station and that the Licensee relied on this representation. Letter Response at 1. A search of the Station’s call sign in the TV Query database by Commission staff, however, revealed that the Station’s class of service is listed as LPTV. TV Query results available at: <https://transition.fcc.gov/fcc-bin/tvq?list=0&facid=10593> (last visited July 31, 2015). We note that the Station’s online public file homepage and station profile page in the Commission’s Consolidated Database System were temporarily changed by staff following the issuance of the Division Letter for the sole purpose of allowing the Licensee to create and upload information/documents to the Station’s online public file (LPTV stations are not required by the Commission’s rules to file periodic reports and, thus, LPTV stations do not have on-line public files in the CDBS). This modification did not confer upon the Station any change in status from its existing LPTV license.

³⁹ *Incentive Auction R&O*, 29 FCC Rcd at 6673, para. 238, 6674, para. 241 (finding that repacking protection of LPTV stations is not mandated by the Spectrum Act and declining to exercise discretionary authority to protect LPTV facilities), *aff’d on recon.*, *Incentive Auction Second R&O*, paras. 66-70.

⁴⁰ Letter Response at 3.

⁴¹ *Id.*

⁴² *Incentive Auction R&O*, 29 FCC Rcd at 6834-39, paras. 657-67; *see Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations*, MB Docket No. 03-185, Third Notice of Proposed Rulemaking, 29 FCC Rcd 12536 (2014).