



Federal Communications Commission
Washington, D.C. 20554

January 29, 2015

Robert D. Hill
Hill Broadcasting Company, Inc.
P.O. Box 131206
Birmingham, AL 35213

Re: DKTVG-TV, Grand Island, NE
Facility ID: 27220
File Nos. BLCT-19990126KG and BRCDT-
20140530ANP

Dear Mr. Hill:

This letter concerns a Petition for Reconsideration and Request for Reinstatement ("Petition") filed by Hill Broadcasting Company, Inc. ("Hill Broadcasting"), former licensee of DKTVG-TV, Grand Island, Nebraska (the "Station"). Hill Broadcasting requests that the Station's canceled license, call-sign and dismissed license renewal application be reinstated. For the reasons below we deny the Petition.

Background. By letter dated April 22, 2014, the Video Division ("Division") canceled the station's license and deleted its call sign for not having a valid construction permit and having been silent for more than one year. The Division's letter also noted that the Licensee failed to file a license renewal application in a timely manner.¹ Cancellation of the Station's license was placed on Public Notice on April 25, 2014.² No petition for reconsideration of this action was received within the thirty (30) day filing window.³ On May 30, 2014, Hill Broadcasting filed the above-captioned license renewal application for the Station. Not only was this application filed late, but on October 30, 2014, it was dismissed because, following cancellation of the Station's license, there was no valid authorization to be renewed.⁴ On December 4, 2014, Hill Broadcasting filed the Petition requesting that the Station's license, call-sign and license renewal application be reinstated.⁵

Discussion. First, we note the procedural deficiency of Hill Broadcasting's Petition. As stated above, a party has thirty (30) days to file a petition for reconsideration. Therefore, to the extent the Petition purports to request reconsideration of the cancellation of the Station's license, such a request is untimely. In order to have been timely filed, a petition for reconsideration was required to be filed with the Commission by May 26, 2014; no such petition was received. While the Petition could be construed as a petition or reconsideration of our dismissal of the Station's license renewal application, we cannot provide such relief. Reinstating the license renewal application would be futile as there is no longer a valid authorization to be renewed.

¹ Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Hill Broadcasting Company, Inc. (Apr. 22, 2014).

² Broadcast Actions, Report No. 48226, FCC Daily Digest (rel. Apr. 25, 2014).

³ See 47 C.F.R. § 1.106(f); 47 U.S.C. § 405(a).

⁴ Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, Media Bureau to Hill Broadcasting Company, Inc. (Oct. 30, 2014); Broadcast Actions, Report No. 48359, FCC Daily Digest (rel. Nov. 4, 2014).

⁵ Hill Broadcasting Inc., former licensee of DKTVG-TV, Grand Isle, NE (Facility ID 27720), Petition for Reconsideration and Request for Reinstatement of License Renewal (filed Dec. 4, 2014).

Were we to look past the procedural deficiencies of the Petition, we find that cancellation of the license was still warranted under Section 312(g) of the Communications Act of 1934, as amended (the "Act").⁶ Section 312(g) provides that the license of a broadcast station that fails to transmit a broadcast signal for any consecutive twelve month period expires automatically at the end of that period. Under Section 312(g), the Commission can only reinstate a license "to promote equity and fairness," however the Commission's discretion under this provision is severely limited.⁷ The Commission has exercised its authority to reinstate a license only for compelling reasons beyond the licensee's control;⁸ 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.⁹ Commission records indicate that the Station has failed to transmit a broadcast signal for more than one year. This was confirmed by Hill Broadcasting in its dismissed license renewal application where it certified that the station was currently not airing broadcast programming intended to be received by the public and that during the preceding license term the station had been silent for a consecutive twelve month period.¹⁰

Hill Broadcasting also contends in its Petition that our decision below was in error because the bankruptcy proceeding is still on going and therefore the Station's digital construction permit for channel 16 continues to be tolled. As we have previously stated, for purposes of Section 312(g) the expiration date of the construction permit is immaterial.¹¹ Even if our conclusion below that the bankruptcy proceeding had been terminated was incorrect, this would not have prejudiced Hill Broadcasting.¹² Section 312(g) of the Act explicitly states that the license expiration occurs "*notwithstanding any provision, term, or condition of the license to the contrary*" (*emphasis added*).¹³ The Commission has a long established policy of the "single, unified station license" as part of the digital conversion process.¹⁴ Hill Broadcasting's digital construction permit for channel 16 is considered to be part of its underlying license. In order to prevent the automatic expiration of its license under Section 312(g) Hill Broadcasting needed to transmit a broadcast signal, which it admittedly did not. As a result, not only did its underlying license for channel 16 expire, but so did its construction permit for channel 16, regardless of whether that construction permit was still subject to tolling.

⁶ 47 U.S.C. § 312(g).

⁷ See *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617 (2008) ("*A-O Broadcasting*") ("This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited.").

⁸ 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).

⁹ See, e.g., *A-O Broadcasting*, 23 FCC Rcd at 617 (2008) (reinstatement not warranted when site loss was a result of the 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 the licensee chose not to operate financially struggling station while offering it for sale); *Kirby Young*, Letter, 23 FCC Rcd 35 (MB 2008) (reinstatement not warranted where the licensee was not financially able to restore operations after transmitter failed).

¹⁰ FCC File No. BRCDDT-20140530ANP, Section IV, Questions 13 and 14.

¹¹ See *Spirit Productions, Inc.*, Letter, 28 FCC Rcd 8875, 8877 (MB 2013).

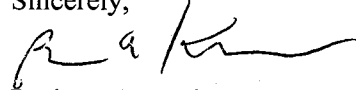
¹² For this reason, we do not need to reach a finding of fact as to whether the construction permit is still valid as Hill Broadcasting claims.

¹³ 47 U.S.C. § 312(g).

¹⁴ See *Remedial Steps For Failure to Comply With Digital Television Construction Schedule, Report and Order*, 18 FCC Rcd 7174, 7183-4 and n. 25 (2003).

Accordingly, for the reasons stated herein, the Petition for Reconsideration and Request for Reinstatement filed by Hill Broadcasting Company, Inc., former licensee of DKTVG-TV, Grand Island, Nebraska, **IS DENIED**.

Sincerely,

A handwritten signature in black ink, appearing to read 'B A Kreisman', written over the printed name.

Barbara A. Kreisman
Chief, Video Division
Media Bureau