



Federal Communications Commission
Washington, D.C. 20554

October 13, 2023

SENT VIA CERTIFIED MAIL AND ELECTRONIC MAIL

Roseland Broadcasting, Inc.
Julie Huang, President
888C 8th Ave., Suite 733
New York, NY 10019
legal@box733.com

In re: K07AAJ-D, Bakersfield, CA
Facility ID No. 181741
LMS File No. 0000213425
Construction Permit Expiration

Dear Former Permittee:

This concerns the above-referenced low power television (LPTV) station K07AAJ-D, Bakersfield, California (K07AAJ-D or Station), permitted to Roseland Broadcasting, Inc. (Roseland) and its pending license to cover application (License Application). For the reasons set forth below and, pursuant to section 73.3598(e) of the Commission's rules (Rules),¹ the Station's pending License Application is dismissed, its construction permit has expired, and its call sign has been deleted.

Background. In 2009, the Media Bureau (Bureau) began accepting applications for new rural digital LPTV/translator stations on a limited basis (Rural Filing Window).² On August 25, 2009, Mako Communications LLC (Mako), the former permittee, filed an application for construction permit to build a digital low power station on channel 22 in Bakersfield, California.³ The Bureau suspended processing of applications filed in the Rural Filing Window due to the possibility that they could be displaced by a potential auction of broadcast spectrum and subsequent repacking process.⁴ Mako's construction permit application had not been processed and, as a result, it remained pending.

On December 2, 2019, the Bureau announced the opening of a filing window to provide applicants with pending applications from the Rural Filing Window that either were displaced by the post-incentive auction repack or their proposed channels were now out-of-core (i.e., above channel 36) an opportunity to amend their applications to specify a new channel.⁵ During the new window, Mako amended its construction permit application to relocate from channel 22 to channel 7. The construction

¹ 47 CFR § 73.3598(a) and (e).

² See *Commencement of Rural, First-Come, First-Served Digital Licensing*, Public Notice, 24 FCC Rcd 8911 (MB 2009) (Rural Filing PN); *Freeze on the Filing of Applications for New Digital Low Power Television and TV Translator Stations*, Public Notice, 25 FCC Rcd 15120 (MB 2010); *Initiation of Nationwide, First-Come, First-Served Digital Licensing for Low Power Television and TV Translator Services Postponed Until Further Notice*, Public Notice, 25 FCC Rcd 8179 (MB 2010) (Postponement PN).

³ LMS File No. BNPDTL-20090825APG.

⁴ See *Postponement PN*, 25 FCC Rcd 8179.

⁵ See *Filing Window for New Rural Digital Low Power Television and TV Translator Applicants Displaced by Incentive Auction and Station Repack December 2, 2019 to January 31, 2020*, 34 FCC Rcd 11064 (MB 2019).

permit application was granted on April 9, 2020, and assigned an expiration date of April 9, 2023. On December 15, 2022, the construction permit was assigned to Roseland⁶ and the assignment was consummated on January 6, 2023.⁷ On March 27, 2023, Roseland was granted a minor modification of its construction permit to, among other things, modify the location and power level of its facility.⁸

Upon completion of construction of a facility, a licensee is required to file an application for license to cover.⁹ An application for license to cover must specify the facilities built and authorized in the station's underlying construction permit. Pursuant to section 73.3598(e) of the Rules "[a]ny construction permit for which construction has not been completed...shall be automatically forfeited upon expiration without any affirmative cancellation by the Commission."¹⁰ On April 3, 2023, Roseland filed the License Application in which it certified "Yes" to the statement that "[t]he facility [was] constructed as authorized in the underlying construction permit."¹¹

On April 5, 2023, the Bureau received a complaint stating that the Station was not transmitting a signal on channel 7 and that no antenna could be found at the coordinates listed in the License Application, which correspond to the following residential address: 2502 18th Street, Bakersfield, California.¹² As a result, the Media Bureau's Video Division (Division) initiated an investigation into the Station's construction and the License Application remained pending. On May 18, 2023, Enforcement Bureau field agents visited the location specified in the license application and confirmed that there was no signal being broadcast over channel 7 and no facility was found at the site. Agents were also informed by the homeowner that the homeowner had no knowledge of a LPTV station being located at his home and he was not familiar with Roseland or any person listed in the License Application.¹³

Division Inquiry Letter. On June 1, 2023, the Division sent a letter of inquiry (Inquiry Letter) to Roseland seeking additional information about the Station's construction and operational history.¹⁴ Given the above-outlined history, Roseland was instructed to provide certain information regarding the Station's transmitter, encoder, and antenna, including the manufacturer, make, model, and serial number.¹⁵ Roseland was also instructed to provide the exact dates and times of any and all periods the Station

⁶ LMS File No. 0000203340.

⁷ LMS File No. 0000206420.

⁸ LMS File No. 0000212936.

⁹ 47 CFR § 73.3536.

¹⁰ 47 CFR § 73.3598(e).

¹¹ LMS File No. 0000213425.

¹² See [www.google.com/maps/place/35°22'32.0"N+119°01'50.7"W](https://www.google.com/maps/place/35°22'32.0) (last visited Sept. 25, 2023).

¹³ On May 12, 2023, Roseland filed a request for engineering special temporary authority (STA) to operate the Station at reduced power at the same coordinates indicated in the License Application. The STA states that "the facility has been operating at reduced power" and that the Station's transmitter "requires replacement." Roseland states it would resume full power operations once its transmitter was replaced. It provided no date for when this would occur. On May 22, 2023, the STA was inadvertently granted and immediately rescinded on the same day. See LMS File No. 0000214764 (Engineering STA).

¹⁴ See Operational Status Inquiry Letter to Roseland Broadcasting, Inc. from Kevin Harding, Deputy Chief, Video Division, Media Bureau, FCC (June 1, 2023) (Inquiry Letter).

¹⁵ *Id.* at 4.

operated from its transmitter site at full or reduced power.¹⁶ In addition, Roseland was asked to provide the exact dates and times of any and all periods during which the Station was not broadcasting from its transmitter site, and for periods of silence, to provide a detailed explanation as to why the Station was not broadcasting.¹⁷ Roseland was also asked to provide copies of any and all purchase orders, invoices, and bills related to the construction of such facilities and was instructed to provide the name, official mailing address, email address, and telephone number of all property owners, townner owners, and/or tower managers of the transmitter site, as well as all documents related to the Station's use of its transmitter site.¹⁸ Finally, Roseland was asked to identify any person or entity that performed any services, work, or provided any equipment goods, services, or merchandise related to the operation or construction of the facility.¹⁹ The findings of the Enforcement Bureau field agents were also disclosed in the Inquiry Letter to Roseland.²⁰

Response. On July 7, 2023, Roseland filed a timely response to the Inquiry Letter.²¹ It asserted that the Station “was broadcasting, but not from the proper site.”²² Roseland admits that it “inadvertently” filed a modification to its construction permit listing incorrect coordinates for its transmitter site, which was actually located nearly ten miles south of where it was authorized to construct.²³ It made the same “inadvertent error” in its License Application.²⁴ According to a declaration included with the Response and signed by Brian Short, Principal of TV Masters, Inc., in “late March 2023,” Roseland asked Mr. Short to find a broadcast site in or near Bakersfield, California.²⁵ After initially identifying a ham radio broadcast site at 2502 18th Street, Bakersfield, CA, the consultant became less confident that this site could be built before the expiration of Roseland's construction permit and moved forward with a site at 13161 Eberle Road, Bakersfield, CA instead.²⁶ On June 2, 2023, a principal of Roseland became aware of the actual broadcast address.²⁷ According to a declaration included with the Response and signed by Roseland's Chief Financial Officer, Matthew Davidge, its engineering consultant, Mr. Short, “had switched the transmitter location without advising Roseland Broadcasting of this new address.”²⁸ Upon learning that the Station was not operating legally, Roseland ceased

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 2.

²¹ Because the 30th day after the date of the Letter Inquiry was Saturday, July 1, 2023, the deadline to respond to the Inquiry Letter was July 3, 2023, which the Division later extended to July 7, 2023. *See* 47 CFR § 1.4.

²² *See* Roseland Response to Operational Status Inquiry Letter (July 7, 2023) (Response) at 4.

²³ *See* Response at Attachment G.

²⁴ *Id.* It also listed the incorrect location in its Engineering STA. *See supra* note 13.

²⁵ Response at Attachment C.

²⁶ *Id.*

²⁷ *Id.* at Attachment G.

²⁸ *Id.*

broadcasting.²⁹ Roseland does not explain in its Response why it was unable to construct at the location set forth in the construction permit it acquired in January 2023.³⁰

Roseland contends the error was not willful or deliberate.³¹ Accordingly, Roseland seeks leave to correct the location error in its applications and modify the Station's parameters to reflect the actual location which it broadcast from during the period from April 2, 2023 to June 12, 2023.³² Roseland argues that seeking leave to correct its mistake and obtain a license to allow it to broadcast from the authorized site is "clearly in the public interest"³³ and attempts to compare its situation to the one in the case of *Gendreau Broadcast* where the Bureau issued a forfeiture for, among other things, "non-conforming operations."³⁴

Discussion. Upon review of the facts and circumstances presented, we find that Roseland failed to construct the facility authorized in its construction permit, and, as a result, its construction permit expired by operation of law on April 9, 2023. Roseland admits that the Station was not broadcasting from the site authorized in its construction permit. Although Roseland maintains that its failure to specify the correct transmitter site location in its construction permit, License Application, and Engineering STA was inadvertent, it is well established precedent that inadvertence is, at best, ignorance of the law, which the Commission does not consider a mitigating circumstance.³⁵

²⁹ *Id.* at 9; On June 12, 2023, Roseland filed a request for special temporary authority to remain silent. That application remained pending as a result of the investigation. LMS File No. 0000216514; Response at Attachment H.

³⁰ According to Mr. Davidge, Roseland started exploring alternate site locations for the Station starting in January 2023. He goes on to state that while Roseland "eventually" concluded that a site owned by American Tower was the best site, "there [] was no time to complete the American Tower lease approval and station construction process before the construction permit's expiry date." Response at Attachment G. However, it was not until late-March 2023, mere weeks before the Station's construction permit expired, that it started to look for an alternative site, which it appears Roseland clearly intended to be temporary in nature.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 9 and Attachment G.

³⁴ *Id.* at 9 citing *Gendreau Broadcast LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 23-465 (MB May 31, 2023) (*Gendreau Broadcast*) (subsequent history omitted) (proposing an \$11,000 fine for, among other things, operating at a variance from the station's licensed parameters without proper authorization). We note that ultimately, the Media Bureau entered into a consent decree with the licensee to resolve the issues arising from the station's violations and the licensee agreed to pay a \$6,000 fine. See *Gendreau Broadcast LLC*, Order and Consent Decree, DA 23-811 (MB Sept. 21, 2023)

³⁵ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387, para. 3 (1991).

Roseland requests leave to allow it to correct its mistake;³⁶ however, given the facts, we decline to grant such a request. Roseland cites to *Gendreau Broadcast* for the proposition that allowing it to correct its error would be in the public interest and that forfeiture is a more appropriate remedy. In *Gendreau Broadcast*, the Bureau, in connection with its review of the license renewal application of KCLN(AM), Clinton, Iowa (KCLN), found that the station operated at a variance from its licensed daytime and nighttime parameters for more than 30 consecutive days without proper authorization.³⁷ The Bureau found that while KCLN's failure to apply for special temporary authority to operate at a variance from its license parameters warranted forfeiture, the apparent rule violation did not constitute "serious violations" under section 309(k) of the Act and the station otherwise served the public interest during the license term.³⁸ We are not persuaded by Roseland's reliance on *Gendreau Broadcast* and find that it is distinguishable from the case before us.

First, in *Gendreau Broadcast* the station's operational location was correct, but it was the station's operations that were not in compliance (i.e., the station's authorized antenna input power). Second, KCLN, the station at issue in *Gendreau Broadcast*, had been a licensed facility for decades and but for a technical issue requiring it to operate at reduced power, it had previously operated with authorized facilities. Third, the violation was being examined in the context of the Station's license renewal application, an analysis which is governed by section 309(k) of the Act.³⁹ In contrast, here, K07AAJ-D was an unbuilt, never previously operated station. Its only operations, by Roseland's own admission, have been from an unauthorized location. Our analysis here is not governed by the public interest analysis found under section 309(k) of the Act, but rather the simple and unambiguous standard under section 73.3598 of the Rules as to whether the facility was constructed as authorized in the construction permit by the construction permit expiration.⁴⁰ If not, the construction permit is forfeited without any affirmative action necessary by Commission.⁴¹ Roseland does not dispute the fact that it failed to construct the Station in accordance with the parameters of its construction permit.

We also find the fact that the Station operated from an incorrect location that was located about ten miles away from where it was authorized, whether mistaken or not, to be an important factor in

³⁶ In an August 1, 2023 letter, Roseland clarifies, among other things, that Roseland would prefer to broadcast from a tower for which Roseland has a business agreement and from which its signal would fully encompass the signal coverage of the approved permit BNPDTL-20090825 and serve a population of 500,000 or greater, but notes it "could" operate from the site at which it was built. See Letter from Aaron P. Shainis, Counsel for Roseland Broadcasting, Inc. to Barbara Kreisman, Chief, Video Division, Media Bureau, FCC (filed Aug. 1, 2023).

³⁷ *Gendreau Broadcast*, at para. 8.

³⁸ *Id.* at para. 14. In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Communications Act of 1934, as amended (Act), which requires grant of a renewal application if the Commission finds that, with respect to the station, during the preceding term of its license: (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; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.

³⁹ See *supra* n.38.

⁴⁰ 47 CFR § 73.3598(a) (specifying a period of three years from the date of issuance of a construction permit within which construction must be completed and application for license filed).

⁴¹ 47 CFR § 73.3598(e). We note that additional time to construct may be sought pursuant to the Commission's "tolling" rule, which provides that a construction permit deadline may be tolled only for specific circumstances not under the licensee's control, such as acts of God or delays due to administrative or judicial review. See 47 CFR § 73.3598(b). However, none of these situations are present here.

determining whether the relief being requested is in the public interest. The Commission in other contexts has drawn a clear distinction between a station that operates from the correct site, but was mistakenly operating with incorrect parameters, as opposed to a station that simply operates from an incorrect location.⁴² Roseland's unauthorized operation from an incorrect location for such an extended period of time – nearly two months – is inherently adverse to the public interest and in conflict with both the Act and our licensing processes.⁴³ Although the addition of new television services is certainly in the public interest, that does not condone permittees to not only disregard the terms of their construction permit, but fail to properly oversee the construction of a facility because a permittee rushed to meet a rapidly approaching construction permit deadline for a permit it chose to purchase just months earlier. While Roseland asserts that it did not intend to mislead the Commission and that its operation from an incorrect location was the result of a miscommunication with its consulting engineer, it is well established precedent that licensees are responsible for the actions of their employees and those they hire to do work on their behalf.⁴⁴

According to Commission records, Roseland is the licensee of thirteen low power television stations and utilizes experienced counsel for its legal services. As such, Roseland should be intimately aware of the requirement that construction must be completed pursuant to the terms of a construction permit, that licensees are responsible for ensuring compliance with Commission rules, and that it is the responsibility of licensees to make accurate filings with the Commission. Roseland was clearly aware of the timeframe in which it was required to construct the Station and for unexplained reasons chose to either voluntarily move the Station after acquiring the construction permit, or purchased a construction permit for a station at a site it appears to have known was not feasible.⁴⁵ Either way, Roseland accepted the risks associated with acquiring a construction permit just months before its expiration. All of these facts taken together, we find that Roseland failed to construct the Station as specified in its construction permit, and, as a result, the Station's construction permit was forfeited pursuant to section 73.3598(e) of the Commission's rules. We also find that Roseland's situation is not comparable to the facts in *Gendreau Broadcast*, and providing leave for Roseland to correct its mistakes is adverse to the public interest.

Accordingly, the application for license to cover (LMS File No. 0000213425) **IS HEREBY DISMISSED** and pursuant to section 73.3598(e) of the Commission's rules, the construction permit for station K07AAJ-D, Bakersfield, California (LMS File No. 0000212936) was **AUTOMATICALLY FORFEITED** and the call sign has been **DELETED**. All authority to construct the station has been

⁴² See *Absolute Broadcasting, LLC*, Memorandum Opinion and Order, FCC 23-38 (rel. May 17, 2023) (distinguishing for purposes of section 312(g) between a station that operates from the correct location but at incorrect operational parameters and a station that operates from an incorrect location).

⁴³ See *Vearl Pennington, DW05CB, Burlington, Ohio, DW06BC, Mount Sterling, Kentucky, and DW10BM, Morehead Kentucky*, Memorandum Opinion and Order, 34 FCC Rcd 8501, 8506, para. 13 (2019) ("Unauthorized operation, by its very nature, fails to serve the public interest, convenience, or necessity and is in direct conflict with the Act.").

⁴⁴ See, e.g., *Roy E. Henderson*, Memorandum Opinion and Order, 33 FCC Rcd 3385, 3387-88, para. 6 (2018) (rejecting argument that licensee's engineer was to blame for station's unauthorized operations).

⁴⁵ See Response at Attachment G (acknowledging that "[t]ime was of the essence because the FCC construction permit was set to expire on April 9, 2023.").

TERMINATED.⁴⁶ Furthermore, we **DENY** Roseland's request for leave to file a minor modification and new application for license to cover to specify the site of its apparent unauthorized operation.

Finally, we **ADMONISH** Roseland for its unauthorized operation for its apparent violation of section 301 of the Act, which we find particularly concerning based on the apparent lack of oversight by Roseland relating to the construction of the facility and filing of an application for license to cover containing incorrect information. We take this opportunity to remind Roseland that as a licensee it is responsible to ensure compliance with Commission rules, including construction in accordance with authorized parameters, and when it submits an application to the Commission it should be sure that the information contained therein is accurate.⁴⁷

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Aaron Shainis, Esq. (aaron@s-plaw.com)

⁴⁶ We remind Roseland that it must continue to adhere to the requirements in the former Station's authorization pertaining to lighting of antenna structures. See 47 U.S.C. §303(q); 47 CFR §§ 17.1 *et seq.*, 73.1213 and 73.1740(a)(4). See also *Streamlining the Commission's Antenna Structure Clearance Procedure*, Report and Order, 11 FCC Rcd 4272, 4293-4 (1995) (tower owner bears primary responsibility for maintaining tower painting and/or lighting).

⁴⁷ In his declaration Mr. Davidge also admits that "...K07AAJ-D station was not fully EAS-compliant during the period that it broadcast." Response at Attachment G. Given our finding that the Station's construction permit has been forfeited and call sign deleted, we decline to refer this matter to the Commission's Enforcement Bureau. However, we stress the importance of ensuring that all stations are constructed in accordance with and once operating follow our emergency alert system (EAS) rules. We reserve the right to refer this matter to the Enforcement Bureau should Roseland seek reconsideration of this decision. We will also not hesitate to refer similar failures by Roseland or any other licensee to the Enforcement Bureau for investigation and appropriate sanction.