



Federal Communications Commission
Washington, D.C. 20554

August 13, 2013

In Reply Refer to:
1800B3-ATS

Mr. William Johnson
2545 NE 11th Place
Gainesville, FL 32601

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In re: **W227AV, Newberry, Florida**
Reach Communications, Inc. (Assignor)
Suncoast Radio, Inc. (Assignee)
Facility ID No. 145070
File No. BALFT-20130325ALR

Petition for Reconsideration

Dear Mr. Johnson and Counsel:

We have before us: 1) a "Petition to Issue Letter of Inquiry" ("Inquiry Petition"), filed by William Johnson ("Johnson"), seeking a determination that the license of Station W227AV, Newberry, Florida ("Station") has expired as a matter of law;¹ and 2) a "Petition for Consideration of Petitioner's Previously Filed Informal Objection Against the Assignor Reach Communications, Inc., and to Rescind the Staff Grant of the Instant Assignment Application Forthwith as a Matter of Law" ("Assignment Petition") also filed by Johnson, seeking review of the grant of the application for consent to assign the license of the Station ("Assignment Application"), from Reach Communications, Inc. ("Reach"), to Suncoast Radio, Inc. ("Suncoast").² For the reasons discussed below, we deny the Inquiry Petition and dismiss the Assignment Petition.

Background. On December 17, 2010, Johnson filed the Inquiry Petition, alleging that the Station was silent from February 2008 through October 9, 2010,³ and that its license had thus expired as a matter of law per Section 312(g) of the Communications Act of 1934, as amended ("Act").⁴ Johnson requests that the Commission issue a letter of inquiry to Reach so that it could determine whether the Station's license had expired.⁵ Johnson also alleges that Reach breached a programming agreement with

¹ Johnson filed the Inquiry Petition on December 17, 2010. Reach filed an Opposition on January 14, 2011. Johnson filed a Reply on February 25, 2011.

² Johnson filed the Assignment Petition on May 20, 2013. Reach filed an Opposition on May 28, 2013. Johnson filed a Reply on June 10, 2013.

³ Inquiry Petition at Affidavit of William Johnson.

⁴ 47 U.S.C. § 312(g).

⁵ Johnson also requests that the Commission "direct" Reach to file a renewal application for its license and certify its operational status. Inquiry Petition at 2. The Commission does not "direct" licensees to submit license renewal applications. *See Radio Training Network, Inc.*, Letter, 27 FCC Rcd 1471, 1474-75 (MB 2012) ("*Radio Training Network*") (denying Johnson's request that the Commission "direct" a licensee to file a renewal application). Rather, the Commission's Rules ("Rules") required Reach to file a renewal application by October 1, 2011, four

him and that his offer to buy the Station was refused due to his race.⁶ We will treat this as a request for Commission action pursuant to Section 1.41 of the Rules.⁷

Reach filed the Assignment Application on March 25, 2013. The Assignment Application appeared on public notice on March 28, 2013,⁸ triggering a 30-day period for filing petitions to deny or informal objections.⁹ No party filed a petition or objection, and the staff granted the Assignment Application on May 6, 2013.¹⁰ On May 20, 2013, Johnson filed the Assignment Petition, arguing that the Commission should not have granted the Assignment Application because it had not considered his Inquiry Petition.

Discussion. *Inquiry Petition.* Section 312(g) of the Act states, in relevant part, that “[i]f 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.”¹¹ Johnson’s Inquiry Petition and his supporting affidavit allege that he “monitored the [Station] on a continued basis for the last three (3) years” and that the Station was silent February 2008 through October 9, 2010.¹² Reach responds that the Station was never silent for more than one year.¹³ In support, Reach provides the sworn declaration, under penalty of perjury, of Chad Keiler (“Keiler”),¹⁴ and “Maintenance Logs” detailing power measurements for the Station during the alleged silent period.¹⁵

We find Johnson’s allegation that the Station was silent for more than one year to be without merit. Johnson does not provide any evidence to demonstrate that Section 312(g) applies here beyond his claim that he monitored the Station. Keiler’s sworn affidavit and accompanying Maintenance Logs, detailing the Station’s power levels throughout much of the period during which it was allegedly silent, strongly rebut Johnson’s allegation. We therefore find that the Station’s license has not expired pursuant to Section 312(g), and there is no need for the requested inquiry.

Johnson’s other arguments also are without merit. We note that Johnson previously raised similar and equally meritless arguments against another translator license.¹⁶ The Commission has consistently

months before its expiration date of February 1, 2012. *See* 47 C.F.R. § 73.3539(a). Reach did in fact file a timely renewal application on September 26, 2011. *See* File No. BRED-20110926ABI. The renewal application was unopposed and granted on January 27, 2012.

⁶ Inquiry Petition at 2.

⁷ 47 C.F.R. § 1.41.

⁸ *Public Notice*, Broadcast Applications, Report No. 27955 (MB Mar. 28, 2013) (“*Public Notice*”).

⁹ 47 C.F.R. § 1.939(a)(2).

¹⁰ *Public Notice*, Broadcast Applications, Report No. 47985 (MB May 9, 2013).

¹¹ 47 U.S.C. § 312(g).

¹² Inquiry Petition at Affidavit of William Johnson. Johnson fails to explain why he was attempting to acquire the Station’s license in October 2010 even though he believed that it had expired pursuant to Section 312(g). *See also Radio Training Network*, 27 FCC Rcd at 1472, n.10 (noting that Johnson attempted to acquire the license for FM Translator Station W244BC, Ocala, Florida, even though he alleged that station’s license had expired under Section 312(g)).

¹³ Inquiry Opposition at 1-2.

¹⁴ *See id.*, Declaration of Keiler.

¹⁵ *See id.*, Exhibit 1

¹⁶ *See Radio Training Network*, 27 FCC Rcd at 1471-72.

declined to consider private contractual disputes.¹⁷ We also find that Johnson has failed to make a *prima facie* case his unsuccessful efforts to enter into a contract for the sale of the Station or the subsequent sales agreement between Reach and Suncoast is tainted by racial discrimination.¹⁸

Assignment Petition. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts, not known or existing at the time of the petitioner's last opportunity to present such matters.¹⁹ Additionally, a petitioner who is not a party to the proceeding must state with particularity the manner in which its interests are adversely affected by the action taken, and show good reason why it was not possible to participate in the earlier stages of the proceeding.²⁰ Johnson does not show good reason why it was not possible to participate in the earlier stages of the proceeding. Johnson had ample constructive notice of the Assignment Application; the staff did not grant the application until nearly six weeks after release of the *Public Notice* accepting the application for filing.²¹ Still, Johnson did not tender the Assignment Petition until after the Assignment Application had been granted. Accordingly, Johnson is barred from participating in the proceeding at this late date, and the Assignment Petition is dismissed as procedurally defective.²²

Conclusion/Action. Accordingly, IT IS ORDERED that William Johnson's December 17, 2010, "Petition to Issue Letter of Inquiry" IS DENIED and his May 20, 2012, "Petition for Consideration of Petitioner's Previously Filed Informal Objection Against the Assignor Reach Communications, Inc., and to Rescind the Staff Grant of the Instant Assignment Application Forthwith as a Matter of Law" IS DISMISSED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Reach Communications, Inc.
Suncoast Radio, Inc.
Cary S. Tepper, Esq.

¹⁷ See *John F. Runner, Receiver (KBIF)*, Memorandum Opinion and Order, 36 RR 2d 773, 778 (1976) (the Commission is not the appropriate forum to resolve the contractual, property, and bankruptcy issues raised by petitioner); *Decatur Telecasting, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 8622 (1992).

¹⁸ See, e.g., *Radio Training Network*, 27 FCC Rcd at 1473-74 (Johnson fails to make *prima facie* case that sale of Station W244BC, Ocala, Florida, was tainted by racial discrimination).

¹⁹ See 47 C.F.R. § 1.106(c),(d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

²⁰ 47 C.F.R. § 1.106(b)(1).

²¹ See *Public Notice*, *supra* n.6.

²² See, e.g., *K255BE, Tulsa, OK*, Letter, 20 FCC Rcd 17193, 17195 (MB 2005) (citing *R&S Media*, Memorandum Opinion and Order and Order to Show Cause, 19 FCC Rcd 6300 (MB 2004)) (dismissing a petition for reconsideration because petitioners had ample constructive notice of the application's filing but did not file a petition to deny).