



Federal Communications Commission  
Washington, D.C. 20554

February 29, 2016

Three Angels Broadcasting Network, Inc.  
P.O. Box 220  
West Frankfort, IL 62896-0220

Re: K25MM-D Channel 25  
Omaha, NE  
File No. BLDTL-20121210ABX  
Facility ID No. 74377

Dear Counsel:

This is with respect to the Petition for Reconsideration ("Petition") filed by Three Angels Broadcasting, Inc., ("3ABN") seeking reconsideration of the Video Division's November 18, 2015 letter cancelling the digital license for low power television (LPTV) station K25MM-D, Omaha, NE ("Station") and deleting the call sign. For the reasons provided below, the Petition filed by Three Angels Broadcasting, Inc., is denied.

Background. The Station was originally licensed in 1998 on analog channel 61. Following the filing of a digital displacement application on March 8, 2011, the Station was granted a digital construction permit for channel 25 on October 4, 2011, and was subsequently licensed as a digital station on channel 25 on January 8, 2013. On February 20, 2014, 3ABN filed a request for Silent Authority indicating the station had been silent since February 10, 2014. Commission records, as well as representations by 3ABN in its Petition, indicate that the Station did not return to the air and remains silent today. In its November 18, 2015 letter, the Video Division found that the Station had been silent since February 10, 2014, and, pursuant to Section 312(g) of the Communications Act, the Station's license was cancelled and its call sign deleted.

On December 31, 2015, 3ABN filed its Petition requesting that, as a matter of equity and fairness, the cancellation of its license for the Station be rescinded and its digital license be reinstated. In its Petition, 3ABN states that the station's transmitter broke beyond repair and that it would have cost more than \$40,000 to install a new antenna and guide wire reinforcements. In addition, 3ABN cites to the Commission's recently released *Third Report and Order*<sup>1</sup> and argues that they should not "be required to construct and operate a new digital facility" since the Commission had extended the construction deadline for new digital LPTV and TV translator stations due to the threat of displacement in the incentive auction.

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<sup>1</sup> See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Third Report and Order and Fourth Notice of Proposed Rulemaking, FCC 15-175 (rel. December 17, 2015) (*Third Report and Order*). In that decision, the Commission concluded that the construction deadlines for digital construction permits held by analog low power television ("LPTV") and TV translator stations transitioning to digital; and for new digital LPTV and TV translator stations be extended to the new digital transition date or 51 months from the completion of the broadcast television incentive auction. *Id.* at paras. 7 n. 17 and 9. In adopting this deadline, the Commission cautioned stations to be mindful of the automatic cancellation provision in Section 312(g) of the Communications Act that reads, in part: "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...." *Id.* at para. 14 n. 37 citing 47 U.S.C. § 312(g).

Furthermore, 3ABN contends they “should not have to do what no other LPTV licensee is required to do, i.e., construct an expensive digital facility when every other LPTV licensee has been given a multi-year extension to do so.”

Discussion. We dismiss 3ABN’s Petition on procedural grounds. The Video Division’s letter was released on November 18, 2015, and pursuant to section 1.106(f) of the Commission’s rules,<sup>2</sup> the deadline for filing a petition for reconsideration was 30 days later or December 18, 2015. Because 3ABN filed its Petition on December 31, 2015, it was late filed and is dismissed.

Even if we to overlook this procedural defect, we still find no basis for granting reconsideration of our previous decision. Section 312(g) provides that the license of a broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires automatically at the end of that period. Under Section 312(g) the Commission can reinstate a license “to promote equity and fairness.”<sup>3</sup> However the Commission’s discretion under this provision is severely limited.<sup>4</sup>

While the Commission has exercised its authority to reinstate a license in only a few cases, each of which involved silence for compelling reasons beyond the licensee's control,<sup>5</sup> it has declined to reinstate licenses where failure to transmit a broadcast signal was due to the licensee's own actions, finances, and/or business judgments.<sup>6</sup> As acknowledged in its Petition, 3ABN was granted a digital construction permit for channel 25 and in January 2013 commenced digital operations as evidenced by the grant of the Station’s digital license on January 8, 2013. 3ABN’s Station subsequently went silent has remained so for more than 12 consecutive months. Although 3ABN provided an explanation for this period of silence, including an account of a broken transmitter along with the cost of installation and the Station’s difficult coordination with a new digital transmitter and a new transmitter site, its Petition fails to provide any evidence as to why, as a result of reasons beyond its control, it was unable to transmit a

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<sup>2</sup> 47 C.F.R. § 1.106(f).

<sup>3</sup> Section 312(g) takes affect by operation of law and the provision the Commission’s discretion is severely limited. *See In the Matter of A-O Broad. Corp.*, 23 FCC Rcd 603, 618 (2008).

<sup>4</sup> *In the Matter of A-O Broad. Corp.*, 23 FCC Rcd 603, 618 (2008) *citing OCC Acquisitions, Inc. v. FCC*, 64 Fed. Appx. at 790, *aff’d In re OCC Acquisitions, Inc. Radio Station WSTA-FM*, 17 FCC Rcd 6147 (2002).

<sup>5</sup> *See, e.g., V.I. Stereo Communications 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).

<sup>6</sup> *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617 (2008) (reinstatement not warranted when site loss was a result of 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, 10689 (MB 2010) (reinstatement not warranted where licensee chose not to operate financially struggling station while offering it for sale); *Kirby Young*, Letter, 23 FCC Rcd 35 (MB 2008) (reinstatement not where licensee not financially able to restore operations after transmitter failed).

broadcast signal within a 12-month period.<sup>7</sup>

In the Petition, 3ABN also contends that unlike other LPTV licensees, it was not afforded the extension of its construction deadline to the new transition date or 51 months after completion of the incentive auction. However, the new digital transition date adopted by the Commission in the *Third Report and Order* applied only for the digital transition of analog LPTV and TV Translator stations and for new digital LPTV and TV Translator stations, rendering 3ABN's underlying argument immaterial.<sup>8</sup> Further, Section 312(g) explicitly states that the license expiration occurs "*notwithstanding* any provision, term, or condition of the license to the contrary."<sup>9</sup> In addition, the Commission cautioned stations to be mindful of the automatic cancellation provision in Section 312(g) in the *Third Report and Order*.<sup>10</sup> Once transmission on channel 25 was no longer feasible due to unforeseen circumstances, 3ABN was required to resume operations and transmit a broadcast signal on channel 25 in order to prevent the automatic expiration of its license under Section 312(g). When 3ABN failed to do so, its license for channel 25 expired by operation of law.

Based upon the foregoing, we conclude that 3ABN has failed to present any facts or arguments that warrant reconsideration and reinstatement of the authorization for its license at Omaha, Nebraska. Accordingly, the Petition for Reconsideration filed by Three Angels Broadcasting, Inc., **IS HEREBY DENIED**.

Sincerely,

Hossein Hashemzadeh  
Deputy Chief, Video Division  
Media Bureau

cc: David M. Silverman, Esq.

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<sup>7</sup> 3ABN incorrectly asserts that "the Commission is well aware, the construction date for digital facilities has been postponed due to the upcoming auction and the likelihood of displacement requiring additional cost," however there are other actions 3ABN could have taken in order to transmit a signal before the automatic cancellation provision in Section 312(g) took effect. As a policy, the Video Division routinely grants Special Temporary Authority (STA) for television stations to operate at variance from a new transmitter site while the station facilitates its relocation transition. *See, e.g.*, STA request file no: BDSTA-20100715AJP for station KPST-DT, channel 44, Seattle, WA.

<sup>8</sup> *See Third Report and Order*, at para. 6 n. 17.

<sup>9</sup> 47 U.S.C. § 312(g) (emphasis added).

<sup>10</sup> *See Third Report and Order*, at para. 14 n. 37 citing 47 U.S.C. § 312(g).