COPY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re	)	DLED-199805 27 4D
	)	
Hyde County Board of Education	)	FILED/ACCEPTED
	)	
Noncommercial Educational FM Station WHYC(FM), Swan Quarter, North Carolina	)	FIN 28177 MAR 12 2010
	)	Federal Communications Commission Office of the Secretary

TO: Marlene H. Dortch, Secretary

For transmission to: Peter Doyle, Chief
Audio Division, Media Bureau

PETITION FOR RECONSIDERATION AND REINSTATEMENT OF LICENSE

1. Hyde County Board of Education ("the Board") hereby petitions for reconsideration of the decision of the Chief, Audio Division ("the Division"), cancelling the license and deleting the call sign of Noncommercial Educational FM Station WHYC(FM) ("the Station"), Swan Quarter, North Carolina. The Board is the licensee of the Station. The Division's action is reflected in a letter, dated February 3, 2010 [1], from Peter H. Doyle, Chief, to Mr. Gregory T. Todd, Superintendent. A copy of the Division's letter is included as Attachment A hereto. As set forth in detail below, the Division's action is based on an

[1] While the Division's letter bears the date of February 3, 2010, the cancellation of the Station's license was not reflected in a public notice until February 12, 2010. *See* Broadcast Actions, Report No. 47169, at page 2. It should be noted that, while that public notice bears the date of February 9, 2010, the Commission was closed on that date because of a blizzard. As stated in the Commission's Daily Digest released on February 12, 2010, all items dated for February 8-11 (*i.e.*, the dates on which the Commission was closed) "are released on February 12, 2010". The instant petition is therefore timely.

inaccurate factual assumption. Contrary to the Division's apparent belief, the Station has never failed to transmit a broadcast signal for any consecutive 12-month period.

2. According to the Division's letter, the Station "has been silent since September 5, 2006" and its license has therefore expired as a result of the operation of Section 312(g) of the Communications Act, 47 U.S.C. §312(g). [2] In fact, the Station operated repeatedly, if somewhat irregularly, throughout the period from September 5, 2006, through September 22, 2009. During that time, the station was ***not*** silent for any consecutive 12-month period. Thus, Section 312(g) had not been triggered and no automatic expiration has occurred.

3. To be sure, the Station has encountered a number of technical difficulties since September, 2006. [3] The Board, although not then represented by communications counsel, alerted the Commission of its situation repeatedly after advising the Commission that the Station had temporarily ceased operation in September, 2006. Those efforts are reflected, in part, in letters from the Commission to the Board dated June 1, 2007, and October 10, 2007, copies of which are included as Attachments B and C hereto. Indeed, as is clear from the latter of those two letters – which indicated that failure to resume operation by April 2, 2008 would result in

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[2] Section 312(g) provides that "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."

[3] The precise nature of the difficulties is not relevant here. It suffices to say that, as reflected in notices sent by the Board to the Commission, they included equipment failures, which were ultimately addressed by acquisition and installation of new equipment. Once the station did resume operation, a number of residents in the vicinity of the station's transmitter complained of interference to their television reception (also as the Board has advised the Commission). In an effort to respond to those complaints, the Board curtailed operation of the Station while it attempted to identify and remedy the problem – leading to further periods of non-operation of the Station.

automatic expiration of the license – the Commission was satisfied that the Station had operated at least as of April 1, 2007. [4]

4. Notwithstanding the station's technical difficulties, with the assistance of representatives of a nearby community college, the Board was able to, and did, operate the Station each day during the periods April 11-25, 2007, January 2-February 29, 2008, March 3-28, 2008, April 1-30, 2008, May 5, 2008, January 30-February 2, 2009, February 13, 2009, and September 3-22, 2009. Included as Attachment D hereto is the Declaration of Vanessa Bryant, General Manager of the Station, attesting to these dates of operation. Ms. Bryant's statements are based on transmitter logs maintained by the Station contemporaneously with its operation.

5. While the Board may arguably have been somewhat remiss in not notifying the Commission of the resumption of station operation at each particular stage of the process, the Board did advise the Commission of (a) its readiness to resume operation in December, 2007, (b) the fact that it had been operating prior to May 9, 2008, and (c) the fact that it was ready to operate in October, 2009. *See* Attachments E, F and G. Throughout this period, the Board was operating *pro se*, without the benefit of expert communications counsel to assist in its interactions with the Commission. Any failure to comply with the precise chapter and verse of the Commission's notification requirements was, at most, a matter of inadvertence and inexperience. The documentary record amply reflects that the Board sought at all times and in good faith to apprise the Commission of its situation.

6. In view of the foregoing, it is clear that the Station has never failed to broadcast for any consecutive 12-month period. Accordingly, the automatic expiration provision of

[4] The Division's letter (Attachment A hereto) states that the Station's license expired as a matter of law on "September 6, 2006". That is plainly wrong, since even the Division's letter acknowledges that the Station had ceased operation only as of September 5, 2006, *i.e.*, one day before the supposed date of automatic expiration.

Section 312(g) has ***not*** been triggered, and the Division's action must therefore be reconsidered and the Station's license reinstated. The Board hereby expressly requests the Commission to reinstate the Station's license promptly. [5]

Respectfully submitted,

/s/ Harry F. Cole
Harry F. Cole

Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street – 11th Floor
Arlington, Virginia 22209
703-821-0483
cole@fhhlaw.com

Counsel for the Hyde County Board of Education

March 12, 2010

[5] Simultaneously with the filing of this Petition, the Board is also submitting a request for Special Temporary Authority permitting it to resume operation pending disposition of the Petition. The Station is presently off-the-air because of the Bureau's February 3, 2010 letter cancelling the Station's license.

ATTACHMENT A

Letter, dated February 3, 2010,
from Peter H. Doyle, Chief, Audio Division to
Mr. Gregory T. Todd, Superintendent

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554
February 3, 2010

IN REPLY REFER TO:
1800B3-DW

FILED/ACCEPTED

MAR 12 2010

Federal Communications Commission
Office of the Secretary

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Gregory T. Todd, Superintendent
Hyde County Schools
1430 Main Street, P.O. Box 217
Swan Quarter, North Carolina 27885

In re: WHYC(FM), Swan Quarter, NC
Facility ID No. 28177
Silent Since September 5, 2006
Notification of Cancellation of
License and Deletion of Call
Letters

Dear Mr. Todd:

Our records indicate that radio station WHYC(FM), Swan Quarter, North Carolina, has been silent since September 5, 2006. As you are probably aware, Section 312(g) of the Communications Act, 47 U.S.C. Section 312(g), provides that "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."[1] Given the licensee's failure to file a resumption of operation, we must conclude that WHYC(FM)'s license has expired as a matter of law.

Accordingly, the Commission's public and internal databases will be modified to indicate that the broadcast license (BLED-19980527KD) for the referenced station EXPIRED as a matter of law, at 12:01 a.m. on September 6, 2006, and we HEREBY DELETE the station's call sign WHYC(FM).

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

[1] *See Implementation of Section 403(l) of the Telecommunications Act of 1996*, 11 FCC Rcd 16499 (1996); *see also* 47 C.F.R. Section 73.1740(c).

transmitting antenna is located is required, pursuant to 47 U.S.C. Section 303(q), to maintain the tower in the manner prescribed by our rules and the terms of the cancelled license. *See* 47 C.F.R. Sections 17.1 *et seq.* and 73.1213. *See also, Streamlining the Commission's Antenna Structure Clearance Procedure*, WT Docket No. 95-5, 11 FCC Rcd 4272 (1995).

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

ATTACHMENT B

Letter, dated June 1, 2007,
from H. Taft Snowdon, Supervisory Attorney,
to Mr. Gregory T. Todd, Superintendent

REC'D JUN 07 2007

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

IN REPLY REFER TO:
1800B3-ALM

FILED/ACCEPTED

June 1, 2007

MAR 12 2010

Federal Communications Commission
Office of the Secretary

Mr. Gregory T. Todd, Superintendent
Hyde County Schools
1430 Main Street, P.O. Box 217
Swan Quarter, North Carolina 27885

In re: WHYC(FM), Swan Quarter, NC
Facility ID No. 28177
Silent Since September 5, 2006
Request For Extension of
Special Temporary
Authority To Remain Silent

Dear Mr. Todd:

This letter concerns the request, filed on May 31, 2007, on behalf of Hyde County Board of Education ("Hyde County"), for extension of Special Temporary Authority ("STA") to FM Station WHYC to remain silent.

Commission records reflect that WHYC(FM) went silent on September 5, 2006, due to the failure of the station's transmitter. On September 11, 2006, Hyde County requested an STA for the station to remain silent while it explored methods of returning the station to the air. The STA was granted on October 13, 2006, and expired on April 13, 2007. Hyde County's request for an extension of its STA states that it has purchased and installed a new transmitter and that it will purchase and install an Emergency Alert System. Hyde County further indicates that it is hopes to return WHYC(FM) to the air within the next two months. Hyde County's request includes the appropriate certification regarding Section 5301 of the Anti-Drug Abuse Act of 1988.

Hyde County's request will be granted. Accordingly, Special Temporary Authority is granted to permit FM Station WHYC to remain silent not to exceed September 5, 2007. **Notwithstanding the grant of this Special Temporary Authority, the broadcast license for WHYC(FM) will automatically expire as a matter of law if broadcast operations do not**

commence by 12:01 a.m. on September 6, 2007.[1] *See* Section 312(g) of the Communications Act, 47 U.S.C. Section 312(g).

The station's silent status does not suspend the licensee's obligation to comply with all other relevant Commission rules, including the filing, when appropriate, of applications for renewal of broadcast license. Finally, we note that it is imperative to the safety of air navigation that any prescribed painting and illumination of the station's tower shall be maintained. *See* 47 C.F.R. Sections 17.6 and 73.1740(a)(4).

Sincerely,

H. Taft Snowdon
Supervisory Attorney
Audio Division
Media Bureau

[1] Notification of resumption of broadcast operations must either be electronically filed or mailed to:

Federal Communications Commission
Attn: 1800B3-ALM, Room 2-B450
445 12th Street, S.W.
Washington, D.C. 20554

ATTACHMENT C

Letter, dated October 10, 2007,
from H. Taft Snowdon, Supervisory Attorney,
to Mr. Gregory T. Todd, Superintendent

REC'D OCT 15 2007 TS

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

IN REPLY REFER TO:
1800B3-ALM

FILED/ACCEPTED

MAR 12 2010

Federal Communications Commission
Office of the Secretary

October 10, 2007

Mr. Gregory T. Todd, Superintendent
Hyde County Schools
1430 Main Street, P.O. Box 217
Swan Quarter, North Carolina 27885

In re: WHYC(FM), Swan Quarter, NC
Facility ID No. 28177
Silent Since September 5, 2006
Request For Special Temporary
Authority To Remain Silent

Dear Mr. Todd:

This letter concerns the request, filed on September 25, 2007, and supplemented on October 5, 2007, on behalf of Hyde County Board of Education ("Hyde County"), for Special Temporary Authority ("STA") to FM Station WHYC to remain silent.

Commission records reflect that WHYC(FM) went silent on September 5, 2006, due to the failure of the station's transmitter. On September 11, 2006, Hyde County requested an STA for the station to remain silent while it explored methods of returning the station to the air. The STA was granted on October 13, 2006, and expired on April 13, 2007. On May 31, 2007, Hyde County's requested an extension of its STA and indicated that it had purchased and installed a new transmitter; that it would purchase and install an Emergency Alert System; and that it hoped to return WHYC(FM) to the air within two months. The STA was granted on June 1, 2007, and expired on September 5, 2007. Hyde County's current request for an STA states that the new transmitter was installed and tested on March 21, 2007, but that two surge suppressors it received were not compatible with the transmitter and had to be returned. Hyde County further indicates that its consulting engineer retired and his replacement resigned shortly after he was hired. As a result, Hyde states that it has turned to another college for technical assistance in returning WHYC(FM) to the air. Hyde County also says that after installation of the station's amplifier, it was discovered that the station suffered damage from a lightning strike. Finally, Hyde County states that in order to reduce the risk of further lightning damage, it intends to install a wireless studio-transmitter link. Hyde County says that it expects to complete this project and have the station operational by April 2, 2008. Hyde County's request includes the appropriate certification regarding Section 5301 of the Anti-Drug Abuse Act of 1988.

Hyde County's request will be granted. Accordingly, Special Temporary Authority is granted to permit FM Station WHYC to remain silent not to exceed April 1, 2008.

Notwithstanding the grant of this Special Temporary Authority, the broadcast license for WHYC(FM) will automatically expire as a matter of law if broadcast operations do not commence by 12:01 a.m. on April 2, 2008.[1] *See* Section 312(g) of the Communications Act, 47 U.S.C. Section 312(g).

The station's silent status does not suspend the licensee's obligation to comply with all other relevant Commission rules, including the filing, when appropriate, of applications for renewal of broadcast license. Finally, we note that it is imperative to the safety of air navigation that any prescribed painting and illumination of the station's tower shall be maintained. *See* 47 C.F.R. Sections 17.6 and 73.1740(a)(4).

Sincerely,

H. Taft Snowdon
Supervisory Attorney
Audio Division
Media Bureau

[1] Notification of resumption of broadcast operations must either be electronically filed or mailed to:

Federal Communications Commission
Attn: 1800B3-ALM, Room 2-B450
445 12th Street, S.W.
Washington, D.C. 20554

ATTACHMENT D

Declaration of Vanessa Bryant

DECLARATION

Vanessa Bryant, under penalty of perjury, hereby declares the following to be true and correct:

1. I am the General Manager of Station WHYC(FM) ("the Station"), Swan Quarter, North Carolina, which is licensed to the Hyde County Board of Education ("the Board"). I am preparing this Declaration for submission to the Federal Communications Commission in connection with the Board's Petition for Reconsideration and Reinstatement relative to the cancellation of the Station's license and deletion of its call sign, as reflected in a letter from Peter H. Doyle, Chief, Audio Division, dated February 3, 2010.

2. According to Mr. Doyle's letter, the Commission assumes that, at some point during the period September 5, 2006-February 3, 2010, the Station did not operate for a consecutive 12-month period and, therefore, its license expired automatically. The Commission's assumption is incorrect. In fact, the Station operated daily during the periods April 11-25, 2007, January 2-February 29, 2008, March 3-28, 2008, April 1-30, 2008, May 5, 2008, January 30-February 2, 2009, February 13, 2009, and September 3-22, 2009. Operation on most of those days lasted from four-six hours, although on at least three days (February 1 and 29, 2008, and March 3, 2008) it operated for eight hours or more and on at least one occasion (September 3, 2009) it operated for only two hours. I know this because, as the General Manager, I am responsible for the Station's operation. As part of my responsibilities, I routinely maintain transmitter logs based on my contemporaneous observation of transmitter readings. Those logs – copies of which will be submitted to the Commission upon request – establish that the Station operated during the periods indicated above.

3. The Station's operation during the period September, 2006, to date has been somewhat irregular as a result of a number of difficulties which we have encountered, including equipment failure and complaints (from residents in the vicinity of the Station's transmitter) that the Station was interfering with their television reception. Even though the Board has not previously had the assistance of expert communications counsel, we made good faith efforts to keep the Commission apprised of our situation.

4. The Station is presently off the air as a result of the letter advising of the expiration of its license. The Board is seeking special temporary authority to recommence operation as soon as possible.

Vanessa Bryant

Vanessa Bryant

Date: 3-12-10

ATTACHMENT E

E-mail exchange, dated December 17, 2007,
between Carol Wolfe Evans, Executive Director Personnel,
and Allen Myers

From: "Allen Myers" <Allen.Myers@fcc.gov>
To: "Carol Evans" <cevans@hyde.k12.nc.us>
Date: 12/17/2007 11:38:34 AM
Subject: RE: Request

Carol:

You may resume operation with programming and authorized facilities at any time. Please electronically submit notification of resumption of operation when you do start broadcasting.

I'll be retiring on January 2nd. I'm copying the person assuming my work with this message.

Allen

-----Original Message-----
From: Carol Evans [mailto:cevans@hyde.k12.nc.us]
Sent: Monday, December 17, 2007 11:19 AM
To: Allen Myers
Subject: Request

Good morning Mr. Myers,
First I want to thank you for all of the help you've given me during this time of working on our radio station. We had requested a date of April 1, 2008 to go back on the air. We are ready now, if our testing continues to go well....and I have no reason to think otherwise. What do we need to do to go back on the air so that we are legal? (WHYC Radio Station in Swan Quarter, NC)

Carol Wolfe Evans
Executive Director Personnel/Public Info.
1430 Main Street
PO Box 217
Swan Quarter, NC 27885

CC: "Denise Williams" <Denise.Williams@fcc.gov>

ATTACHMENT F

Letter, dated May 9, 2008,
from Gregory T. Todd
to Marlene H. Dortch, Secretary

Hyde County Schools
1430 Main Street
P. O. Box 217
Swan Quarter, NC 27885
Office (252) 926-3281 Fax (252) 926-3083

BOARD OF EDUCATION
Thomas L. Whitaker, Chairman
John L. Mullen
David G. Tolson
Willie G. Shaw
Glenn Gibbs

Superintendent
Gregory T. Todd

May 9, 2008

FILED/ACCEPTED

MAR 12 2010

Federal Communications Commission
Office of the Secretary

Ms. Marlene H. Dortch
FCC Secretary
Federal Communications Commission
445 12th Street, S W Rm. TW-B204
Washington, DC 20554

Dear Ms. Dortch:

I am requesting that WHYC, 88.5 fm go silent from May 12, 2008 until February 1, 2009. The reason for this request is that when the radio station went back on the air January 2, 2008, its signal has interfered with the television signal of the families that live around the tower.

We have tried all the things we know to stop the interference and have not found a suitable solution. The local cable TV company had agreed to furnish the families complimentary cable TV for the local channels. However, when we went back on the air in January, the local cable TV company said they no longer provided service in this area. We have talked to DirecTV and Dish Network neither of them are willing to provide local channel service to these families without a paid subscription. This would cost the school system over $3,000 each year. With our limited budget, I am not willing to spend $3,000 of student instructional money so these adults can see television during the day.

We have changed our broadcast hours so it would not interfere with their television viewing in the early morning and evening. We have brought a digital converter box for them to use and they say that does not work. We have exhausted all the possible avenues we know to resolve this interference. Now the only thing I know to do is go silent until such time as all television all must go digital. Then our signal should not interfere with their television signal.

We have been advised by some people that this is not our problem and we should not let it brother us. We want to be better neighbor than that.

Please grant this request so a resolution to the problem may be found.

Thanks for your consideration.

Sincerely,

Gregory T. Todd





ATTACHMENT G

Letter, dated October 7, 2009,
from Gregory T. Todd
to Marlene H. Dortch, Secretary

Hyde County Schools
1430 Main Street
P. O. Box 217
Swan Quarter, NC 27885
Office (252) 926-3281 Fax (252) 926-3083

Superintendent
Gregory T. Todd

BOARD OF EDUCATION
Thomas L. Whitaker, Chairman
John L. Mullen
David G. Tolson
Willie G. Shaw
Glenn Gibbs

FILED/ACCEPTED

MAR 12 2010

Federal Communications Commission
Office of the Secretary

October 7, 2009

Ms. Marlene H. Dortch
FCC Secretary
Federal Communications Commission
445 12th Street, S W Rm. TW-B204
Washington, DC 20554

Dear Ms. Dortch:

I am requesting that WHYC, 88.5 fm be allowed to start rebroadcasting on its frequencies as soon as possible. I wrote you a letter dated May 9, 2008 stating that we would like to go silent for a period due to interference problems with local citizens' television reception. We had planned to go silent until such time as all the TV stations were broadcasting a digital signal. My letter of May 9, 2008 describes the problems we were having with the interference. In the meantime Congress did extend the digital broadcast deadline until June.

We have done some additional work to our radio station and are now ready to go back live with our broadcasts. Could you please advise me as to how and when we may resume our broadcasts.

Since WHYC is a radio station that is owned and operated by the local school system and is used to teach high school students the techniques of broadcasting I would hope that we would be able to resume our broadcasting in the near future so that our students would have a live learning environment.

Please advise me on this matter.

Sincerely,

Gregory T. Todd