



Federal Communications Commission
Washington, D.C. 20554

March 12, 2024

SENT VIA CERTIFIED MAIL AND ELECTRONIC MAIL

Tutt Media Group, Inc.
Otis Tutt, Manager
203 North Queen Street
Kinston, NC 28501
otistutt@gmail.com

Re: Letter of Inquiry - Operational Status
WTMV-LD, Ogden, NC
Facility ID No. 184347

Dear Licensee:

The Video Division (Division) is issuing this letter of inquiry (LOI) to develop the record regarding the recent operational status of the above-captioned low-power television (LPTV) station WTMV-LD, Ogden, North Carolina (WTMV-LD or Station), licensed to Tutt Media Group, Inc. (Tutt or Licensee). Based on information received by the Commission, it appears the Station may have been silent for at least 30 days without proper authorization or may have permanently discontinued operations. This letter provides you **thirty (30) days** to provide information concerning the Station's operational history. Failure to reply will result in cancellation of the Station's license pursuant to section 74.763(c) of the Commission's rules.¹

Background. WTMV-LD is an LPTV station previously licensed on channel 39.² The Station's channel 39 facilities were displaced by the Incentive Auction and repacking process when the Station received notice from T-Mobile that it intended to commence operations on October 31, 2017 on the 600 MHz Band spectrum that encompassed the Station's channel 39.³ In response, Tutt filed a displacement application for channel 35.⁴ The Station simultaneously filed a request for special temporary authority to allow it to begin operating on channel 35 while its displacement application was being processed.⁵ Tutt subsequently completed construction of the Station's channel 35 displacement facilities and filed a license to cover on July 20, 2018, which was granted shortly thereafter.⁶

On November 25, 2020, the Station filed a request for special temporary authority (STA) to be silent "for financial reasons (including due to the ongoing coronavirus national emergency)" and in order to "investigate multiple options ranging from new financing to potentially selling the station."⁷ Tutt requested silent authority for six months stating that "during which time (Tutt) intends to investigate

¹ 47 CFR § 74.763(c) ("Failure of a low power TV or TV translator station to operate for a period of 30 days or more, except for causes beyond the control of the licensee, shall be deemed evidence of discontinuation of operation and the license of the station may be cancelled at the discretion of the FCC.").

² See CDBS File No. BLDTL-20131021ACZ.

³ See LMS File No. 0000028840.

⁴ See LMS File No. 0000028008.

⁵ See LMS File No. 0000028840.

⁶ See LMS File No. 0000058471.

⁷ See LMS File No. 0000127345.

multiple options ranging from new financing to potentially selling the station.”⁸ The silent STA was granted on December 21, 2020, and later extended to November 25, 2021.⁹

In its application for license renewal, filed on June 9, 2021, Tutt reported that the Station was off-the-air.¹⁰ On October 28, 2021, one month before the one-year anniversary of the Station having gone silent, Tutt reported that the Station had resumed operations with its licensed channel 35 facilities.¹¹ Tutt amended the Station’s renewal application to note that the Station had resumed operations per the October 28, 2021 notification and the license renewal application was granted.¹²

In January 2024 Commission staff received information that the Station was not operational. According to Commission records, the Station has not been granted a silent STA and no request for silent STA is currently pending.

Request for Information. The attachment to this LOI includes inquiries to which Licensee must respond. Licensee’s response to this LOI should be filed and formatted in accordance with the instructions set forth in the attachment. If the Station has been silent, but failed to file necessary applications, such as a request for silent STA, that should be disclosed in its response to this LOI and Video Division staff will contact Licensee to provide further instructions. We note that our inquiry not only covers the Station’s operations (or potential lack thereof) since January 2024, but extends back to October 28, 2021, the date that the Station resumed operation after having been silent for nearly 11 months. We find it is prudent to seek information about WTMV-LD’s operations dating back to that date in light of Licensee’s recent decision to relinquish the license of DWTMQ-LD, Jacksonville, North Carolina (DWMTQ-LD), which presented a similar licensing history as WTMV-LD.¹³ Specifically, both DWTMQ-LD and WTMV-LD were previously operating on channels above channel 36 and displaced by the Incentive Auction and repacking process.¹⁴ Both chose displacement to channel 35 for their new channel, went silent in November 2020, although DWTMQ-LD gave the reason for its silent as it was constructing its displacement facilities, and purportedly returned to the air on the same day – October 28, 2021.¹⁵ Given certain discrepancies in Tutt’s filings relating to DWTMQ-LD, the Division determined that the Station’s operational status was unclear and sought information from Tutt to determine whether DWTMQ-LD’s had been silent for more than 12 consecutive months or instead failed to file required applications.¹⁶ Rather than respond to the Division’s LOI, Tutt submitted DWTMQ-LD’s license for cancellation, an alternative that was afforded in the Division’s inquiry letter.¹⁷

⁸ *Id.*

⁹ See LMS File No. 0000147434.

¹⁰ See LMS File No. 0000127356 at Tutt Media Renewal Application – Silent Station (Renewal Application).

¹¹ See LMS File No. 0000165158.

¹² See Amendment to LMS File No. 0000127356.

¹³ See Letter to Tutt Media Group, Inc. from Barbara A. Kreisman, Chief, Video Division (Dec. 21, 2023), a copy of which is available at LMS Facility ID No. 184346.

¹⁴ *Id.* at 2-3.

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 3-4.

¹⁷ *Id.* See LMS File No. 0000235916

This LOI constitutes an order of the Commission to produce the documents and information requested herein.¹⁸ To knowingly or willfully make any false statement,¹⁹ or to provide incorrect or misleading material factual information, or conceal any material fact in reply to this letter,²⁰ is punishable by imprisonment or fine,²¹ and may subject Licensee to sanction, up to and including license revocation.²² **Furthermore, failure to respond fully to this LOI as directed herein constitutes a violation of the Act and our Rules and may subject Licensee to sanction by the Commission.**²³

If Licensee fails to provide the information requested **within 30 days from the date of this letter**, we will conclude that the Station has not transmitted a broadcast signal from an authorized facility for at least 30 days. As a result, pursuant to section 74.763 of the Commission's rules we will deem the Station's silence to be evidence of discontinuation of operation and the Commission's public and internal databases **WILL BE MODIFIED** to indicate that the station's license **IS CANCELLED**,²⁴ its call sign **IS DELETED**, and any pending applications **WILL BE DISMISSED**.²⁵ As an alternative to a response to this LOI, **Licensee may choose to relinquish the Station's license for cancellation.**²⁶

¹⁸ See 47 U.S.C. § 155(c)(3).

¹⁹ See 18 U.S.C. § 1001.

²⁰ See 47 CFR § 1.17.

²¹ See 18 U.S.C. § 1001; see also 47 CFR § 1.17.

²² 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).

²³ 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).

²⁴ 47 CFR § 74.763(c).

²⁵ If the Station has been silent for 12-consecutive months, pursuant to section 312(g) of the Communications Act of 1934 (Act) its license would have automatically expired as a matter of law. 47 U.S.C. § 312(g). The Commission has exercised its discretion under section 312(g) of the Act to extend or reinstate a station's expired license "to promote equity and fairness" only in limited circumstances when a station's failure to transmit a broadcast signal was due to compelling circumstances that were beyond its control. See *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617, para. 27 (2008) (A-O Broad.) ("This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited"). See e.g., *V.I. Stereo Communications Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259, 14262, para. 8 (2006) (reinstating license where silence due to destruction of towers in hurricanes); *Community Bible Church*, Letter Order, 23 FCC Rcd 15012, 15014 (MB 2008) (reinstatement warranted where station remained off air to promote air safety after discovering and reporting that FCC and FAA records contained incorrect tower information); *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). The Commission has declined to exercise its discretion when a station's silence was the result of its own action or inaction, finances, and/or business judgment. See, e.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)); *Zacarias Serrato*, Letter Order, 20 FCC Rcd 17232 (MB 2005) (station taken off the air due to a business decision).

²⁶ Requests for license cancellation may be filed electronically in the Commission's Licensing and Management System (LMS). After logging in to LMS: (1) click on "Facility" tab on the left top of the page; (2) click on facility ID of the station; (3) click on "File an Application" button; (4) select "Cancellation" from the drop-down menu; and (5) complete the application and click "Submit."

If you have any questions about this matter, please contact Shaun Maher, Video Division, at (202) 418-2324 or Shaun.Maher@fcc.gov.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Attachment

cc (via electronic mail): Jeffrey L. Timmons , Esq.

ATTACHMENT

Inquiries: Information and Documents to be Provided

You must provide the following information and documents as requested below, and in accordance with the Instructions and Definitions that follow the inquiries. To ensure you provide complete and full responses to all inquiries, carefully review the Definitions that follow these inquiries and the Instructions regarding Document production and retention.

Unless otherwise indicated, or necessary to accurately and fully respond to an inquiry, the time covered by these inquiries is **October 28, 2021** to the present.

Requests for Information

1. Answer the following and produce all Documents that support your responses regarding the construction and operation of WTMV-LD's facilities:
 - a. Identify every site at which WTMV-LD has operated since October 28, 2021, and provide the following for each such site:
 - i. the manufacturer, make, and model of all equipment installed at all such sites, and the dates on which construction was completed for each such site;
 - ii. copies of any and all purchase orders, invoices and bills related to the construction of such facilities including equipment invoices, bills of lading, tax invoices, installation and service invoices and copies of payment of such invoices;
 - iii. the exact location (ASRN or geographic coordinates) of WTMV-LD's transmitter and antenna for each relevant time period, including the effective radiated power and antenna height above ground level, the start and stop dates for each period of operation or silence, and the applicable authorization file number for all periods of operation or silence. For any period of operation, provide the Station's programming source (i.e., satellite dish/receiver, playout server, internet, etc.) and a quarterly sample of EAS and program logs. For any period of silence provide the reason the Station was silent;
 - iv. identify any Person or entity (whether compensated or not) that performed any services, performed any work for, assisted Tutt in securing WTMV-LD's transmitter sites and provided equipment or other goods, services, or merchandise related to the construction or operation of WTMV-LD. Provide the mailing address, email address, and telephone number for all such Persons; and
 - v. Provide the full legal name, mailing address, and telephone number of all property owners, tower owners, and/or tower managers of all sites WTMV-LD operated from, as well as all Documents related to WTMV-LD's use of any tower or transmitter site, including but not limited to, purchase or rental contracts, invoices, receipts, tax records, electric bills, and/or leasing agreements, and copies of payments made for all such invoices, receipts, leases.
2. Provide time-stamped pictorial evidence of WTMV-LD's Transmitter Site and of the tower from which WTMV-LD has most recently broadcast. Provide an affidavit from the person who took the photographs that describes what is depicted in the photographs, where and when the photographs

were taken, and an attestation by the photographer verifying the accuracy of the date of the photographs and the images depicted therein. Provide the mailing address, email address, and telephone number for the photographer.

3. Provide any additional information that Licensee believes may be helpful in our consideration and resolution of this matter.
4. Provide copies of all Documents that serve as the basis for the responses to all the Inquiries above, to the extent not already requested above.
5. Provide the full legal name of each Person employed or relied upon by Licensee to respond to or answer this LOI. Provide the mailing address, email address, and telephone number for all such Persons.
6. Licensee is expected to reply a complete response by the deadline. **If Licensee cannot provide all requested information or Documents by the deadline, it must submit all information it is able to obtain by the deadline, fully explain why certain information could not be provided, and indicate when such information will be submitted. We also remind Licensee that it is Commission policy that extensions of time shall not be routinely granted.¹**

Filing Requirements

Affidavit Requirement. We direct Licensee to 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, and if multiple Licensee employees contribute to the response, 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 47 CFR § 1.16, and be substantially in the form set forth therein. They must also provide the mailing address, e-mail address, and telephone number of the signatory. Failure to support your responses with a sworn affidavit could subject you to forfeiture.

Delivery Requirements. Licensee shall both send its response by commercial overnight courier or by First-Class or overnight U.S. Postal Service mail and transmit an electronic copy to the individuals designated below.

If sent by commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail), the response should be sent to the attention of Shaun Maher, Video Division, Media Bureau, Federal Communications Commission, BrightKey, 9050 Junction Drive, Annapolis Junction, MD 20701.

¹ 47 CFR § 1.46(a); see Communications Satellite Corporation and Contel Corporation for Approval of Merger, Order, 2 FCC Rcd 76, para. 3 (CCB 1986) (denying request for extension of time due to upcoming holidays as inadequate).

If sent by first-class, Express, or Priority Mail, the response should be sent to Shaun Maher, Video Division, Media Bureau, Federal Communications Commission, 45 L Street, NE, Room 4-444, Washington, DC 20554.

Electronic Copy. Licensee shall also transmit a copy of the response and any attachments or exhibits via email to Shaun.Maher@fcc.gov and VideoLOI@fcc.gov. The electronic copy shall be produced in a format that allows the Commission to access and use it, together with instructions and all other materials necessary to use or interpret the data, including record layouts, data dictionaries, and a description of the data's source.

Instructions

Format of Responses. The response must be organized in the same manner as the questions asked, i.e., the response to Inquiry 1 should be labeled as responsive to Inquiry 1, etc.

Method of Producing Documents. Licensee shall submit each requested Document in its entirety, even if only a portion of that Document is responsive to an inquiry made herein, including all appendices, tables, or other attachments, and all other documents referred to in the Document or attachments. Licensee shall not edit, cut, expunge, or otherwise take any action to modify any Document submitted in response to this LOI. In addition to any Document Licensee submits in response to any inquiry, Licensee shall also submit all written materials necessary to understand any Document responsive to these inquiries.

Identification of Documents. For each Document or statement submitted in response to the inquiries stated in the cover letter, indicate, by number, to which inquiry it is responsive and identify the persons from whose files the document was retrieved. If any Document is not dated, state the date on which it was prepared. If any Document does not identify its authors or recipients, state, if known, the names of the authors or recipients. Licensee must identify with reasonable specificity all Documents provided in response to these inquiries.

Documents No Longer Available. If a Document responsive to any Inquiry made herein existed but is no longer available, or if Licensee is unable for any reason to produce a Document responsive to any Inquiry, Identify each such Document by author, recipient, date, title, and specific subject matter, and explain fully why the Document is no longer available or why Licensee is otherwise unable to produce it.

Retention of Original Documents. With respect only to Documents responsive to the specific Inquiries made herein and any other Documents relevant to those Inquiries, Licensee is directed to retain the originals of those Documents for 60 months from the date of this letter unless (a) Licensee is required to retain Documents for a longer period of time pursuant to a Commission order or rule; (b) Licensee is directed or informed by the Media Bureau in writing to retain such Documents for some shorter or longer period of time; or (c) the Media Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case, Licensee must retain all such Documents until the matter has been finally concluded by payment of any monetary penalty, satisfaction of all conditions, expiration of all possible appeals, conclusion of any enforcement action brought by the United States Department of Justice, or execution and implementation of a final settlement with the Commission or the Media Bureau.

Confidentiality. 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 the Commission's rules,² 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 Commission's 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.³ 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.⁴

Claims of Privilege. 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.

Prior Responses. If a document responsive to any inquiry made herein has already been provided to the Commission during this or any other investigation, identify each such document, when and how it was produced, and the facility identification number under which such document was filed.

Definitions

For purposes of this LOI, the following definitions apply. The definitions in this section apply regardless of whether the first letter of the defined term appears in upper or lower case.

"Document" shall mean the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, punched, computer-stored, electronically-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made.

"Tutt" or "Licensee" shall mean Tutt Media Group, Inc., and any predecessor-in-interest, affiliate, parent company, wholly or partially owned subsidiary, other affiliated company or business, and all owners including, but not limited to, trustees, partners or principals, and all directors, officers, employees, time brokers, or agents, including consultants and any other persons working for or on behalf of Tutt at any time during the period covered by this LOI, whether in exchange for compensation or on a voluntary or other basis. Although this LOI refers to Tutt to collectively include each person or entity

² See 47 CFR § 0.459.

³ See 47 CFR § 0.459(b).

⁴ See 47 CFR § 0.459(c). 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; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific grounds for claiming that the item is privileged.

listed in this definition, any responses must specifically detail and distinguish between the actions or responsibilities of each entity or individual.

“Person” shall mean any natural person or any non-natural person, including but not limited to a business, company, corporation, enterprise, institution, organization (educational, religious, or otherwise), partnership, proprietorship, or any other entity, whether for-profit or non-profit and whether of general or limited liability and all of such non-natural person’s advisers, agents, consultants, directors, employees, members, officers, owners, partners, principals, representatives, and any other persons working for or on behalf of the foregoing, whether in a paid or unpaid status.

“Transmitter Site” shall mean the permanent, physical location, and all associated equipment necessary for the transmission of broadcast television programming consistent with Part 73 and Part 74 of the Rules and as specified in any construction permit or authorization granted to WTMV-LD.

“WTMV-LD” or “Station” shall mean WTMV-LD, Ogden, North Carolina (Facility ID No. 184347).