Federal Communications Commission
Washington, D.C. 20554

NOV 15 2017

In reply refer to: 1800B3-VM

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Paul H. Reynolds
Valleydale Broadcasting, LLC
2711 Pelham Parkway
Pelham, AL 35124

In re: WZNN(FM), Maplesville, AL
Facility ID No. 183374
Notice of license expiration

Dear Mr. Reynolds:

We have before us a request for Special Temporary Authority (STA) for Station WZNN(FM), Maplesville, Alabama (Station), licensed to Valleydale Broadcasting, LLC (VB) requesting authority to operate using a temporary site and facility.[1] Upon review of the record before us, we find that the Station's license expired as a matter of law under Section 312(g) of the Communications Act of 1934, as amended (Act).[2] Accordingly, we cancel the Station's license, delete the Station's call sign and dismiss the STA request as moot.

Background. On February 16, 2016, VB filed an STA to remain silent, stating that the Station went silent on November 25, 2015 because it had been "forced to dismantle its transmitter location due to a disagreement with the property owner."[3] VB requested an extension of STA on August 29, 2016, again noting its lost transmitter site as its reason for silence.[4] On November 22, 2016, VB filed a notice of Resumption of Operations, stating that the Station had resumed operation using its "licensed facility."

On June 27, 2017, VB filed an application for construction permit, proposing a minor change of facilities.[5] Frontdoor Broadcasting, LLC (Frontdoor) opposed this application, alleging that the Station had not been operating for over a year.[6] Frontdoor includes a letter from the Station's tower site owner stating that VB removed its tower in November 2015, and stopped paying rent for the site at that time. The site owner also stated that the electric meter at the site indicated that electrical service had been stopped in 2015 and had not resumed. Finally, the site owner indicated that she had observed a nearby site being used to operate a radio station.[7]

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[1] *See* File No. BSTA-20171025ABA.

[2] 47 U.S.C. § 312(g) (Section 312(g)); *Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543 (D.C. Cir. 2009); *A-O Broad. Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603 (2008).

[3] File No. BLSTA-20160216ABI, granted on March 2, 2016, with a notice that the period of silence from December 25, 2015 to February 16, 2016, was unauthorized.

[4] File No. BLESTA-20160829ABK, granted on September 15, 2016.

[5] File No. BPH-20170627ABF (dismissed on Oct. 26, 2017).

[6] *See* Comments in Opposition to File No. BPH-20170627ABF (dismissed on Oct. 26, 2017).

[7] *See* Comments in Opposition, File No. BPH-20170627ABF at p.3 and Ex. 2.

On October 25, 2017, VB filed a technical STA request which states that after being silent for almost 12 months, the Station resumed operation from an alternate site on November 22, 2016, and has operated from that site since that date.[8] VB does not explain why its resumption notice stated that the Station was using its licensed facility. Frontdoor again opposes this application.[9]

Discussion. Section 312(g) of the Act provides that "if a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary...."[10] Well-established Commission precedent dictates that licensees cannot avoid the statutory deadline set forth in Section 312(g) through the use of unauthorized facilities.[11] Thus, a station is subject to Section 312(g)'s license expiration provision if: (a) the station fails to operate for twelve consecutive months or longer; (b) the station operates with unauthorized facilities for such a period; or (c) a combination of the prior two situations occurs for such a period.[12]

Based on our records, and VB's admissions in its October 25, 2017, STA request, we conclude that the Station was silent (or failed to operate with authorized facilities) for over one year, and that the Station's license expired at 12:01 a.m., November 26, 2016.

Having determined that the Station's license expired, we decline to exercise our discretion to reinstate under §312(g). Although the Commission retains discretion under Section 312(g) to extend or reinstate such license "to promote equity and fairness,"[13] our discretion under that provision of Section 312(g) is severely limited.[14] The Commission has exercised its authority to reinstate an expired license to "promote equity and fairness" only where the station failed to provide service for 12 consecutive months due to compelling reasons beyond the licensee's control.[15] Conversely, the Commission has declined to reinstate licenses where, as here, the failure to transmit a broadcast signal was due to the licensee's own actions, finances, and/or business judgments.[16] In particular, we note that VB has never explained why it did not apply for

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[8] *See* File No. BSTA-20171025ABA.

[9] *See* Informal Objection to File No. BSTA-20171025ABA.

[10] *See Implementation of Section 403(l) of the Telecommunications Act of 1996,* 11 FCC Rcd 16499 (1996); *see also* 47 CFR § 73.1740(c).

[11] *See Eagle Broad. Group,* 563 F.3d at 553 ("Under the statute, unauthorized and unlicensed transmissions are no better than silence"); *see also James McCluskey, Ph.D.*, Letter Order, 27 FCC Rcd 6252, 6254-55 (MB 2012) ("an unauthorized transmission counts for nothing").

[12] *Id.*

[13] 47 U.S.C. § 312(g).

[14] *See A-O Broad.*, 23 FCC Rcd at 617, para. 27 ("This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited").

[15] *See, e.g., V.I. Stereo Commc'ns Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006) (reinstatement warranted where station's silence resulted from hurricane destruction); *Community Bible Church*, Letter, 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); *Mark Chapman, Court-Appointed Agent*, Letter, 22 FCC Rcd 6578 (MB 2007) (reinstatement warranted where extended silence resulted from licensee's compliance with a court order).

[16] *See, e.g., A-O Broad.*, 23 FCC Rcd at 617, para. 27 (reinstatement not warranted when site loss was a

an STA to operate the Station from an alternate site in 2016, but instead claimed that the Station had resumed operation from its licensed site. We find that exercise of discretion to reinstate an expired license is especially unwarranted when VB violated Section 301 of the Act by operating the Station from an alternate facility, without FCC approval, falsely claimed in November of 2016 that the Station returned to the air "with its licensed facility," and only notified the Commission of the Station's unauthorized operation after opposing comments were filed notifying us of the situation.[17] The "unclean hands" doctrine – which "closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief"[18] – can be applied in appropriate circumstances in administrative proceedings,[19] and VB's conduct in this proceeding mitigates against any "equity and fairness" finding in its favor.[20]

Conclusion/Actions. For the reasons set forth above, we find that the license of WZNN(FM), Maplesville, Alabama (Facility ID No. 183374), EXPIRED by operation of 47 U.S.C. § 312(g) on or about 12:01 a.m. November 26, 2016. In addition, File No. BSTA-20171025ABA IS DISMISSED. Accordingly, the Commission's public and internal databases will be modified to reflect that expiration, and we HEREBY DELETE the Station's call sign, WZNN(FM). All authority to operate this facility IS TERMINATED and any operation of the facility must cease immediately. Valleydale Broadcasting, LLC (and its principals, R3 Partners, LLC, Paul H. Reynolds, Joan K. Reynolds., Lee S. Reynolds, and Lyle S. Reynolds, as well as any entity in which any of them holds an interest that is within the scope of the ownership and control disclosure standard set forth in 47 CFR § 1.2112) SHALL SUBMIT a copy of this *Letter Order* with every facilities application—FCC Form 301, 302 (any version), 349, or 350—it files with the Commission for a period of five years from the date of this *Letter Order.*

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result of the licensee's rule violations and continued silence was a result of licensee's failure to complete construction at an alternate site); *ETC Communications, Inc.*, Letter, 25 FCC Rcd 10686 (MB 2010) (reinstatement not warranted where the licensee chose not to operate financially struggling station while offering it for sale); *Kirby Young*, Letter, 23 FCC Rcd 35 (MB 2008) (reinstatement not warranted where the licensee was not financially able to restore operations after transmitter failed). *See also Kingdom of God*, Letter, 29 FCC Rcd 11589 (MB 2014) (Bureau rejects KOG's request for reinstatement of its permit for LPTV Station WKGK-LP, Kokomo, Indiana, expired pursuant to Section 312(g), under the "equity and fairness" language, finding that "the ultimate reason for the station's silence was due to KOG's business decision not to promptly find a permanent and suitable transmitter site," and concluding that KOG's silence was not the result of compelling reasons beyond the licensee's control, but, rather, "due to the licensee's own actions, finances and/or business judgments.").

[17] *See Eagle Broad. Group*, 563 F.3d at 554 (discretion not warranted because "it does not require legal counsel or any level of sophistication to avoid making false statements on simple matters of fact"); *cf., John L. White*, Notice of Apparent Liability for Forfeiture and Order, 24 FCC Rcd 12541, 12543 (MB 2009) (312(g) discretion appropriate when, among other factors, licensee did not misrepresent regarding its operation).

[18] *Precision Instrument Manufacturing Co. v. Automotive Maintenance Machinery Co.*, 324 U.S. 806, 815 (1945).

[19] *See, e.g., Daniel A. Edelman, Esq.*, 19 FCC Rcd 12741, 12742-3, para. 5 (2004); *see also WKAT, Inc. v. FCC*, 296 F.2d 375, 383 (D.C. Cir. 1961) (*WKAT*).

[20] *See, e.g., FCC v. WOKO, Inc.*, 329 U.S. 323, 329 (1946), cited in *WKAT*, 296 F.2d at 383 (counterbalancing considerations of public interest in the service involved might justify award despite misbehavior).

It is imperative to the safety of air navigation that any prescribed painting and illumination of the Station's tower shall be maintained.[21]

If you have any questions concerning the content of this letter, please contact Victoria McCauley, Attorney, by phone (202-418-2136), or e-mail (Victoria.McCauley@fcc.gov).

Sincerely,

Peter H. Doyle 11TH

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: M. Scott Johnson, Esq.

[21] *See* 47 CFR Sections 17.6 and 73.1740(a)(4).