



Federal Communications Commission
Washington, D.C. 20554

November 22, 2022

SENT VIA CERTIFIED MAIL AND ELECTRONIC MAIL

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In re: WNDL-LD, Salisbury, MD
Facility ID No. 130443
LMS File Nos. 0000185909 and
0000180288

Notice of Dismissal and Cancellation

Dear Licensee:

This letter relates to the above-captioned former analog low power television station (Station or WNDL), licensed to Iglesia Manmin Toda La Creacion USA Inc. (Licensee or IMTC), and Licensee's pending request to toll WNDL's construction permit (Tolling Request) and its application for license to cover (License Application).¹ Based on the facts and circumstances discussed below, we dismiss the Station's License Application and Tolling Request. Furthermore, because the Station's construction permit has been automatically forfeited and its analog license has been automatically canceled, the Station's license in the Commission's database has been cancelled and its call sign deleted.

Background. On January 18, 2022, IMTC filed a request to toll the Station's construction deadline for its displacement construction permit,² citing a "lack of the necessary equipment at the site."³ According to the Tolling Request, "[d]elays in the supply chain and delivery services have been caused by covid-related personnel shortages on the part of vendors and delivery services."⁴ On January 28, the Video Division (Division) sent a deficiency letter to IMTC, advising that IMTC had not provided information sufficient to process its request and offering two options: either provide the requested information within 30 days (i.e., by March 1, 2022), or withdraw the Tolling Request and submit WNDL's construction permit for cancellation.⁵ IMTC did neither.

On March 7, 2022, IMTC filed the License Application, certifying therein that it had constructed WNDL's facilities on a tower with ASR number 1053208, in accordance with its construction permit.⁶

¹ LMS File No. 0000185909 (application for license to cover) (filed Mar. 7, 2022) (License Application).

² LMS File No. 0000054251 (displacement application initially filed May 17, 2018; amended Nov. 20, 2018) (granted Jan. 22, 2019) (establishing a January 21, 2022 expiration date).

³ LMS File No. 0000180288 (filed Jan. 18, 2022) and Attach. (Tolling Request).

⁴ *Id.*

⁵ *Id.* Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to IMTC (Jan. 28, 2022) (Tolling Deficiency Letter).

⁶ License Application (LMS File No. 0000185909, certified by Esteban Handal, President, IMTC). Three weeks later, IMTC filed a request to withdraw the Tolling Request, certifying that "Tolling is no longer needed because the

On August 9, 2022, the Division issued a letter of inquiry (Inquiry) to IMTC and directed it to provide information about whether it had in fact constructed WNDC's digital displacement facility as authorized.⁷ The Division further instructed IMTC to file its response within 15 days (i.e., by August 24, 2022) and supply evidence supporting assertions made in response to the Inquiry.⁸ On August 23, counsel for Licensee sought a nine-day extension to respond to the Inquiry.⁹ Division staff found no good-cause basis to grant the request and directed IMTC to file all information it had assembled by the August 24 filing deadline and, as a courtesy, permitted Licensee to file a supplemental response no later than September 2, 2022.¹⁰

IMTC Response to Inquiry. On August 24, IMTC filed a partial response (Response) to the Inquiry.¹¹ As an initial matter, IMTC states it cannot provide much of the requested information due to difficulty in contacting Antonio Cesar Guel, the individual who purportedly constructed WNDC's facilities. IMTC explains that Guel is responsible for WNDC's "[g]eneral management and oversight of station development and operation" and assisted in the preparation for and construction of WNDC, to include making arrangements with the Station's tower owner.¹² IMTC avers that its president and counsel were unable to reach Guel, except for "a brief but not comprehensive telephone conversation on August 22, 2022," because Guel was traveling since August 9 and did not have access to records that might be helpful in providing the requested information.¹³ IMTC states Guel revealed for the first time on August 22 that he had delegated oversight of WNDC's construction to Dionny Hernandez.¹⁴ IMTC states that the telephone number Guel had for Hernandez is not in service and, as of August 24, Guel had not been able to consult his records for other contact information for Hernandez.¹⁵ Given Guel's responsibilities, IMTC stated it would continue to "reach out to Mr. Guel for his input"¹⁶ in order to provide information responsive to the Inquiry and "is attempting to confirm the exact location of the Station's facilities."¹⁷

station has been constructed and the license application has been filed." Withdrawal of Tolling Request, LMS File No. 0000180288 (filed Mar. 24, 2022). That request for withdrawal remained pending and as a result of the action taken herein has been denied.

⁷ Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to IMTC (Aug. 9, 2022) (Inquiry). The Division also sent an electronic copy of the Inquiry to counsel on August 9.

⁸ *Id.* The Inquiry advised IMTC that the Commission was in receipt of information that WNDC was not a tenant on the tower identified in its applications. We thus sought confirmation of the accuracy of information contained in the License Application and other Commission filings regarding WNDC's operations. The Inquiry also put Licensee on notice as to the seriousness of our inquiry: "Because the record raises questions about possible misrepresentation and a abuse of Commission processes, IMTC's character qualifications are at issue." *Id.* at 2.

⁹ E-mail from Don Martin, Esq., to Dana Leavitt, Video Division, FCC Media Bureau (Aug. 23, 2022, 2:53 EDT).

¹⁰ E-mail from Dana Leavitt, Special Counsel, Video Division, FCC Media Bureau, to Don Martin, Esq., counsel for IMTC (Aug. 23, 2022, 4:55 EDT).

¹¹ Letter from Esteban Handal, President, Iglesia Manmin Toda la Creacion USA Inc. to Dana Leavitt, Special Counsel, and David Brown, Deputy Chief, Video Division, FCC Media Bureau (Aug. 24, 2022) (Response). Handal certified under penalty of perjury that the information in the Response was true and correct.

¹² *Id.* at 1, 9.

¹³ *Id.* at 1.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 1.

¹⁷ *Id.*

With respect to Licensee's knowledge of WNDC's construction, Licensee avers the "Station has been constructed" and that Licensee had believed, until receipt of the August 9 Inquiry, that WNDC was constructed at the authorized tower site.¹⁸ Licensee further explains that, until Guel advised otherwise, Licensee believed Guel had physically overseen the construction of the Station. Licensee also submitted photographs that it states Guel provided to Licensee on March 5, 2022, which Guel indicated were "the Station's antenna mounted on a tower, the transmitter, and other equipment in operation."¹⁹ Licensee, however, does not state when or who took the photographs and does not explain what the photographs represent.²⁰ IMTC states it is relying on Guel to provide information responsive to the Inquiry.²¹ IMTC never supplemented its Response and thus never provided a complete response to the Inquiry.

Discussion. Upon review of the facts and circumstances presented, we find that IMTC has failed to provide information fully responsive to the Inquiry. The Commission therefore lacks sufficient information and evidence upon which to grant the Tolling Request of License Application.²² Licensees are responsible for the operation of their stations,²³ and failure to provide required responses are not excused because a licensee relied on an agent or contractor that failed to perform.²⁴ Here, IMTC certified the Station was constructed as authorized but is unable to provide evidence that the Station was, in fact,

¹⁸ *Id.* This statement appears to conflict with prior statements made to Commission staff. *See, e.g.*, E-mail from Don Martin, Esq., to Shaun Maher, Attorney, Video Division, FCC Media Bureau (Mar. 11, 2022, 4:47 EST) (in reply to staff's inquiry "Was construction completed per the terms of the CP?" for WNDC, counsel for IMTC stated: "I have no reason to believe that it was not built according to the CP. I am seeking confirmation."). Thus, IMTC was aware as early as of March 11 that the Commission questioned the circumstances of WNDC's construction.

¹⁹ Response at 2, Attach. 1c. This statement appears inconsistent with a prior statement. *See* E-mail from Don Martin, Esq., to Shaun Maher, Attorney, Video Division, FCC Media Bureau (Mar. 25, 2022, 11:50 EDT) (in reply to staff's inquiry into whether WNDC's facilities "were constructed as authorized in the underlying CP. Please confirm," IMTC's counsel stated: "I am expecting to receive photos."). IMTC avers in its Response that Guel provided photographs of WNDC's installed equipment on March 5, 2022; it thus is unclear why counsel represented on March 25 that it was still "expecting to receive photos."

²⁰ *See* Response at 1-2, Attach. 1c.

²¹ *Id.* at 1-3.

²² Based on this record, the Bureau will evaluate whether to investigate IMTC's claims as to the construction of its other stations as authorized. Those facilities are: KJPO-LD, Tonopah, AZ (Facility ID No. 128085), KZHO-LD, Houston, TX (Facility ID No. 130345); and KHFW-LD, Dallas, TX (Fac. ID No. 130952).

²³ A corporation is responsible for the broadcast-related misconduct of its employees during the course of their employment; to hold otherwise would encourage corporate owners to improperly delegate authority over station operations as a way to immunize themselves against liability for violations of the Act or Commission rules. *Policy Regarding Character Qualifications In Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and Making of Misrepresentations to the Commission by Permittees and Licensees*, Report, Order, and Policy Statement, 102 FCC 2d 1179, 1218, para. 78, *recon. dismissed/denied*, 1 FCC Rcd 421 (1986). It is also well settled that a "licensee will not be excused for violation because he may have been deceived by an employee since licensees are responsible for acts of their employees." *Triad Broadcasting Company*, Memorandum Opinion and Order, 96 F.C.C.2d 1235, 1242-43, para. 16 (1984) (*Triad*), *citing James C. Vernon*, Memorandum Opinion and Order, 30 FCC 2d 456 (1971). Moreover, "failure to acquaint itself with the Commission's requirements will not excuse a licensee from its obligation to operate its station in compliance with the terms of the authorization and the Commission's Rules." *Triad* at 1242-43, para. 16, *citing Empire Broadcasting Corp.*, Memorandum Opinion and Order, 25 FCC 2d 68 (1970).

²⁴ *Triad*, 96 F.C.C.2d at 1242-43, para. 16 (advice of legal counsel or contract engineer cannot excuse a clear breach of duty of a Commission licensee, *citing Asheboro Broadcasting Co.*, Decision, 20 FCC 2d 1, (1969)). *See also Vista Services Corporation*, Forfeiture Order, 15 FCC Rcd 20646, 20650 para. 9, n.24 (2000) ("Employers are routinely held liable for breach of statutory duties, even where the failings are those of an independent contractor").

constructed as authorized. Indeed, Licensee appears to admit that it does not have firsthand knowledge or evidence concerning the Station's construction because Licensee states that it "is attempting to confirm the exact location of the Station's facilities"²⁵ and thus cannot confirm that any such facilities conform to the construction authorized.

Because Licensee has not fully responded to the Inquiry and thus has not provided information sufficient to confirm that WNDC was built as authorized, we are unable to grant the Station's pending License Application. Despite being given the opportunity to supplement the partial response Licensee filed on August 24, no additional information has been provided. Furthermore, the Tolling Request was found by staff to be deficient and the Licensee was provided an opportunity to amend its request.²⁶ The Division specifically stated in the January 28, 2022 Tolling Deficiency Letter that "[f]ailure to submit this information within 30 days of the date of this letter will result in the dismissal of the [Tolling] Request."²⁷ IMTC failed to respond to the Division's letter.

Accordingly, the application for license to cover (LMS File No. 0000151969) and application for tolling (LMS File No. 0000180288) **ARE HEREBY DISMISSED**. Furthermore, pursuant to section 74.731(m) of the Commission's rules, the license for station WNDC-LD, Salisbury, Maryland, **HAS BEEN AUTOMATICALLY CANCELED**,²⁸ its call sign **IS DELETED**, and all authority to operate the Station **HAS TERMINATED**.

Furthermore, we note that IMTC previously submitted eligibility information to the TV Broadcaster Relocation Fund for the Station.²⁹ The final invoice filing deadline for the Fund was September 6, 2022 and IMTC did not file a request for extension prior to that deadline. Because the Displacement CP expired on January 21, 2022,³⁰ and the Station's license has been cancelled, it is no longer eligible for the program.³¹

²⁵ Response at 1.

²⁶ Tolling Deficiency Letter.

²⁷ *Id.*

²⁸ 47 CFR § 74.731(m) (stating that after 11:59 p.m. local time on July 13, 2021, low power television and TV translator stations may no longer operate any facility in analog (NTSC) mode and all licenses for such analog operations will automatically cancel at that time without any affirmative action by the Commission). The Commission has a long-established policy of the "single, unified station license" as part of the digital conversion process, *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 and to Amend Rules for Digital Class A Television Stations*, Second Report and Order, 26 FCC Rcd 10732, 10755, para. 48 (2011) citing *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 and to Amend Rules for Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19390, n. 362 (2004) (stating that the Commission has always been clear that the station's two "authorizations" are part of a single, unified license) (emphasis added). Therefore, because the Station's license has been cancelled, there is no longer a valid facility to convert to digital. *See Media Bureau Reminds Remaining Analog Low Power Television and Television Translator Stations Without Digital Construction Permits to File Immediately in Order to Ensure A Successful Digital Transition*, Public Notice, 36 FCC Rcd 9467, n. 4 (MB 2021); Letter to County of San Bernardino from Barbara A. Kreisman, Chief, Video Division (Nov. 4, 2021) available at LMS Station Facility Nos. 11537, 11539 and 43812.

²⁹ *See* LMS File No. 0000089805.

³⁰ *See supra* note 2.

³¹ *See LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 34 FCC Rcd 1690, 1704, para. 26 (2019).

Sincerely,

/s/

Barbara Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Donald Martin, Esq. (dempc@prodigy.net)