

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D. C. 20554

In re	)	
	)	
<b>SILVER STATE BROADCASTING, LLC</b>	)	File No. 0000093597
<b>K276GW, Las Vegas, Nevada</b>	)	Facility ID # 203222
	)	
For Construction Permit	)	

TO:           Honorable Marlene H. Dortch  
              Secretary of the Commission

ATTN:       Chief, Audio Division,  
              Media Bureau

**REPLY TO OPPOSITION TO  
PETITION FOR DECLARATORY RULING, OR,  
IN THE ALTERNATIVE, PETITION FOR RECONSIDERATION,  
AND TO REINSTATE CONSTRUCTION PERMIT**

Silver State Broadcasting, LLC (SSB) hereby respectfully submits this Reply to the April 29, 2020 "Opposition to Petition for Declaratory Ruling, or, in the Alternative, Petition for reconsideration, and to Reinstate Construction Permit" filed by Chinese Voice of Golden City (CVGC), former licensee of deleted LPFM Station DKQLS-LP, Las Vegas, Nevada. In so doing, the following is shown:

1. We're not quite sure how CVGC can oppose SSB's Petition with a straight face, as its counsel received a letter ruling on April 16, 2020 from the Chief, Audio Division, Media Bureau which ordered another LPFM station not constructed in

accordance with its construction permit to cease operations immediately. **Cease Operations Letter to Foundation for a Beautiful Life and James L. Winston, Esq.** relative to DKQEK-LP, Cupertino, California (unreported) (Exhibit A).

2. The April 16, 2020 ruling in DKQEK-LP makes it clear that LPFM stations that lose operating authority by any order other than denial of license renewal are obligated to cease operations immediately. Counsel for CVGC was certainly on notice of this position as of April 29, 2020 when the Opposition pleading was filed in this matter.

3. The Audio Division's position in the DKQEK-LP matter is consistent with recent precedents which hold that when authority to operate a broadcast station has expired, the former licensee is obligated to cease broadcast operations immediately. **Avenal Educational Services, Inc. (KAAX)**, DA 20-468, 35 FCC Rcd - (MB, May 1, 2020); **William L. Zawila**, DA 20-130, 2020 WL 762730 (MB, February 6, 2020); **Dan J. Alpert, Esq. (KCIY, Helendale, California)**, 30 FCC Rcd 4898 (MB, May 21, 2015). The only exception to this rule is where a license renewal application has been denied; Section 307(c)(3) of the Communications Act of 1934, as amended, extends the license until the denial of license renewal becomes a final order. That is not the case with CVGC's DKQLS-LP, Las Vegas, Nevada.

4. To permit SSB's K284CW to operate on 103.1 MHz while CVGC exhausts its administrative and judicial remedies is consistent with the Commission's policy on permitting parties to close license assignment transactions prior to Commission consent having become final and unappealable. In ***Improvement Leasing Company***, 73 FCC 2d 676, 684, ¶19 (1979), the Commission *en banc* wrote:

There are, thus, no specific legal barriers to the closing of an assignment or transfer application prior to the release of a written opinion, and we believe that such activity should not be barred on policy grounds. Applicants who close an approved transaction prior to the release of a written document or prior to administrative or judicial review of the decision exercise their independent business judgment and proceed at their own risk with the full understanding that they may ultimately be required to undo the transaction. Such consummation in no way prejudices the Commission's ability to take any remedial action it may consider necessary at a future date and in no way prejudices the rights of petitioners or other objecting parties to seek administrative review or judicial appeal of the Commission's action. [emphasis supplied; footnote omitted]

5. In accord with this position is ***Amendment of Section 1.420(f) of the Commission's Rules Concerning Automatic Stay of Certain Allocations Orders***, 10 FCC Rcd 7753, ¶8 and n. 5 (FCC *en banc* 1995), where the Commission stated:

Elimination of the automatic stay, while allowing licensees to commence construction and operation of their modified facilities, would not prejudice final resolution of any challenges to the initial staff decision. Licensees who proceed, where feasible, to construct and operate new facilities in instances in which a petition for reconsideration or application for review is pending bear the risk of an adverse final decision, and must take whatever steps are necessary to comply with the final order. Moreover, the Commission retains the authority to impose a stay in individual cases where circumstances warrant [see 47 C.F.R. §§ 1.102(b), 1.106(n), and 1.115(h)] [emphasis supplied]

6. SSB would be operating on 103.1 MHz at its own risk, and SSB would comply with any future Commission or judicial order that might reinstate CVGC's authority to operate an LPFM station on 103.1 MHz.

**WHEREFORE**, it is urged that this Petition for Declaratory Ruling, etc. **BE GRANTED** and that the construction permit for FM Translator Station K276GW **BE IMMEDIATELY REINSTATED**.

Respectfully submitted,

**SILVER STATE BROADCASTING, LLC**

A handwritten signature in black ink, appearing to read "D. Kelly", written over a horizontal line.

By \_\_\_\_\_  
Dennis J. Kelly  
Its Attorney

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DATED AND FILED: May 4, 2020



**Federal Communications Commission**  
**Washington, D.C. 20554**  
 April 16, 2020

In Reply Refer To:  
 1800B3-IB

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**In re: DKQEK-LP, Cupertino, CA**  
 Facility ID No. 196541

File Nos. BLL-20180518APL; BMPL-  
 20180705AAQ

**Cease Operation Order – Response Required**

Dear Foundation and Counsel:

It has come to our attention that deleted station DKQEK-LP, Cupertino, California (Station), for which Foundation for a Beautiful Life (FBL) formerly held a construction permit, but currently has no authorization from the Commission to broadcast, is currently broadcasting with unauthorized facilities. Pursuant to section 301 of the Communications Act of 1934, as amended<sup>1</sup> (Act), FBL is **REQUIRED TO CEASE OPERATION IMMEDIATELY** and **TO NOTIFY** the Commission within one day of the date of this letter that it has done so. In addition, in any application filed with the Commission in the next ten years, FBL and each of its principals (Ling Gao, Hong Yan and Lee Song) must disclose that they engaged in unlicensed operation of a broadcast station in violation of section 301 of the Act.<sup>2</sup>

Our records show that on May 18, 2018, FBL filed a license application<sup>3</sup> incorrectly certifying that it had constructed at an authorized location (*i.e.*, at the PG&E Site) although it had in fact constructed at an unapproved location about 3.5 miles away (*i.e.*, at the Apollo Site). After the issue was disclosed in objections, FBL filed a modification application on July 5, 2018,<sup>4</sup> claiming to have made an “honest mistake” and seeking authority for the facilities actually constructed. The Media Bureau (Bureau) dismissed the Modification Application on September 28, 2018 as defective.<sup>5</sup> The Bureau also found that

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> *Id.*; see also 47 CFR § 73.854 and *E-String Wireless, Ltd.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 133, 139-40, para. 18 (MB 2016).

<sup>3</sup> See File No. BLL-20180518APL (rec. May 18, 2018) (License Application).

<sup>4</sup> See File No. BMPL-20180705AAQ (rec. July 5, 2018) (Modification Application).

<sup>5</sup> Foundation for a Beautiful Life, Letter Order (MB Sept. 28, 2018).

the construction permit expired on its own terms and had forfeited upon failure to complete authorized construction prior to permit expiration. On March 28, 2019, the Bureau dismissed the License Application and also dismissed as moot a petition for reconsideration with respect to the Modification Application.<sup>6</sup> In connection with those filings, FBL argued that the Station would bring a "critically needed resource" to the area's Chinese-American community. On October 7, 2019, the Bureau denied reconsideration with respect to the License Application and dismissed a further reconsideration request with respect to the Modification Application.<sup>7</sup> FBL filed an Application for Review (AFR) on November 6, 2019, which remains pending.<sup>8</sup>

The record reflects that FBL is currently operational despite the fact that it did not properly file a request for Special Temporary Authority (STA) to operate. Instead, on March 12, 2020, counsel filed a supplement to the AFR, entitled "Application for Special Temporary Authority to Resume Broadcasting" (Supplement). The Supplement expressed FBL's desire to broadcast pandemic-related information in Mandarin to the Chinese American community. Because of the defective manner of the filing, its existence was not known to the Commission staff that reviews STA requests submitted for proposed radio operations. On March 28, 2020, FBL filed another supplement to the AFR, this time entitled "Notice of Resumption of Broadcasting Due to Pandemic." Therein, FBL stated that on March 27, 2020, having waited two weeks for a response to the Supplement, FBL independently decided to return to the air in order to provide health-related information to the Chinese American community. FBL claimed that despite having ceased broadcasting for nearly two years, it had a "right" to resume under several alternative theories including program test authority, lack of finality of dismissal of its applications, the Commission's grant of many pandemic-related waivers in other circumstances, and section 307(c) of the Act which allows license renewal applicants to operate after license expiration until final action on a license renewal application. The March 28, 2020 filing included a letter of support from Dave Cortese, County of Santa Clara Supervisor. FBL filed another supplement to its AFR on April 3, 2020, transmitting letters of support from the National Diversity Coalition and City of Cupertino Councilmember Liang Chao.

It appears that FBL is broadcasting from the Apollo Site with the unauthorized facilities specified in its dismissed Modification Application. Contrary to FBL's claim, it has no "right" to do so. FBL's position is specious. For example, its reliance on section 307(c)(3) of the Act is unfounded because that provision concerns license renewal applications; the Station has never been licensed and therefore has not filed, and could not lawfully file, such an application. Similarly, FBL has never had valid program test authority to operate at any site, and could only have qualified to operate under program test authority if FBL had constructed the Station at the PG&E Site prior to expiration of its construction permit in accordance with the terms and conditions of that permit.<sup>9</sup> With respect to lack of finality of the Commission's actions on FBL's License Application and Modification Application, the Commission's rules (Rules) specifically provide that an order of the Commission's staff under delegated authority takes effect, notwithstanding lack of finality, upon release of the document or upon release of a public notice announcing the action taken.<sup>10</sup> The Commission has held that support of local officials and alleged public

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<sup>6</sup> Foundation for a Beautiful Life, Letter Order (MB Mar. 28, 2019).

<sup>7</sup> Foundation for a Beautiful Life, Letter Order (MB Oct. 7, 2019).

<sup>8</sup> FBL, Application for Review (rec. Nov. 6, 2019).

<sup>9</sup> See 47 CFR §§ 73.801, 73.1620(a).

<sup>10</sup> *Id.* § 1.102(b). The effectiveness of any such order may be stayed, but no stay has ever been issued in this proceeding with respect to any of FBL's authorizations or applications.

safety benefits do not justify unauthorized broadcasts.<sup>11</sup> Such broadcasts could result in adverse action including, for example, substantial monetary forfeitures.

Accordingly, to the extent that FBL's three supplements to the AFR can be considered as defective requests for STA, they ARE DISMISSED and otherwise DENIED. FBL MUST IMMEDIATELY CEASE operation of the Station AND WITHIN ONE DAY OF THE DATE OF THIS LETTER NOTIFY the Commission that it has done so. Please file the notification electronically with an e-mail copy to [Irene.Bleiweiss@fcc.gov](mailto:Irene.Bleiweiss@fcc.gov).

IT IS FURTHER ORDERED that Foundation for a Beautiful Life (and its principals, Ling Gao, Hong Yan, and Lee Song, as well as any entity in which any of them holds an interest that is within the scope of the ownership and control disclosure standard set forth in 47 CFR § 1.2112) SHALL SUBMIT a copy of this Letter Order with every application that any of them file with the Commission for a period of ten years of the date from this Letter Order.

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>11</sup> See *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603 (2008), *recon. dismissed*, *Barry D. Wood*, Letter Order, 24 FCC Rcd 13666 (MB 2009).


## **CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing "Reply, etc." has been served by both e-mail and first-class United States mail, postage prepaid, on this 4<sup>th</sup> day of May, 2020 upon the following:

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Additionally, I have today provided a PDF file of this pleading to the following e-mail addresses:

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Dennis J. Kelly