



Federal Communications Commission
Washington, D.C. 20554

June 9, 2023

SENT VIA CERTIFIED MAIL AND ELECTRONIC MAIL

Better Life Television, Inc.
Charles Oliver
P.O. Box 766
Grants Pass, OR 97528

In re: K47HT, Roseburg, OR
Facility ID No. 5007
LMS File Nos. 0000184621 and
0000203167
Operational Status Inquiry Letter

Dear Licensee:

This concerns the above-referenced applications for license (License Application) and renewal of license (Renewal Application) filed by Better Life Television, Inc. (BLT or Licensee) for low power television (LPTV) station K47HT, Roseburg, Oregon (K47HT or Station). For the reasons set forth below, we direct BLT to respond to this letter of inquiry (LOI) within thirty (30) days.

Background. K47HT was an analog LPTV station licensed on channel 47. The Station's analog channel 47 was displaced by the incentive auction and repacking process. The Station obtained a construction permit for displacement channel 14 with an expiration date of July 13, 2021 (Displacement CP).¹ On July 13, 2021, the Station terminated its analog operations on channel 47 to comply with the LPTV digital transition and because construction of its digital displacement facilities were not complete, the Station went silent.² The Station obtained an extension of its displacement CP in July 2021 and it was extended to January 11, 2022.³ In its extension application, BLT explained that it was awaiting delivery of the Station's equipment for its displacement facilities.⁴

Because its displacement facilities were authorized on channel 14, the Displacement CP contained the following condition:

During equipment tests, authorized by Section 73.1610 of the Commission's Rules, the permittee shall take adequate measures to identify and substantially eliminate objectionable interference which may be caused to existing land mobile radio facilities in the 460 to 470 MHz band. Documentation that objectionable interference will not be caused to existing land mobile radio facilities shall be submitted along with the request for Program Test Authority. Program tests shall not be commenced under Section 73.1620(a) of the Commission's Rules and may only be started after specific authority is granted by the Commission. An

¹ See LMS File No. 0000035603.

² See LMS File No. 0000153840. See also 47 CFR § 74.790(m) that replaced 47 CFR § 74.731(m) (mandating that LPTV stations terminate all analog operations not later than 11:59pm local time on July 13, 2021).

³ See LMS File No. 0000152213 granted July 12, 2021.

⁴ *Id.*

application for a license must be filed within 10 days after the start of program tests.⁵

On January 11, 2022, the date its Displacement CP was set to expire, the Station filed an application for license to cover and notice of resumption of operations.⁶ In its notice of resumption of operations, BLT states that the Station had begun operations pursuant to the Displacement CP.⁷ However, the Station failed to include its report demonstrating no interference to LMR facilities and failed to request program test authority (PTA). On February 2, 2022, this first license application was dismissed for failure to pay the required filing fee. The Station re-filed the above-referenced application for license to cover (License Application) on February 8, 2022. Once again, the Station failed to include its report demonstrating no interference to LMR facilities and failed to request program test authority.

In a February 24, 2022 email, Video Division (Division) staff alerted the Station to the License Application was “lacking a channel 14 interference analysis as required by the special condition on the permit.”⁸ The Station was instructed to amend its application to attach this analysis. The staff stated that “[o]nce we have it and we grant Program Test Authority, you may begin to operate K14QQ-D.”⁹ On May 3, 2023, over a year after having been alerted to the fact that its License Application was incomplete, the Station submitted an amendment to supply what it says are the results of an interference study for its Displacement CP facilities on channel 14.¹⁰ The License Application remains pending while the operational status and validity of the of the Station is resolved.

In addition, the Station filed its Renewal Application on November 1, 2022, almost one month after the October 3, 2022 deadline for filing.¹¹ In an explanatory exhibit, the Station stated that it had been silent since July 13, 2021.¹² BLT maintained that, at some point in January 2022, when the Station attempted to “start the transmitter to conduct the (LMR) interference analysis, it was discovered that the electrical wiring at the site had deteriorated to the point of being completely unusable. This was because the building roof was leaking rain water into the electrical system.”¹³ BLT went on to state that since January 2022, it “has been urgently working with the landlord and a third-party electrical contractor to repair the facilities.” BLT outlined various construction delays that it claimed were preventing the Station from completing the testing of the channel 14 facilities and commencing operation. BLT stated at the

⁵ See LMS File No. 0000035603.

⁶ See LMS File Nos. 0000179703 and 0000179711.

⁷ See LMS File No. 0000179711.

⁸ See E-mail from Video Division staff to Donald Martin, Esq. (Feb. 24, 2022) a copy of which is available at LMS File No. 0000184621.

⁹ *Id.*

¹⁰ An analysis of BLT’s May 3, 2023 interference study by Division staff has found that it is insufficient to demonstrate that objectionable interference will not be caused to existing land mobile radio facilities. BLT provides no analysis of whether or not the filtering installed at the Station’s facilities is sufficient to protect nearby land mobile operations; BLT only provided a measurement of the equipment it installed. Absent a complete analysis, PTA cannot be granted.

¹¹ See 47 CFR § 73.3539 (“An application for renewal of license must be filed no later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed.”).

¹² See Renewal Application at Explanation Re: Silent Period at 1.

¹³ *Id.*

time (November 1, 2022) that repairs “are nearly complete” and that it “expects to conduct the interference analysis promptly, and, subject to Commission approval, return the station to the air.”¹⁴

Based on above facts, it appears that not only did the Station fail to complete construction of its Station by its Displacement CP expiration date (January 11, 2022), but the Station has been silent for more than one year and its license automatically expired on July 14, 2022, pursuant to section 312(g) of the Communications Act of 1934 (Act).¹⁵ BLT admits that the Station went silent on its analog channel 47 facilities on July 13, 2021, to comply with the LPTV digital transition. Even if the Station operated on its digital channel 14 displacement facilities since that time, any such operation would have been without Commission authority as the Station was never granted program test authority due to its failure to timely file the necessary LMR interference report that was a condition to its construction permit.¹⁶ BLT also appears to admit that construction of the facility may in fact have not been completed by the Station’s construction permit deadline and it proceeded with completing construction without a valid construction permit.

Information Request. This letter provides you 30 days to provide evidence that our information is incorrect and that, in fact, the Station has either not been silent for more than one year or went silent but returned to the air with **authorized** facilities prior to its one-year silent anniversary (emphasis added). For any period the Station was operational since July 13, 2021, please provide the Station’s technical operating parameters, specific evidence of the Station’s operation throughout the entire period of operation, and the valid authorization under which the Station operated. This evidence must indicate the location, effective radiated power, RF channel number, antenna height above ground level, copy of the valid authorization, and precise dates for **all periods of operation**. You must also include copies of all leases, engineering records, and station records, including EAS and program logs, for all periods. In addition, you must provide copies of all relevant invoices, bills (such as electricity bills), installation and service invoices, invoices for engineering services, or any other documentation demonstrating the Station’s operation since July 13, 2021 and construction of its digital displacement facility. Please also include a detailed timeline of all actions taken between July 13, 2021 and present with regards to the Stations construction and any operation. Finally, please include **dated pictures** of the Station’s studio facilities and transmission facilities during this timeframe and provide exact coordinates of the pictured facilities. For any period that the Station was silent, please provide the exact dates for any periods of silence and a detailed explanation as to why the Station was silent.

To the extent BLT believes that reinstatement of the Station’s license is warranted under the equity and fairness provision of section 312(g) of the Act, please provide a detailed showing demonstrating why the Station was unable to resume operations prior to its one-year silent anniversary and why reinstatement would promote equity and fairness to reinstate and extend the Station’s license.

¹⁴ *Id.*

¹⁵ 47 U.S.C. § 312(g).

¹⁶ It is well established precedent that unauthorized operation does not constitute operation for purposes of avoiding automatic cancellation under section 312(g) of the Act. *See, e.g. Eagle Broad. Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, para. 9 (2008), *aff’d sub nom. Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543, 553 (D.C. Cir. 2009) (unauthorized, unlicensed broadcasts cannot constitute transmission of broadcast signals to avoid termination under Section 312(g)); *A-O Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617, para. 27 (2008) (*A-O Broadcasting*) (transmission from unauthorized location not sufficient to avoid the consequences of section 312(g); *Mt. Rushmore Broadcasting, Inc.*, Letter Order, 32 FCC Rcd 3924, 3927 (MB 2017) (discretion unwarranted when station was either silent or engaging in brief periods of unauthorized operation for six years).

The Commission has exercised its discretion under section 312(g) to extend or reinstate a station's expired license "to promote equity and fairness" only in limited circumstances where a station's failure to transmit a broadcast signals for 12 consecutive months is due to "compelling circumstances" that were beyond the licensee's control.¹⁷ For example, the Commission has granted section 312(g) relief to stations whose facilities were destroyed by natural disasters such as hurricanes;¹⁸ where silence was necessary in furtherance of public safety;¹⁹ where reinstatement of the station's license was necessitated by court order;²⁰ where stations were actually displaced by the Incentive Auction and repacking process;²¹ or where station silence was the result of governmental closure.²² The Commission has declined to exercise its section 312(g) discretion when a station's silence is the result of a licensee's own action or inaction, finances, and/or business judgment.²³

¹⁷ See *A-O Broadcasting*, 23 FCC Rcd at 617 ("This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited").

¹⁸ *V.I. Stereo Communications Corp.*, 21 FCC Rcd 14259, 14262, para. 8 (2006) (reinstating license where silence due to destruction of towers in hurricanes).

¹⁹ *Community Bible Church*, Letter Order, 23 FCC Rcd 15012, 15014 (MB 2008) (reinstatement warranted where licensee took all steps needed to return to air, but remained off air to promote air safety after discovering and reporting that FCC and FAA records contained incorrect tower information).

²⁰ *Mark Chapman, Court-Appointed Agent*, Letter Order, 22 FCC Rcd 6578, 6580 (MB 2007) (reinstating license where silence necessitated by licensee's compliance with court order).

²¹ See, e.g., *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd 858, 873-74, para. 49 (IATF/MB 2017) (displaced LPTV station that remains silent for more than one year may request an extension or reinstatement of license where station can demonstrate that its silence is the result of compelling reasons beyond the station's control including facts that relate to the post-auction transition process); *The Incentive Auction Task Force and Media Bureau Announce Procedures for Low Power Television, Television Translator and Replacement Translator Stations During the Post-Incentive Auction Transition*, Public Notice, 32 FCC Rcd 3860, 3865-66, para. 12 (IATF/MB 2017) (displaced LPTV station receiving conditional grant of its displacement construction permit that results in station remaining silent for more than one year may request extension or reinstatement of license pursuant to section 312(g)). We note that simply being displaced by the incentive auction is not necessarily alone sufficient grounds to warrant extension or reinstatement of a station's license. See Letter to New York Spectrum Holding Company, LLC (KVFW-LD and WAGC-LD) from Barbara A. Kreisman, Chief, Video Division (July 15, 2022), a copy of which is available at LMS File Nos. 0000189943 and 0000189944; Letter to Sarkes Tarzian, Inc. (K40JV-D) from Barbara A. Kreisman, Chief, Video Division (Oct. 12, 2022), a copy of which is available at LMS File No. 0000136502; Letter to The Camp Verde TV Club (K31LZ) from Barbara A. Kreisman, Chief, Video Division (June 3, 2022), a copy of which is available at LMS File No. 0000152248.

²² *Universal Broadcasting of New York, Inc.*, 34 FCC Rcd 10319, (MB 2019) (finding that station's inability to file an STA to resume service due to a federal government shutdown was a compelling circumstance under section 312(g)).

²³ See, e.g., *New Visalia Broadcasting, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9744 (2014) (record did not show that health problems prevented the principals from resuming operations); *A-O Broadcasting*, 23 FCC Rcd 603 (transmission from unauthorized location not sufficient to avoid the consequences of section 312(g)); *Eagle Broadcasting Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, 589-90 (2008) (operation from unauthorized site insufficient to avoid the consequences of section 312(g)); *Mt. Rushmore Broadcasting, Inc.*, Letter Order, 32 FCC Rcd 3924, 3927 (MB 2017) (discretion unwarranted when station was either silent or engaging in brief periods of unauthorized operation for six years); *Zacarias Serrato*, Letter Order, 20 FCC Rcd 17232 (MB 2005) (station taken off the air due to a business decision); *Kingdom of God*, Letter Order, 29 FCC Rcd 11589 (MB

BLT must also demonstrate why reinstatement and tolling of the Station's construction permit is warranted. BCT must demonstrate that it was unable to complete construction of its displacement facilities by the expiration date of its Displacement CP and that it would have qualified for tolling under section 73.3598(b) of the Rules.²⁴ Alternatively, should BLT not qualify for tolling, it may demonstrate that good cause exists to waive the Commission's tolling provisions and that tolling is warranted due to "rare and exceptional circumstances" that prevented construction by the Station's Displacement CP expiration date.²⁵

Further, as discussed above,²⁶ an analysis of BLT's interference study attached to its License Application does not demonstrate that objectionable interference will not be caused to existing land mobile radio facilities. BLT provides no analysis of whether or not the filtering installed at the Station's facilities is sufficient to protect nearby land mobile operations; BLT only provided a measurement of the equipment it installed. Absent a complete analysis, PTA cannot be granted. If BLT wishes to pursue PTA and to license its facility, it must amend its License Application to provide the necessary analysis.

Procedural Matters. The Licensee must support its responses with an affidavit or declaration made under penalty of perjury, signed and dated by an authorized officer of Licensee with personal knowledge of the representations provided in Licensee's response. The affidavit or declaration must verify the truth and accuracy of the information therein, state that all of the information requested by this letter that is in Licensee's possession, custody, control, or knowledge has been produced, and state that any and all documents provided in its responses are true and accurate copies of the original documents. In addition to such general affidavit or declaration of the authorized officer of Licensee described above, if such officer (or any other affiant or declarant) is relying on the personal knowledge of any other individual rather than his or her own knowledge, the Licensee shall provide separate affidavits or declarations of each such individual with personal knowledge that identify clearly to which responses the affiant or declarant with such personal knowledge is attesting. All such declarations provided must comply with section 1.16 of the Rules,²⁷ and be substantially in the form set forth therein.

In addition to providing the requested information and documents, any request for confidentiality of certain information or documents must strictly comply with the requirements of section 0.459 of

2014) (station's numerous periods of extended silence were a direct result of licensee's own business decisions); *Christian Broadcasting*, 30 FCC Rcd at 13976 (2015) (licensee provided no evidence that station's silence was beyond its control).

²⁴ See 47 CFR § 73.3598(b). The Commission's tolling provisions provide that a construction permit deadline may be tolled under specific circumstances such as acts of God, delays due to administrative or judicial review, or construction that is delayed by any cause of action pending before a court of competent jurisdiction relating to any necessary local, state, or federal requirement for the construction or operation of the station, including any zoning or environmental requirement. *Id.*

²⁵ See 1998 Biennial Regulatory Review -- *Streamlining of Mass Media Applications, Rules, and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17542, para. 42 (1999) (*Streamlining MO&O*) (recognizing that there may be "rare and exceptional circumstances" beyond the control of the licensee that do not fall under the tolling provisions, but "which would warrant the tolling of construction time." The Commission concluded that in such "limited circumstances," it would entertain requests for waiver of its "strict tolling provisions"); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown).

²⁶ See *supra* note 10.

²⁷ See 47 CFR § 1.16.

Rules,²⁸ including a statement of the reasons for withholding the materials from inspection. The request must include a schedule of the information or documents for which confidentiality is requested that states, individually as to each such item, the information required by section 0.459(b) of the Rules including, but not limited to, identifying the specific information for which confidential treatment is sought; explaining the degree to which the information is commercial or financial, or contains a trade secret or is privileged; and explaining how disclosure of the information could result in substantial competitive harm.²⁹

If Licensee withholds any information or documents under claim of privilege, it shall submit, together with any claim of privilege, a schedule of the items withheld that states, individually as to each such item: the numbered inquiry to which each item responds and the type, title, specific subject matter and date of the item; and the specific grounds for claiming that the item is privileged.

This letter constitutes an order of the Commission to produce the documents and information requested herein.³⁰ To knowingly or willfully make any false statement,³¹ or to provide incorrect or misleading material factual information, or conceal any material fact in reply to this letter,³² may subject you to sanction, up to and including license revocation.³³ **Failure to respond accurately, truthfully, and fully to this letter as directed herein constitutes a violation of the Act and our Rules.**³⁴ As an alternative to a written response explaining the Station's operational status, you may submit the Station's license for cancellation and request withdrawal of all pending applications in the Commission's Licensing and Management System.

If you fail to provide the requested information **within 30 days from the date of this letter**, we will dismiss the Station's pending application for license to cover and since the Station has been silent for greater than a one year period the Commission's public and internal databases **WILL BE MODIFIED** to indicate that pursuant to section 312(g) of the Act the broadcast license for the referenced station **IS EXPIRED**, that the Station's license **IS CANCELED** as a matter of law, and that the station's call sign **IS DELETED**.³⁵

²⁸ See 47 CFR § 0.459.

²⁹ See 47 CFR § 0.459(b). Accordingly, a "blanket" request for confidentiality or a casual request, including simply stamping pages "confidential," will not be considered a proper request for confidentiality, and those materials will not be treated as confidential. See 47 CFR § 0.459(c).

³⁰ See 47 U.S.C. § 155(c)(3).

³¹ See 18 U.S.C. § 1001.

³² See 47 CFR § 1.17.

³³ See 18 U.S.C. § 1001; see also 47 CFR § 1.17. See, e.g., *William L. Zawila*, Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order, 18 FCC Rcd 14938, 14964 (2003) (motive present to misrepresent completion of construction), licenses revoked, Summary Decision, FCC 17M-28, 2017 WL 3499740 (ALJ, Aug. 10, 2017).

³⁴ See, e.g., *Net One International, Net One, LLC, Farrahtel International, LLC*, Forfeiture Order, 29 FCC Rcd 264, 267, para. 9 (EB 2014) (imposing \$25,000 penalty for failure to respond to LOI) (forfeiture paid); *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7600, para. 28 (2002) (imposing \$100,000 penalty for failing to submit a sworn written response) (forfeiture paid).

³⁵ All pending applications including the License Application and Renewal Application will be dismissed.

The written response to this letter must be filed as an amendment to the License Application. In addition, please email a copy of your response to: Shaun Maher, Attorney-Advisor, Video Division, Media Bureau at the address below. Please direct any questions concerning the content of this letter to Shaun Maher, Attorney, phone (202-418-2324), or e-mail (Shaun.Maher@fcc.gov).

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Donald Martin, Esq.