



Federal Communications Commission
Washington, D.C. 20554

May 20, 2015

In Reply Refer To:
1800B3-MM

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Jason Konarz
1820 West Marks Road
Marks, Mississippi 38646-8923

In re: DWQMA(AM), Marks, MS
Facility ID No. 1219
File Nos. BR-20060608ADB

License Renewal Application

Petition for Reconsideration

Dear Mr. Konarz:

We have before us an application for renewal (“Renewal Application”) of Mr. Jason Konarz (“Konarz”) license for expired Station DWQMA(AM), Marks, Mississippi (“Station”). For the reasons set forth below, we conclude that the Station’s license has expired pursuant to Section 312(g) of the Communications Act of 1934, as amended (“Act”). Accordingly, we dismiss the Renewal Application.

Background. Konarz should have filed the Station’s license renewal application by February 1, 2004.¹ He did not, and the Station’s license expired on June 1, 2004. Accordingly, on May 31, 2006, the staff wrote to Konarz, indicating that the Station’s license had expired, all authority to operate the Station was terminated, and the Station’s call letters were deleted from the Commission’s database. The staff also indicated that any operation of the Station was then unauthorized and must cease immediately.² Upon receipt of the letter, Konarz tendered the Renewal Application and a request for special temporary authority (“STA”) to continue operations pending consideration of the renewal application (“STA Request”).³ Konarz indicated in the STA Request that he had prepared and mistakenly thought he had timely filed the license renewal application for the Station but discovered upon receipt of the letter that he had not done so. The staff granted the STA Application on June 22, 2006, and it expired on December 22, 2006. On the expiration date, Konarz filed an extension of STA application (“STA Extension Request”).⁴

On August 12 and 13, 2010, field staff of the Commission’s Enforcement Bureau inspected the Station site. The agents found that Konarz had failed to install effective protective fencing around the base of the Station’s tower,⁵ although Konarz has been subject to repeated forfeitures for this violation.⁶

¹ 47 C.F.R. §§ 73.1020, 73.3539(a).

² Letter to Jason Konarz, Ref. 1800B3-JDB (Audio Division, Media Bureau, May 31, 2006).

³ See File No. BLSTA-20060612ACC.

⁴ See File No. 20061222ADF.

⁵ See 47 C.F.R. § 73.49.

⁶ See Jason Konarz, Forfeiture Order, 24 FCC Rcd 1248 (EB 2009) (\$14,000 forfeiture issued for failure to enclose an antenna tower with radio frequency potential at the base within an effective locked fence); Jason Konarz,

Accordingly, in a letter dated August 20, 2010, staff denied the STA Extension Request based on the Station's history of "repeated and ongoing violations of the Commission's technical and operational rules."⁷ The staff concluded that in light of the continuing violations "[a]ny operation of this facility is now unauthorized and must cease immediately."⁸

On September 22, 2010, Konarz filed an untimely Petition for Reconsideration of the denial of the STA Extension Request.⁹ In it, he argues that: (1) he is doing the best he can with the limited resources available to him; (2) he has "once again" fixed the fence surrounding the tower; (3) he is paying fines in "good faith"; (4) the Station is a "critically important" source of local public service information to an economically depressed area;¹⁰ and (5) the Station did not intend to violate any rules.¹¹ He also notes that the Station was "off air during this period due to the STA expiration."¹² There is no evidence in the record that Konarz has operated the Station since the staff denied the STA Extension Request.

Discussion. Section 312(g) of the Communications Act of 1934, as amended ("Act") and Section 73.1750 of the Commission's Rules ("Rules") provide for automatic termination of inactive licenses so that scarce broadcast spectrum does not lie fallow and unavailable to others capable of instituting and maintaining service to the public.¹³ Section 312(g) of the Act specifically provides that "if a broadcasting station fails to transmit broadcast signals for any consecutive twelve-month period," the station's license expires as a matter of law "notwithstanding any provision, term, or condition of the license to the contrary," and the license is automatically forfeited.¹⁴ The Station's license expired on June 1, 2004. The Commission authorized Station operations pursuant to STA until December 22, 2006, pending a decision on the Renewal Application. However, once the staff denied the STA Extension Request on August 20, 2010, further broadcasts were unauthorized. Because the Station apparently has not operated since that date, it has been silent for more than 12 consecutive months, and its license has expired pursuant to Section 312(g).

Forfeiture Order, 22 FCC Rcd 10890 (EB 2007) (\$7,000 forfeiture issued for failure to enclose an antenna tower with radio frequency potential at the base within an effective locked fence); *Jason Konarz*, Forfeiture Order, 19 FCC Rcd 19562 (EB 2004) (\$20,000 forfeiture issued for failing to install and maintain operational Emergency Alert System equipment, failure to operate consistent with authorized power levels and discontinue operating at night, and failure to make available for inspection all of the required materials in the station's public inspection file), *recon. denied*, Memorandum Opinion and Order, 21 FCC Rcd 10082 (EB 2006).

⁷ *Letter to Jason Konarz*, Ref. 1800B3 (Audio Division, Aug. 20, 2010).

⁸ *Id.*

⁹ The staff denied the STA Extension Request on August 20, 2010. The last day to file a petition for reconsideration was Monday, September 20, 2010. See 47 C.F.R. § 1.4; 47 U.S.C. § 405. Accordingly, Konarz filed his petition two days late.

¹⁰ Petition for Reconsideration at 2.

¹¹ *Id.* at 3.

¹² *Id.* at 2.

¹³ *Cf. 1998 Biennial Review - Streamlining of Mass Media Applications, Rules and Processes*, Report and Order, 13 FCC Rcd 23056, 23093 (1998), *recon. granted in part*, Memorandum Opinion and Order, 15 FCC Rcd 17525 (1999). (Commission construction deadlines "strike a balance between our fundamental interests in expediting new service to the public and preventing the warehousing of scarce spectrum . . .")

¹⁴ 47 U.S.C. § 312(g)(1996). See *Aerco Broadcasting Corp. v. FCC*, 51 Fed. Appx. 23 (D.C. Cir. 2002) (*per curiam*) (the effect of Section 312(g) is license forfeiture). See also 47 C.F.R. § 73.1740(c). Subsequently, Congress amended Section 312(g) by adding language giving the Commission discretion to extend or reinstate a license in order to, *inter alia*, "promote equity and fairness." 47 U.S.C. § 312(g) (2004) (amended by Consolidated Appropriations Act, 2005, Pub.L. No. 108-447, 118 Stat. 2809 (2004)).

Section 312(g) provides the Commission the discretion, where appropriate, to extend or reinstate a forfeited license, notwithstanding more than 12 months of station silence "... if the holder of the station license prevails in an administrative or judicial appeal . . . or for any reason to promote equity and fairness."¹⁵ The Media Bureau staff resolves such questions by conducting a case-by-case analysis of the circumstances that led to the particular station's extended silence.¹⁶ We have exercised its authority to reinstate in only a few cases, each of which involved silence for compelling reasons beyond the licensee's control.¹⁷

Here, the Station's extended silence was initially mandated by the staff's denial of the Station's STA Extension Request. However, that action was taken due to the Station's history of repeated and ongoing violations of the Commission's technical and operational rules. Konarz has amassed over \$40,000 in forfeitures¹⁸ for various violations involving the Station, including twice failing to maintain an effective fence around the Station's transmission facilities.¹⁹ This recurring violation is also the most serious in terms of potential harm to the public. Although Konarz argues that he operates the Station under difficult economic and financial circumstances,²⁰ the Bureau has held consistently that licensee's arguments concerning its own finances and/or business judgments do not meet the threshold for reinstatement under Section 312(g) of the Act.²¹ Neither are they a sufficient justification for failure to comply with the Rules, particularly those operational requirements designed to ensure the safety of the general public. For these reasons, we will not exercise our discretion to reinstate the Station license here.

Conclusions/Actions. Accordingly, for the reasons set forth above, we find that the license of DWQMA(AM), Marks, Mississippi (Facility ID No. 1219), HAS EXPIRED as of 12:01 a.m. on August

¹⁵ 47 U.S.C. § 312(g).

¹⁶ See *Eagle Broadcasting Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 600-01 (2008), *aff'd sub nom. Eagle Broadcasting Group, Ltd. v. FCC*, 563 F.3d 543 (D.C. Cir. 2009) ("The Commission and its staff will determine on a case-by-case basis whether any purported equities associated with individual circumstances warrant reinstatement of a license forfeited pursuant to Section 312(g)").

¹⁷ See, e.g., *V.I. Stereo Communications Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006) ("*V.I. Stereo*") (reinstatement warranted where station's silence attributable to destruction of towers in hurricane and substantial damage to subsequently rebuilt towers in additional hurricanes); *Community Bible Church*, Letter, 23 FCC Rcd 15012, 15014 (MB 2008) (reinstatement warranted where licensee took all steps needed to return to air from replacement site prior to 12 months of silence but nevertheless remained off air to promote air safety after discovering and diligently reporting that FCC and FAA records contained incorrect tower information for which it was not responsible); *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); *c.f.*, *Kanza Society*, Letter, 25 FCC Rcd 12812 (MB 2010) (reinstatement unwarranted and deactivation of FM translator station avoidable where station voluntarily went silent to prevent potential interference to unbuilt, new station, although the Rules do not require cessation of operations absent actual interference, and licensee did not seek permission to change to non-adjacent channel because it was not aware of Commission's waiver policy).

¹⁸ Konarz did not pay the 2004 forfeiture of \$20,000.

¹⁹ Enforcement Bureau staff's 2010 visit to the Station marked the third time Konarz had been found to have violated the protective fencing rule.

²⁰ Petition at 1.

²¹ See *ETC Communications, Inc.*, Letter, 25 FCC Rcd 10686, 10689 (MB 2010) (reinstatement unwarranted where licensee chose not to operate financially struggling station while offering it for sale); *Family Life Ministries, Inc.*, Letter, 23 FCC Rcd 15395 (MB 2008) (reinstatement unwarranted where station deactivated for economic reasons within licensee's control); *Kirby Young*, Letter, 23 FCC Rcd 35 (MB 2008) (reinstatement unwarranted where licensee not financially able to restore operations after transmitter failed); *Zacarias Serrato*, Letter, 20 FCC Rcd 17232 (MB 2005) (reinstatement unwarranted where licensee made business decision not to obtain an alternate site promptly).

21, 2011. Accordingly, the Commission's public and internal databases will be modified to reflect that expiration. All authority to operate this facility IS TERMINATED and any operation of the facility must cease immediately.

Additionally, IT IS ORDERED, that the application (File No. BR-20060608ADB) of Jason Konarz for renewal of license for expired Station DWQMA(AM), Marks, Mississippi, IS DISMISSED, and all pending related pleadings ARE DISMISSED.

IT IS FURTHER ORDERED that the September 22, 2010, Petition for Reconsideration IS DISMISSED.

Finally, it is imperative to the safety of air navigation that any prescribed painting and illumination of the tower for station DWQMA(AM) be maintained until the tower is dismantled. Accordingly, the owner of the tower where the transmitting antenna is located is required, pursuant to Section 303(q)²² of the Act, to maintain the tower in the manner prescribed by our Rules and the terms of the cancelled license.²³

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

²² 47 U.S.C. § 303(q).

²³ See 47 C.F.R. §§ 17.1 *et seq.* and 73.1213. See also *Streamlining the Commission's Antenna Structure Clearance Procedure*, Report and Order, 11 FCC Rcd 4272 (1995).