



Federal Communications Commission
Washington, D.C. 20554

July 26, 2023

In Reply Refer to:
1800B3-ARR

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Omni Broadcasting, LLC
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Re: **WTKP(FM), Port St. Joe, Florida**
Facility ID No. 67579
Application File Nos. BLH-19940613KM;
0000087367; 0000212297; BSTA-
20210913AAF; 0000124529

Notification of License Cancellation

Dear Counsel:

This letter is to inform you that the license of Station WTKP(FM), Port St. Joe, Florida (Station), licensed to Omni Broadcasting, LLC (Licensee), has expired pursuant to section 312(g) of the Communications Act of 1934, as amended (Act).¹ Accordingly, the Media Bureau (Bureau) hereby dismisses Licensee's pending applications for: renewal of license,² assignment of license,³ engineering special temporary authority (STA),⁴ and minor modification⁵ as moot in light of the license expiration. As a separate and independent basis, we dismiss the Station's license Renewal Application based on Licensee's failure to fully respond to the Letter of Inquiry (LOI)⁶ issued on April 6, 2022 and dismiss all other pending applications as moot.

Licensee has been the licensee of the Station since 2012.⁷ On November 5, 2015, the Station went silent due to a dispute with the tower owner at the licensed site (Site A) and resumed operation using

¹ 47 U.S.C. § 312(g).

² Application File No. 0000087367 (filed Oct. 25, 2019) (Renewal Application).

³ Application File No. 0000212297 (filed Mar. 9, 2023) (Assignment Application).

⁴ Application File No. BSTA-20210913AAF (filed Sept. 13, 2021) (2021 Engineering STA).

⁵ Application File No. 0000124529 (filed Oct. 13, 2020) (2020 Modification Application).

⁶ See *Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, FCC, to Omni Broadcasting, LLC* (Apr. 6, 2022), and 47 CFR §§ 73.3566(b) and 73.3568(a)(1).

⁷ See Application File No. BALH-20120515ACM (filed May 15, 2012) (consummated on July 6, 2012).

an alternate site (Site B) pursuant to STA granted December 3, 2015, and expiring June 1, 2016.⁸ Licensee did not file a request to extend the 2015 Engineering STA. On August 29, 2016, Licensee filed an application for construction permit to operate at its STA site, Site B, which we granted on July 28, 2017.⁹ Licensee never filed a covering license application for this construction permit.

On September 7, 2017, FCC Field inspectors observed the Station operating from an unauthorized location (Site C), approximately 40 miles from the licensed site, Site A, and verified from staff on site that Licensee was leasing space on the tower at that location to operate the Station. On October 13, 2020, Licensee filed an application for construction permit specifying a new community of license and transmitter site (Site D), which remains pending.¹⁰ On August 12, 2021, Licensee requested silent STA, stating that it had lost the temporary Site B, from which it had been operating as of that date.¹¹ On September 13, 2021, Licensee requested STA to operate from Site D, specified in the 2020 Modification Application.¹² On October 20, 2021, we granted the STA, expiring August 13, 2022. On August 11, 2022, Licensee filed a notice of resumption of operations, stating that it had resumed “operations on the tower authorized by the current license [*i.e.*, Site A].”¹³ Licensee also filed a reduced power notification which stated the Station was operating from its licensed site, Site A.¹⁴ On September 9, 2022, Licensee filed an amendment to the 2021 Engineering STA to operate at an alternate location (Site E) at reduced power because the Site A facility is unavailable for long term operations.¹⁵ On March 9, 2023, Licensee filed the Assignment Application.

After the 2017 inspection, the Enforcement Bureau staff reviewed the Station’s operational history and ultimately concluded that the matter should be referred to this Bureau for further investigation. Upon its own review of the Station’s operational history, the Bureau determined that the Station may have been silent or operating with unauthorized facilities for more than one year, specifically from June 1, 2016 to June 1, 2017. Accordingly, the Bureau issued the LOI on April 6, 2022, to evaluate whether the Station was silent or operating with unauthorized facilities for more than one year, in violation of section 312(g) of the Act.

Specifically, the Bureau requested: 1) the location, effective radiated power and antenna height above ground level for all periods of operation from June 2, 2016, to the present; 2) copies of all leases, personnel records (including payroll records appropriately redacted to protect the privacy of individual employees), engineering records, and station records, including Emergency Alert System (EAS) logs, and all correspondence (including emails and text messages) relating to the Station since June 2, 2016; 3) invoices, bills, checks written or received, credit card charges, wire transfers or deposits of funds, and accounting software records relating to the Station’s operation since June 2, 2016; and 4) pictures of the Station’s studio facilities and transmission facilities since June 2, 2016, and provide exact coordinates for the Station’s transmitter site. Pursuant to section 73.3568(a)(1) of the Commission’s rules,¹⁶ Licensee

⁸ See Application File No. BSTA-20151125ACO (filed Nov. 25, 2015) (2015 Engineering STA).

⁹ See Application File No. BPH-20160829ACO (filed Aug. 29, 2016).

¹⁰ See 2020 Modification Application.

¹¹ See Application File No. BLSTA-20210812AAG (filed Aug. 12, 2021) (expiring Apr. 18, 2022).

¹² See 2021 Engineering STA.

¹³ Application File No. 0000197401 (filed Aug. 11, 2022). See also Application File No. BLH-19940613KM.

¹⁴ Application File No. 0000197402 (filed Aug. 11, 2022).

¹⁵ Application File No. BSTA-20210913AAF (filed Sept. 9, 2022) (2021 Engineering STA Amendment).

¹⁶ 47 CFR § 73.3568(a)(1).

was required to respond in writing within thirty days of the date of the LOI. On May 2, 2022, Licensee requested a ten-day extension to respond to the LOI.¹⁷

On May 16, 2022, Licensee submitted a written LOI response and supporting documentation.¹⁸ Licensee also submitted a supplemental response on May 31, 2022.¹⁹ In the LOI Response, Licensee states that due to extreme hardship, including the regional economy and natural disasters, it was required to file a series of STAs. Specifically, Licensee maintains that: 1) it has made a good faith effort to maintain the Station, though at times has not been “within the Standards of Good Engineering Practice;”²⁰ 2) administrative mistakes were made, including failure to adhere to legal and technical requirements and notifications;²¹ and 3) operational delays were due to the Bureau’s slow processing of applications during the COVID-19 pandemic.²²

In support of its claims, Licensee submits declarations signed under penalty of perjury from Jennifer F. Hale, Managing Member of Omni Broadcasting, LLC and Jim Turvaville, engineer and consultant, and a declaration from Bryan A. Covey, engineer and consultant. Licensee also submits certain tower lease agreements, engineering invoices, monthly expenses for Omni Broadcasting, LLC, and photographs of destruction at the original licensed site.²³ As set forth below, Licensee’s response was incomplete in significant respects (*e.g.*, no submission of EAS logs, no explanation of when the Station operated at Site C, and no copy of the tower lease agreement for Site C).

Section 312(g) of the Act provides that if a broadcast station fails to transmit broadcast signals with its authorized facilities 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, except that the Commission may extend or reinstate such station license to promote equity and fairness.²⁴ The Commission has also held that unauthorized operation (*i.e.*, operation from an unauthorized site or on an unauthorized frequency) is “no better than silence” for section 312(g) purposes, and transmissions from an unauthorized location cannot be used to avoid automatic license expiration.²⁵

We find the Station failed to operate from an authorized site for at least a “consecutive twelve-month” period, from June 1, 2016, when the 2015 Engineering STA to operate at a temporary facility

¹⁷ See *Email from John C. Trent, Attorney, to Victoria McCauley, Attorney, Audio Division, MB, FCC* (May 2, 2022, 15:24, EDT). Bureau staff granted the extension and gave Licensee until May 16, 2022, to submit a response. See *Email from Victoria McCauley, Attorney, Audio Division, MB, FCC, to John C. Trent, Attorney*, (May 3, 2022, 16:46, EDT).

¹⁸ See *Email from John C. Trent, Attorney, to Victoria McCauley, Attorney, Audio Division, MB, FCC* (May 16, 2022, 17:10, EDT) (LOI Response).

¹⁹ See *Email from John C. Trent, Attorney, to Victoria McCauley, Attorney, Audio Division, MB, FCC* (May 31, 2022, 10:34, EDT) (LOI Response Supplement).

²⁰ LOI Response at 4.

²¹ *Id.*

²² *Id.*

²³ See generally LOI Response and LOI Response Supplement.

²⁴ 47 U.S.C. § 312(g); see also *Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543, 545 (D.C. Cir. 2009).

²⁵ *Eagle Broad. Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, para. 9 (2008), *aff’d by Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543 (D.C. Cir. 2009); *Absolute Broad. LLC*, Memorandum Opinion and Order, FCC-23-38 at 8, para. 18 (2023).

expired, through June 1, 2017, during which the Station failed to operate from its authorized site for one year,²⁶ warranting automatic license expiration pursuant to section 312(g) of the Act. (As shown above, the Station was operating from an unauthorized site – Site C – as of September 7, 2017, and thus the unauthorized operation lasted for approximately fifteen months.) Licensee has not provided any documentation to show that it operated at an authorized site during this period. Accordingly, we find that the Station’s license expired as a matter of law on June 1, 2017.²⁷ Because we determine that the Station’s license expired as of this date, we decline to further evaluate the Station’s operations after this date.

As a separate and independent basis for dismissing the applications, we find the LOI Response is incomplete because it failed to respond to all the interrogatories or explain why a response was not available.²⁸ Licensee failed to provide the requested EAS logs, correspondence regarding the Station, and exact coordinates of the transmitter sites.²⁹ Licensee also failed to respond to the Bureau’s inquiry regarding the Station’s unauthorized operation at Site C on September 7, 2017 (as well as before and after that date), where FCC field inspectors observed the Station operating approximately 40 miles from the licensed site.³⁰ Licensee also failed to produce a tower site lease for Site C, a critical document that would have enabled the Bureau to determine the duration of the Station’s operation at that site. Licensee offers no explanation why it was unable to provide a response or documentation for these inquiries. Finally, we reject Licensee’s reliance on application processing time during the COVID-19 pandemic as justification for any periods of extended silence or operations at an unauthorized location, or as the basis for claiming the Station endured hardship because the period in question here—from June 2016 until June 2017—predates the pandemic. Moreover, it is well settled that “the staff’s inability to act on any application within a specific time cannot prevent license expiration nor give rise to any equitable claim that the license term should be extended.”³¹

²⁶ See, e.g., *Chinese Voice of Golden City v. FCC*, 2021 WL 6102191 (D.C. Cir. 2021) (affirming that transmissions from an unauthorized location do not constitute “broadcast signals” for purposes of § 312(g)); *Kingdom of God, Inc. v. FCC*, 719 Fed. Appx. 19, 20 (D.C. Cir. 2018) (Mem.) (“Kingdom’s transmissions from its unauthorized location in Beech Grove do not constitute ‘broadcast signals’ for purposes of § 312(g)”; *Roy E. Henderson*, Memorandum Opinion and Order, 33 FCC Rcd 3385, 3385, n.3 (2018) (upholding a section 312(g) finding where the licensee had lost its licensed site and had not obtained authorization to operate at other temporary sites).

²⁷ See *Jan Charles Gray*, Letter Order, 32 FCC Rcd 3924, 3926 (MB 2017) (Bureau found that license expired pursuant to 312(g) where the station was either silent or operated from a temporary site after expiration of STA for more than one year).

²⁸ 47 CFR §§ 73.3566(b) (“If an applicant is requested by the FCC to file any additional documents or information not included in the prescribed application form, a failure to comply with such request will be deemed to render the application defective, and such application will be dismissed.”), and 73.3568(a) (“... failure to respond to official correspondence or request for additional information, will be cause for dismissal.”); see also *LPFM MX Group 37*, Memorandum Opinion and Order, 31 FCC Rcd 7512, 7517, para. 12 (2016) (dismissing application for failure to respond to letter of inquiry). The Station’s license Renewal Application is subject to dismissal based on those rules, and the remaining applications are thereby subject to dismissal as moot.

²⁹ See *Roy E. Henderson*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 5223, 5224 n.15 (listing these items as evidence the Bureau finds acceptable to support a finding that a station resumed operation) (MB 2018).

³⁰ See *LPFM MX Group 37*, 31 FCC Rcd at 7517-18, para. 12 (an applicant’s failure to respond to a specific inquiry from the Commission is grounds for dismissing an application).

³¹ *Ernest T. Sanchez, Esq.*, Letter Order, 31 FCC Rcd 7087, 7090 (MB 2016), citing *Procedures Announced for Expedited Processing of Applications Filed by Silent Broadcast Stations*, Public Notice, 11 FCC Rcd 14356, para. 3 (1996).

For these reasons, the Commission's public and internal databases HAVE BEEN MODIFIED to indicate that the broadcast license for the referenced Station is EXPIRED, that the Station's license is CANCELLED as a matter of law, and that the Station's call sign is DELETED. In addition, the Station's Renewal Application (Application File No. 0000087367), Assignment Application (Application File No. 0000212297), Minor Modification Application (Application File No. 0000124529), and Engineering STA (Application File No. BSTA-20210913AAF) ARE DISMISSED as moot.

Finally, we note that it is imperative to the safety of air navigation that any prescribed painting and illumination of the Station's tower be maintained until the tower is dismantled. Accordingly, the owner of the tower where the referenced Station's transmitting antenna is located is required to maintain the tower in the manner prescribed by our rules and the terms of the cancelled license.³²

Sincerely,

Albert Shuldiner
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Media Bureau

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³² See 47 U.S.C. §303(q); 47 CFR §§17.1 *et seq.* and 73.1213. See also *Streamlining the Commission's Antenna Structure Clearance Procedure*, Report and Order, 11 FCC Rcd 4272, 4293 (1995) (tower owner bears primary responsibility for maintaining tower painting and/or lighting).