



Federal Communications Commission
Washington, D.C. 20554

June 8, 2023

Sent via Certified Mail and Electronic Mail

Boundary County TV Translator District
P.O. Box 894
Bonners Ferry, ID 83805
elautomation@starband.net

In re: K46HZ-D, Bonners Ferry, ID
Facility ID No. 6535
LMS File No. 0000192151
Operational Status Inquiry

Dear Licensee:

This concerns the above-referenced application for renewal of license (Renewal Application) filed by Boundary County TV Translator District (BCT) for low power television (LPTV) station K46HZ-D, Bonners Ferry, Idaho (K46HZ-D or Station). For the reasons set forth below, we direct BCT to respond to this letter of inquiry (LOI) within thirty (30) days.

Background. K46HZ was a digital LPTV station licensed on channel 46. The Station's channel 46 was displaced by the incentive auction and repacking process and the Station was required to cease operations on channel 46 no later than July 13, 2020.¹ The Station obtained a construction permit for a displacement channel 17 with an expiration date of November 7, 2021 (Displacement CP).² On September 26, 2018, the Station was granted special temporary authority (STA) to commence operations on its displacement channel (channel 17) while its displacement application was pending. Its STA authority expired March 26, 2019 and was not extended.³ Further, Commission records do not indicate that the Station filed an application for license to cover indicating that it completed construction of its channel 17 displacement facilities. As such its Displacement CP expired on November 7, 2021.

In the Station's Renewal Application, BCT certified that during the preceding license term the Station has not been silent for any consecutive 12-month period. BCT further certified that, during the preceding license term, the Station has not been silent (or operating for less than its prescribed minimum operating hours) for any period of more than 30 days. Therefore it appears K46HZ either has been silent for more than one year and that its license automatically expired on July 14, 2021 pursuant to section

¹ See *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6841, para. 672 (2014) (Incentive Auction R&O) (subsequent history omitted); see also *Media Bureau Reminds Low Power Television and Television Translator Stations Operating on the Guard Band/Duplex Gap Channels of Upcoming July 13, 2020 Deadline to Cease Operations*, Public Notice, 35 FCC Rcd 5495 (MB 2020).

² See LMS File No. 0000052108.

³ See LMS File No. 0000059667.

312(g) of the Communications Act of 1934 (Act);⁴ or it has been operating without a valid authorization⁵ and failed to file a timely license to cover application for its channel 17 Displacement CP.⁶

Request for Information. 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. For any period the Station was operational since September 26, 2018, 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, 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.⁷ 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 September 26, 2018 and construction of its displacement facility. You must also 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.

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,⁸ 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 Rules,⁹ 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

⁴ 47 U.S.C. § 312(g).

⁵ See 47 CFR § 73.1745; 47 U.S.C. § 301.

⁶ See 47 CFR § 74.788 (2022). Effective October 24, 2022, 47 CFR § 74.788 of the Commission's rules was eliminated and found by the Commission to be duplicative with 47 CFR § 73.3598 of the Rules. See 87 FR 58200, Oct. 24, 2022; *In the Matter of Amend. of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations*, FCC 22-58 (July 13, 2022); 47 CFR § 74.780 (bbb) (making 47 CFR § 73.3598 applicable to all TV translator and LPTV stations). At the time the license to cover application should have been filed, 47 CFR § 74.788 was in effect.

⁷ Because of the length of time at issue, you may provide a monthly sampling of documents.

⁸ See 47 CFR § 1.16.

⁹ See 47 CFR § 0.459.

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.¹⁰

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.¹¹ To knowingly or willfully make any false statement,¹² or to provide incorrect or misleading material factual information, or conceal any material fact in reply to this letter,¹³ may subject you to sanction, up to and including license revocation.¹⁴ **Failure to respond accurately, truthfully, and fully to this letter as directed herein constitutes a violation of the Act and our Rules.**¹⁵ 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 such documented evidence **within 30 days from the date of this letter or demonstrate** that reinstatement is warranted pursuant to the equity and fairness provision of section 312(g),¹⁶ we will conclude that the Station has been silent since at least July 13, 2020, the date the Station was required to cease operating on channel 46, and 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

¹⁰ 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).

¹¹ See 47 U.S.C. § 155(c)(3).

¹² See 18 U.S.C. § 1001.

¹³ See 47 CFR § 1.17.

¹⁴ 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).

¹⁵ 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).

¹⁶ See e.g. *A-O Broad. Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617, para. 27 ("This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited"). 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. See, e.g., *V.I. Stereo Communications Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006); *Community Bible Church*, Letter, 23 FCC Rcd 15012, 15014 (MB 2008); *Mark Chapman, Court-Appointed Agent*, Letter, 22 FCC Rcd 6578 (MB 2007). The Commission has declined to reinstate licenses where the failure to transmit a broadcast signal was due to the licensee's own actions, finances, and/or business judgment. See, e.g., *A-O Broadcasting*, 23 FCC Rcd at 617, para. 27; *ETC Communications, Inc.*, Letter, 25 FCC Rcd 10686 (MB 2010); *Kirby Young, Letter*, 23 FCC Rcd 35 (MB 2008).

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**.¹⁷

Documents sent in response to this letter shall be addressed to FCC, Office of the Secretary, 45 L Street, NE, Washington, DC 20554, Attention: Shaun Maher, Attorney-Advisor, Video Division, Media Bureau, and emailed to Shaun Maher at the address below.

Please direct any questions concerning the content of this letter to Shaun Maher, Attorney-Advisor by phone (202-418-2324), or by e-mail (Shaun.Maher@fcc.gov).

Sincerely,

/s/

Barbara Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Susan Hansen

¹⁷ In addition, the Renewal Application will be dismissed.