

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Brantley Broadcast Associates LLC)	
)	
Licensee of W237FK)	Facility Id: 201661
Opp, Alabama)	File No. 0000201205
)	
And)	
)	
Christopher W. Johnson)	
)	
Licensee of WAMI,)	Facility Id: 66212
Opp, Alabama)	

To: Chief, Media Bureau
Chief, Audio Division
Chief, Enforcement Bureau

Petition to Deny Minor Modification of License

Marble City Media, LLC, (“Marble City Media”)¹ by its attorneys, hereby files this Petition to Deny the minor modification application filed on September 29, 2022, by Brantley Broadcast Associates LLC (“Brantley Broadcast”). Brantley Broadcast seeks to move FM translator, W237FK, from Opp, Alabama to Tuskegee, Alabama. As set forth herein, Brantley Broadcast’s application should be denied and its license for W237FK should be revoked.

As evident from documents in the Commission’s files, Brantley Broadcast has failed to comply with the specific terms of its license authorization, which requires common ownership of

¹ Marble City Media is the licensee of WAUE(FM) (fac id 198812), W283DQ (fac id 152415), Waverly, AL; WSGN(FM) (fac id 704), Stewartville, AL, W293CQ (fac id 141538), Sylacauga, AL; WFXO(AM) (fac id 60762), W242CP (fac id 150688), Alexander City, AL; WYEA (AM) (fac id 70638), W262DI (fac id 201058) Sylacauga, AL; and WRFS(FM) (fac id 190442), Rockford, AL.

FM translator W237FK, and WAMI(AM). Brantley Broadcast is not only in violation of the explicit terms of the W237FK license, but also its prior construction permit, as well as the Commission's *Revitalization of the AM Radio Service First Report and Order*,² and Section 73.3517 of the Commission's rules. Specifically, Brantley Broadcast, in Auction 99, which was open only to AM licensees, received a construction permit for FM translator W237FK, claiming it was in the process of acquiring the license for WAMI(AM). As a cross-service translator, W237FK must in perpetuity be commonly owned with AM station WAMI, which at the time of Auction 99 was licensed to Christopher W. Johnson ("Johnson") and which is still licensed to Johnson some four years later. Accordingly, Brantley Broadcast's license to operate translator W237FK should be revoked.

Background

On August 1, 2017, Johnson, as assignor, filed an application with the Commission to assign WAMI(AM) to Brantley Broadcast, (File No. BAL-20170801AIN). Brantley Broadcast is owned by Paul H. Reynolds, Joan K. Reynolds, Lee S. Reynolds, and Lyle S. Reynolds (collectively the "Reynolds Family"). Simultaneously with the filing of the assignment application, Brantley Broadcast on August 1, 2017, filed a Form 349 contingent application for a translator construction permit ("CP") for Calera, Alabama. (File No. BNPFT - 20170801AJA, which it modified in BNPFT-20171219AED.) See attached Exhibit 1. The application as filed and modified was expressly contingent on the approval of the assignment application to Brantley Broadcast and requirements of the AM Revitalization docket and Section 73.3517(a)³ which

² *In re Revitalization of the AM Radio Service*, 30 FCC Rcd 12145 (2015).

³ Section 73.3517(a) states: Upon filing of an application for the assignment of a license or construction permit, or for a transfer of control of a licensee or permittee, the proposed assignee or transferee may, upon payment of the processing fee prescribed in Subpart G, [Part 1 of this chapter](#), file applications in its own name for authorization to make changes in the facilities to be

required consummation of an assignment. In the translator application, Brantley Broadcast included the following statement:

PURSUANT TO THE PUBLIC NOTICE OF JULY 13, 2017, DA 17668 AND NOTE 37 OF THE FIRST REPORT AND ORDER IN REVITALIZATION OF THE AM RADIO SERVICE, MB DOCKET NO. 13-249, 30 FCC RCD 12145, 12152, BRANTLEY BROADCAST ASSOCIATES, LLC, THE ASSIGNEE IS FILING THIS APPLICATION ON A CONTINGENT BASIS UNDER SECTION 73.3517(A) OF THE COMMISSIONS RULES WITH THE LICENSEES/ASSIGNORS CONSENT. SEE ATTACHED LETTER. THE PENDING FORM 314 ASSIGNMENT APPLICATION WAS FILED ON AUGUST 1, 2017 (BAL-20170801AIN).

THE ASSIGNEE RECOGNIZES THAT THE GRANT OF THE TRANSLATOR APPLICATION IS CONTINGENT ON THE GRANT OF THE PENDING ASSIGNMENT APPLICATION.

Brantley Broadcast's contingent FM translator application for a construction permit for a new FM translator was granted on January 17, 2018. Among other provisions and conditions in the CP (File No. BNPFT-20171219AEO) (See attached Exhibit 2), the CP has the following condition:

Grant of this authorization is conditioned on the common ownership, in perpetuity, of this facility and the specified AM primary station. Any violation of this condition shall result in the rescission of the grant of this authorization and the dismissal, with prejudice of the associated application and, if applicable, cancellation of the associated construction permit.

Just before the CP expired, Bentley Broadcast filed an application for license to cover the CP on July 9, 2021, with an amendment filed on March 30, 2022, (File No. 0000152159). The license was granted on March 30, 2022. The license, (see attached [Exhibit 3](#)), contains the same condition as the CP:

assigned or transferred contingent upon approval and consummation of the assignment or transfer. (emphasis added).

Grant of this authorization is conditioned on the common ownership, in perpetuity, of this facility and the specified AM primary station. Any violation of this condition shall result in the rescission of the grant of this authorization and the dismissal, with prejudice of the associated application and, if applicable, cancellation of the associated construction permit.

The WAMI assignment application from Johnson to Brantley Broadcast was granted over four years ago on March 1, 2018, but was never consummated. The Assignment grant Form 732 (see attached Exhibit 4) reflects in paragraph 5 that “consummation shall be completed within 90 days of the date hereof and notice provided to the Commission.” (emphasis added). Further, “Upon furnishing the Commission with such written notice, this transaction will be considered completed for all purposes related to the above described station.” FCC Form 732 also provides: “The Commission's consent to the above is based on the representations made by the applicants that the statements contained in, or made in connection with, the application are true and that the undertakings of the parties upon which this transaction is authorized will be carried out in good faith.” As discussed below, the Reynolds Family, not for the first time, has not been truthful with the FCC staff.

On June 6, 2017, WAMI filed an application to change WAMI’s city of license from Opp to Maplesville, Alabama, located approximately 130 miles from Opp, (File No. BP-20170627ABG). At the time, the Reynolds Family through the entity Valleydale Broadcasting, LLC was the licensee of WZNN (FM). The Reynolds Family wanted to move WZNN(FM) from Maplesville, Alabama to Holtville, Alabama, (File No. BPH-20170627ABF). As the move to Holtville would leave Maplesville without a station providing local service which would be contrary to Commission policy, the Reynolds Family sought to move WAMI to Maplesville to ensure continuation of local service. The WZNN(FM) modification application stated:

THE ATTACHMENT IN EXHIBIT 27 DEMONSTRATES THAT THE PROPOSED FACILITY WILL PROVIDE HOLTVILLE, ALABAMA WITH THAT COMMUNITY'S FIRST LOCAL SERVICE. MAPLESVILLE, ALABAMA WILL CONTINUE TO RECEIVE LOCAL SERVICE FROM THE CONTINGENTLY-FILED FCC FORM 301 OF WAMI(AM), 880 KHZ. SEE THE ATTACHED SECTION 307(B) SHOWING. SEE ALSO THE CONTINGENT APPLICATIONS AGREEMENT.

On November 15, 2017, by letter, the Chief, Audio Division determined, in addition to other misrepresentations and violations of the FCC's rules, that WZNN had been silent for more than a year and that its license had expired as a matter of law under Section 312(g) of the Communications Act, as amended, see attached [Exhibit 5](#), and reconsideration was denied, see attached [Exhibit 6](#). The FCC Form 301 application to move WAMI some 130 miles to Maplesville was granted on November 13, 2017, File No. 20170627ABG, and a CP issued, but the WAMI Maplesville facility was never built, and WAMI has remained licensed to Opp. On March 23, 2022, Johnson filed a Form 301 application to move WAMI from Opp approximately 140 miles to Jackson's Gap, Alabama, File No. BP-20220318AAI. The FCC granted the WAMI modification application on July 7, 2022. The proposed operations of the WAMI modification at Jackson's Gap would provide service in the market area of one of Marble City Media's stations. WAMI filed for a Silent STA on March 29, 2022, file no BLSTA-20220329, which stated WAMI planned to remain silent until implementation of the expected grant of the pending application BP-20220318AAI to relocate to Jackson Gap. The Reynolds Family filed a Silent STA for W237FK on March 30, 2022, referencing the WAMI Silent STA, and that the translator will need to be silent as well. On September 29, 2022, Brantley Broadcasting filed the above captioned application to move, W237FK from Opp, Alabama to Tuskegee, Alabama.⁴

⁴ The application references a waiver request. The document states in full: "See the attached letter in the legal certifications section." The letter, file name "crap letter.pdf" is the November

The Reynolds Family’s Translator, W237FK, License Should be Revoked Because it was Acquired in Violation of the FCC’s AM Revitalization Order.

The Reynolds Family acquired the CP for W237FK in AM Auction 99. The Auction 99 Public Notice, DA 17-668 released, July 13, 2017,⁵ made it clear that “this filing window opportunity is available to either an existing AM station licensee or, if applicable, a proposed assignee of such an AM station, consistent with the provisions of section 73.3517(a) of the Commission’s rules.” Further, as noted above, this requirement was set forth in the *Revitalization of the AM Radio Service First Report and Order*. The grant of the CP and license for W237FK was specifically “conditioned on the common ownership, in perpetuity, of this facility and the specified AM primary station.” The Reynolds Family was further put on notice in the both the W237FK CP and license that “Any violation of this condition shall result in the rescission of the grant of this authorization and the dismissal, with prejudice of the associated application and, if applicable, cancellation of the associated construction permit.” Nonetheless, the Reynolds Family did not close on the purchase of WAMI. The grant of the assignment and the authorization to close expired years ago. Simply stated, the Reynolds Family gamed the FCC’s rules to acquire and operate a translator they were not qualified to own and have continued to manipulate the system to keep it licensed in their name.

The Reynolds Family has a history of abusing the FCC’s rules and has repeatedly demonstrated a lack of candor when dealing with the FCC. In the WZNN case (see Exhibits 5

17, 2017, letter from the Chief, Audio Division deleting WZNN(FM), Maplesville, Alabama and ordering the Reynolds family to submit a copy of the letter with every facilities application it files with the Commission for a period of five years. See Exhibit 5. Other than the “Crap Letter” no waiver is included in the application. Accordingly, Marble City Media reserves the right to file a supplement to this petition if Brantley Broadcast submits a waiver request.

⁵ “AM only” auctions for cross-service FM translators were authorized by the *Revitalization of the AM Radio Service First Report and Order* referenced above.

and 6), the FCC found that the Reynolds Family had made “a false claim of licensed operation.” The Bureau concluded that “Fraudulent intent can be found from ‘the fact misrepresentation coupled with proof that the party making it had knowledge of its falsity.’” See attached [Exhibit 6](#). (footnote omitted). The ink was hardly dry on the FCC’s WZNN letter when the Reynolds Family, doing business as Shelby Broadcast Associates, LLC, was back before the FCC under questionable circumstances. See [Exhibit 7](#). In the FCC letter deleting the license of W234AP, Mooresville, Alabama and the denial of reconsideration, [Exhibit 8](#), the Chief, Audio Division found that W234AP was silent for over a year and that the Reynolds Family had made false claims concerning the station’s tower site. On the question of whether the Commission should exercise its discretion to extend or reinstate the license, the Chief, Audio Division concluded that the Reynolds Family had “unclean hands” which “closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief – can be applied in appropriate circumstances in administrative proceedings, and [the Reynolds Family’s] conduct in this proceeding mitigates against any ‘equity and fairness’ finding in its favor.” See [Exhibit 7](#) (footnotes omitted).

In this case concerning the above captioned translator, the Reynolds Family once again stands before the FCC with unclean hands. The Reynolds Family has a history of not being truthful or forthcoming with the FCC. The Reynolds Family was counting on the FCC not noticing that it had never closed on its proposed purchase of WAMI.⁶ When considering the

⁶ The Reynolds Family hoped its transgressions would not be discovered by the Commission. This has occurred before in the matters referenced above in this Petition. In the Commission’s Letter denying a Petition for Partial Reconsideration (Exhibit 6) the Commission noted on page 2 that Valleydale Broadcasting “never explained its actions and only notified the Commission of its unauthorized operation after Frontdoor filed its opposition comments.” Similarly, in the denying the petition for reconsideration of cancellation of the Mooresville translator W243AP license, (Exhibit 8) the Commission noted on page 3 “that SBA did not acknowledge it operated

character qualifications of licensees, the Commission concerns itself with “misconduct which demonstrates the proclivity of an applicant or licensee to deal truthfully with the Commission and to comply with [its] rules and policies.”⁷ The Reynolds Family has on three separate occasions demonstrated that it cannot be relied on to be truthful or to comply with the FCC’s rules. The evidence dictates that the Commission should take stronger action as to Brantley Broadcast and its Reynolds Family owners.

Conclusion

Accordingly, Marble City Media respectfully requests that Brantley Broadcast’s improperly acquired license for W237FK, Opp, Alabama be revoked.

Respectfully Submitted,

/s/M. Scott Johnson
M. Scott Johnson
sjohnson@fccworld.com

/s/Arthur V. Belendiuk
Arthur V. Belendiuk
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Smithwick & Belendiuk, P.C.
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October 5, 2022

the Station from an unauthorized site until after the Bureau had already noticed the discrepancy and issued the LOI.”

⁷ *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1190-91 (1986).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via email mail to the following:

Ms. Holly Saurer
Chief, Media Bureau
Federal Communications Commission
45 L. Street, NE
Washington, DC 20554

holly.saurer@fcc.gov

Mr. Albert Shuldiner
Chief, Audio Division
Federal Communications Commission
45 L. Street, NE
Washington, DC 20554

albert.shuldiner@fcc.gov

Mr. Loyaan Egal
Acting Chief, Enforcement Bureau
Federal Communications Commission
45 L. Street, NE
Washington, DC 20554

loyaan.egal@fcc.gov

Paul Reynolds
Brantley Broadcast Associates LLC
PO Box 3831174
Birmingham, AL 35238

paulr@reynoldstechnical.com

EXHIBIT 1

<input type="radio"/> Major Change in licensed facility <input type="radio"/> Minor Change in licensed facility	<input type="radio"/> Minor Modification of construction permit <input type="radio"/> Major Amendment to pending application <input type="radio"/> Minor Amendment to pending application
a. File number of original construction permit: -	
If an amendment, submit as an Exhibit a listing by Section and Question Number the portions of the pending application that are being revised. [Exhibit 1]	

NOTE: In addition to the information called for in this section, an explanatory exhibit providing full particulars must be submitted for each question for which a "No" response is provided. See General Instruction J.

Section II - Legal

1.	Certification. Applicant certifies that it has answered each question in this application based on its review of the application instructions and worksheets. Applicant further certifies that where it has made an affirmative certification below, this certification constitutes its representation that the application satisfies each of the pertinent standards and criteria set forth in the application instructions and worksheets.	<input type="radio"/> Yes <input type="radio"/> No	
2.	Applicant is: <input type="radio"/> an individual <input type="radio"/> a limited partnership <input type="radio"/> other	<input type="radio"/> a general partnership <input type="radio"/> a not-for-profit corporation	<input type="radio"/> a for-profit corporation <input type="radio"/> a limited liability company (LLC/LC)
	a. If "other", describe nature of applicant in an Exhibit. [Exhibit 2]		
3.	a. Applicant certifies that it is not the licensee or permittee of the commercial primary station being rebroadcast and that neither it nor any parties to the application have any interest in or connection with the commercial primary station being rebroadcast. See 47 C.F.R. Section 74.1232(d).	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A See Explanation in [Exhibit 3]	
	b. Applicant certifies that the FM translator's (a) 1mV/m coverage contour does not extend beyond the protected contour of the commercial FM primary station to be rebroadcast, or (b) entire 1mV/m coverage contour is contained within the greater of either: (i) the 2 mV/m daytime contour of the commercial AM primary station to be rebroadcast, or (ii) a 25-mile radius centered at the commercial AM primary station's transmitter site.	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A See Explanation in [Exhibit 4]	
<p>NOTE: If No to a. and b., and no waiver has been requested in an Exhibit, this application is unacceptable for filing. See 47 C.F.R. Section 74.1232(d).</p> <p>If Yes to (a) and No to (b) applicant is prohibited from receiving any support, before or after construction, either directly or indirectly from the commercial primary station being rebroadcast or from any person or entity having any interest whatsoever, or any connection with the primary FM station. Interested and connected parties include group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members and business associates. See 47 C.F.R. Section 74.1232(e).</p>			

4.	The applicant, if for a commercial FM translator station with a coverage contour extending beyond the protected contour of the commercial primary station being rebroadcast, certifies that it has not received any support, before or after constructing, directly or indirectly, from the licensee/permittee of the primary station or any person with an interest in or connection with the licensee or permittee of the primary station, except for technical assistance as provided for under 47 C.F.R. Section 74.1232(e).	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A See Explanation in [Exhibit 5]
5.	For applicants proposing translator rebroadcasts that are not the licensee of the primary station, the applicant certifies that written authority has been obtained from the licensee of the station whose programs are to be retransmitted. If No, this application is unacceptable for filing.	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
6.	Character Issues. Applicant certifies that neither applicant nor any party to the application has or has had any interest in or connection with: a. any broadcast application in any proceeding where character issues were left unresolved or were resolved adversely against the applicant or party to the application; or b. any pending broadcast application in which character issues have been raised.	<input type="radio"/> Yes <input type="radio"/> No See Explanation in [Exhibit 6]
7.	Adverse Findings. Applicant certifies that, with respect to the applicant, any party to the application, and any non-party equity owner in the applicant, no adverse finding has been made, nor has an adverse final action been taken by any court or administrative body in a civil or criminal proceeding brought under the provisions of any law related to the following: any felony; mass media-related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination. If the answer is "No," attach as an Exhibit a full disclosure concerning the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), and a description of the disposition of the matter. Where the requisite information has been earlier disclosed in connection with another application or as required by 47 C.F.R. Section 1.65, the applicant need only provide: (i) an identification of that previous submission by reference to the file number in the case of an application, the call letters of the station regarding which the application or Section 1.65 information was filed, and date of filing; and (ii) the disposition of the previously reported matter.	<input type="radio"/> Yes <input type="radio"/> No See Explanation in [Exhibit 7]
8.	Alien Ownership and Control. Applicant certifies that it complies with the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments.	<input type="radio"/> Yes <input type="radio"/> No See Explanation in [Exhibit 8]
9.	Program Service Certification. Applicant certifies that it is cognizant of and will comply with its obligations as a Commission licensee to present a program service responsive to the issues of public concern facing the station's community of license and service area.	<input type="radio"/> Yes <input type="radio"/> No
10.	Local Public Notice. Applicant certifies compliance with the public notice requirements of 47 C.F.R. Section 73.3580.	<input type="radio"/> Yes <input type="radio"/> No
11.	Auction Authorization. If the application is being submitted to obtain a construction permit for which the applicant was the winning bidder in an auction, then the applicant certifies, pursuant to 47 C.F.R. Section 73.5005(a), that it has attached an exhibit containing the information required by 47 C.F.R. Sections 1.2107(d), 1.2110(i), 1.2112(a) and 1.2112(b), if applicable. An exhibit is required unless this question is inapplicable.	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A See Explanation in [Exhibit 9]

12. Anti-Drug Abuse Act Certification. Applicant certifies that neither applicant nor any party to the application is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.	<input type="radio"/> Yes <input type="radio"/> No
13. Equal Employment Opportunity (EEO). If the applicant proposes to employ five or more full-time employees, applicant certifies that it is filing simultaneously with this application a Model EEO Program Report on FCC Form 396-A.	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations. I hereby waive any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and request an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

Typed or Printed Name of Person Signing	Typed or Printed Title of Person Signing
Signature	Date

SECTION III - PREPARER'S CERTIFICATION

I certify that I have prepared Section III (Engineering Data) on behalf of the applicant, and that after such preparation, I have examined and found it to be accurate and true to the best of my knowledge and belief.

Name	Relationship to Applicant (e.g., Consulting Engineer)	
Signature	Date	
Mailing Address		
City	State or Country (if foreign address)	Zip Code
Telephone Number (include area code)	E-Mail Address (if available)	

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

Section III-A - Engineering

TECHNICAL SPECIFICATIONS

Ensure that the specifications below are accurate. Contradicting data found elsewhere in this application will be disregarded. All items must be completed. The response "on file" is not acceptable.

TECH BOX

1. Channel: 293								
2. Primary Station:								
<table border="1"> <tr> <td>Facility ID Number</td> <td>Call Sign</td> <td>City</td> <td>State</td> </tr> <tr> <td>66212</td> <td>WAMI</td> <td>MAPLESVILLE</td> <td>AL</td> </tr> </table>	Facility ID Number	Call Sign	City	State	66212	WAMI	MAPLESVILLE	AL
Facility ID Number	Call Sign	City	State					
66212	WAMI	MAPLESVILLE	AL					

3. Delivery Method (Select One):
 Off-air Microwave Satellite Via Other

4. Antenna Location Coordinates: (NAD 27)
 Latitude:
 Degrees 33 Minutes 7 Seconds 8 North South
 Longitude:
 Degrees 86 Minutes 48 Seconds 49 West East

5. Antenna Structure Registration Number:
 Not Applicable Notification filed with FAA

6. Antenna Location Site Elevation Above Mean Sea Level: 189 meters

7. Overall Tower Height Above Ground Level: 123 meters

8. Height of Radiation Center Above Ground Level: 111 meters(H) 111 meters(V)

9. Effective Radiated Power: 0.25 kW(H) 0.25 kW(V)

10. Transmitting Antenna:
 Before selecting Directional "Off-the-Shelf", refer to "Search for Antenna Information" under [CDBS Public Access](http://licensing.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm) (http://licensing.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm). Make sure that the Standard Pattern is marked Yes and that the relative field values shown match your values. Enter the Manufacturer (Make) and Model exactly as displayed in the Antenna Search.
 Nondirectional Directional Off-the Shelf Directional composite
 Manufacturer SCA Model CA5-FM/CP/RM
 Rotation: 150degrees No Rotation

Degrees	Value	Degrees	Value	Degrees	Value	Degrees	Value	Degrees	Value	Degrees	Value
0		10		20		30		40		50	
60		70		80		90		100		110	
120		130		140		150		160		170	
180		190		200		210		220		230	
240		250		260		270		280		290	
300		310		320		330		340		350	
Additional Azimuths											

[Relative Field Polar Plot](#)

11. **For FM Boosters and Fill-in translators only.**

a. **FM Fill-in translators.** Applicant certifies that the FM translator's (a) 1mV/m coverage contour does not extend beyond the protected contour of the commercial FM primary station to be rebroadcast, or (b) entire 1mV/m coverage contour is contained within the greater of either: (i) the 2 mV/m daytime contour of the commercial AM primary station to be rebroadcast, or (ii) a 25-mile radius centered at the commercial AM primary station's transmitter site.

Yes No
 N/A
 See Explanation in [Exhibit 10]

b. **FM Boosters.** Applicant certifies that the FM Booster station's service contour is entirely within the primary station's protected coverage contour.

Yes No
 N/A
 See Explanation in [Exhibit 11]

12.	<p>Interference. The proposed facility complies with all of the following applicable rule sections. Check all that apply:</p> <p>Overlap Requirements. <input type="checkbox"/> a) 47 C.F.R. Section 74.1204 Exhibit Required.</p> <p>Television Channel 6 Protection. <input type="checkbox"/> b) 47 C.F.R. Section 74.1205 with respect to station(s) Exhibit Required.</p>	<p><input type="radio"/> Yes <input type="radio"/> No</p> <p>See Explanation in [Exhibit 12]</p> <p>[Exhibit 13]</p> <p>[Exhibit 14]</p>
13.	<p>Unattended operation. Applicant certifies that unattended operation is not proposed, or if this application proposes unattended operation, the applicant certifies that it will comply with the requirements of 47 C.F.R. Section 74.1234.</p>	<p><input type="radio"/> Yes <input type="radio"/> No</p> <p>See Explanation in [Exhibit 15]</p>
14.	<p>Multiple Translators. Applicant certifies that it does not have any interest in an application or an authorization for an FM translator station that serves substantially the same area and rebroadcasts the same signal as the proposed FM translator station.</p>	<p><input type="radio"/> Yes <input type="radio"/> No</p> <p>See Explanation in [Exhibit 16]</p>
15.	<p>Environmental Protection Act. Applicant certifies that the proposed facility is excluded from environmental processing under 47. C.F.R. Section 1.1306 (i.e., the facility will not have a significant environmental impact and complies with the maximum permissible radiofrequency electromagnetic exposure limits for controlled and uncontrolled environments). Unless the applicant can determine compliance through the use of the RF worksheets in Appendix A, an Exhibit is required.</p> <p>By checking "Yes" above, the applicant also certifies that it, in coordination with other users of the site, will reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic exposure in excess of FCC guidelines.</p>	<p><input type="radio"/> Yes <input type="radio"/> No</p> <p>See Explanation in [Exhibit 17]</p>
<p>PREPARER'S CERTIFICATION ON PAGE 4 MUST BE COMPLETED AND SIGNED.</p>		

Section IV -- Noncommercial Educational Point System Factors - -New and Major Change Applications on Reserved Channels Only (used to select among mutually exclusive applications for new stations and major modifications) **NOTE:** Applicants will not received any additional points for amendments made after the close of the application filing window.

<p>Preliminary Matter: Does this application provide fill-in service only?</p>	<p><input type="radio"/> Yes <input type="radio"/> No</p>
<p>1. Established Local Applicant: Applicant certifies that for at least the 24 months immediately prior to application, and continuing through the present, it qualifies as a local applicant pursuant to 47 C.F.R. Section 73.7000, that its governing documents require that such localism be maintained, and that it has placed documentation of its qualifications as an</p>	<p><input type="radio"/> Yes <input type="radio"/> No</p>

established local applicant in a local public inspection file and has submitted to the Commission copies of the documentation.	
2. Diversity of Ownership: Applicant certifies that the principal community (city grade) contour of the proposed station does not overlap the principal community contour of any other authorized radio station (including AM, FM, and non-fill-in FM translator stations, commercial or noncommercial) in which any party to the application has an attributable interest as defined in 47 C.F.R. Section 73.3555, that its governing documents require that such diversity qualification in a local public inspection file and has submitted to the Commission copies of the documentation.	<input type="radio"/> Yes <input type="radio"/> No
3. State-wide Network: Applicant certifies that (a) it has NOT claimed a credit for diversity of ownership above; (b) it is one of the three specific types of organizations described in 47 C.F.R. Section 73.7003(b)(3); and (c) it has placed documentation of its qualifications in a local public inspection file and has submitted to the Commission copies of the documentation.	<input type="radio"/> Yes <input type="radio"/> No
4. Technical Parameters: Applicant certifies that the numbers in the boxes below accurately reflect the new (increased) area and population that its proposal would serve with a 60 dBu signal measured in accordance with the standard predicted contours in 47 C.F.R. Section 73.713(c) and that it has documented the basis for its calculations in the local public inspection file and has submitted copies to the Commission. Major modification applicants should include the area of proposed increase only (exclude the station's existing service area). (Points, if any, will be determined by FCC)	<input type="radio"/> Yes <input type="radio"/> No
New (increased) area served in square kilometers (excluding areas of water):	
Population served based on the most recent census block data from the United States Bureau of Census using the centroid method:	
Tie Breakers	
5. Existing Authorizations. a. By placing a number in the box, the applicant certifies that it and any persons and organizations with attributable interests in the applicant pursuant to 47 C.F.R. Section 73.3555 have, as of the date filing, existing authorizations for the following number of relevant broadcast stations. FM translator applicants should count all attributable full service radio stations, AM and FM, commercial and noncommercial and FM translator stations other than fill-in stations. (number of attributable commercial and non-commercial licenses and construction permits) b. (Fill-in Applicants Only.) By placing a number in the box, the applicant certifies that, in addition to the station identified in 5(a), it and any persons and organizations with attributable interests in the applicant pursuant to 47 C.F.R. Section 73.3555 have, as of the date filing, existing authorizations for the following number of FM translators.	
6. Pending Applications. a. By placing a number in the box, the applicant certifies that it and any persons and organizations with attributable interests in the applicant pursuant to 47 C.F.R. Section 73.3555 have, as of the date filing, pending applications for new or major changes to the following number of relevant broadcast stations, AM and FM, commercial and non-commercial and FM translator stations other than fill-in stations. (number of attributable commercial and non-commercial applications) b. (Fill-in Applicants Only.) By placing a number in the box, the applicant certifies that, in addition to the station identified in 5(a), it and any persons and organizations with attributable interests in the applicant pursuant to 47 C.F.R. Section 73.3555 have, as of the date of filing, existing authorizations for the following number of FM translators.	

Section VI -- Certification

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations. I hereby waive any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and request an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

Typed or Printed Name of Person Signing PAUL REYNOLDS	Typed or Printed Title of Person Signing MEMBER
Signature	Date 08/01/2017

Exhibits

Exhibit 1

Description: EXHIBIT 1

PURSUANT TO THE PUBLIC NOTICE OF JULY 13, 2017, DA 17668 AND NOTE 37 OF THE FIRST REPORT AND ORDER IN REVITALIZATION OF THE AM RADIO SERVICE, MB DOCKET NO. 13-249, 30 FCC RCD 12145, 12152, BRANTLEY BROADCAST ASSOCIATES, LLC, THE ASSIGNEE IS FILING THIS APPLICATION ON A CONTINGENT BASIS UNDER SECTION 73.3517(A) OF THE COMMISSIONS RULES WITH THE LICENSEES/ASSIGNORS CONSENT. SEE ATTACHED LETTER. THE PENDING FORM 314 ASSIGNMENT APPLICATION WAS FILED ON AUGUST 1, 2017 (BAL-20170801AIN).

THE ASSIGNEE RECOGNIZES THAT THE GRANT OF THE TRANSLATOR APPLICATION IS CONTINGENT ON THE GRANT OF THE PENDING ASSIGNMENT APPLICATION.

Attachment 1

Description

[Consent to file from WAMI licensee](#)

EXHIBIT 2



United States of America
FEDERAL COMMUNICATIONS COMMISSION
FM BROADCAST TRANSLATOR/BOOSTER STATION
CONSTRUCTION PERMIT

Authorizing Official:

Official Mailing Address:

BRANTLEY BROADCAST ASSOCIATES LLC
P.O. BOX 383174
BIRMINGHAM AL 35238

James D. Bradshaw
Deputy Chief
Audio Division
Media Bureau

Facility Id: 201661

Call Sign: W292FO

Permit File Number: BNPFT-20171219AEO

Grant Date: January 17, 2018

This permit expires 3:00 a.m.
local time, 36 months after the
grant date specified above.

Commission rules which became effective on February 16, 1999, have a bearing on this construction permit. See Report & Order, Streamlining of Mass Media Applications, MM Docket No. 98-43, 13 FCC RCD 23056, Para. 77-90 (November 25, 1998); 63 Fed. Reg. 70039 (December 18, 1998). Pursuant to these rules, this construction permit will be subject to automatic forfeiture unless construction is complete and an application for license to cover is filed prior to expiration. See Section 73.3598.

Name of Permittee: BRANTLEY BROADCAST ASSOCIATES LLC

Principal community to be served: AL-CALERA

Primary Station: WAMI (AM) , Frequency 880 kHz, OPP, AL

Via: Other

Frequency (MHz): 106.3

Channel: 292

Hours of Operation: Unlimited

Antenna Coordinates: North Latitude: 33 deg 07 min 08 sec
West Longitude: 86 deg 48 min 49 sec

Transmitter: Type Accepted. See Sections 73.1660, 74.1250 of the Commission's Rules

Antenna type: (directional or non-directional): Directional

Major lobe directions 60
(degrees true):

	Horizontally Polarized Antenna:	Vertically Polarized Antenna:
Effective radiated power in the Horizontal Plane (kw):	0.25	0.25
Height of radiation center above ground (Meters):	111	111
Height of radiation center above mean sea level (Meters):	300	300

Antenna structure registration number: 1035617

Overall height of antenna structure above ground (including obstruction lighting if any) see the registration for this antenna structure.

Special operating conditions or restrictions:

- 1 Program tests will not commence with the facilities authorized by this construction permit until program tests for WAMI(AM), Maplesville, AL, commence with the facilities authorized in BP-20170627ABG. Furthermore, a license will not be granted to cover the facilities authorized by this translator construction permit until a license is granted to WAMI(AM) to cover the facilities authorized by BP-20170627ABG.
- 2 Prior to commencing program test operations, FM Translator or FM Booster permittee must have on file at the Commission, FCC Form 350, Application for an FM Translator or FM Booster Station License, pursuant to 47 C.F.R. Section 74.14.
- 3 The permittee/licensee in coordination with other users of the site must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic fields in excess of FCC guidelines.

Special operating conditions or restrictions:

- 4 Pursuant to Revitalization of the AM Radio Service, Notice of Proposed Rule Making, 28 FCC Rcd 15221, 15227, para. 14 (2013), and First Report and Order, 30 FCC Rcd 12145, 12154, para. 17 and n. 43 (2015), the permittee and any successor in interest (licensee, transferee, or assignee) shall be subject to the following restrictions: (1) this facility may only, in perpetuity, be used to rebroadcast the authorized facilities of the AM primary station set forth in this construction permit, except that it may also originate nighttime programming if the AM primary station set forth in this construction permit is not authorized regular nighttime service, and then only during periods of the broadcast day when the primary AM station is not regularly authorized to operate; (2) if the AM primary station is operating with reduced facilities, this cross-service FM translator facility may only operate if its coverage contour conforms to the limits set forth in 47 CFR Section 74.1201(g) as applied to the reduced facilities of the AM primary station; (3) the authorization for this facility may not be assigned or transferred except in conjunction with the primary AM station set forth in this construction permit; and (4) if the authorization of the AM primary station set forth in this construction permit is rescinded, revoked, surrendered, subject to special temporary authorization (STA) to remain silent, or is otherwise suspended from operation, the authorization of this cross-service FM translator station shall likewise be rescinded, revoked, surrendered, silent for the duration of the AM primary station's STA to remain silent, or suspended from operation. Minor modifications of this authorization are permitted, provided that the translator meets all of the preceding conditions. Grant of this authorization is conditioned on the common ownership, in perpetuity, of this facility and the specified AM primary station. Any violation of this condition shall result in the rescission of the grant of this authorization and the dismissal, with prejudice, of the associated application and, if applicable, cancellation of the associated construction permit.

*** END OF AUTHORIZATION ***

EXHIBIT 3

Federal Communications Commission

FM TRANSLATOR STATION LICENSE

Permittee

BRANTLEY BROADCAST ASSOCIATES
LLC
PO Box 383174
BIRMINGHAM, AL, 35238

Call Sign	Facility ID
W237FK	201661

File Number 0000152159	This License Covers Construction Permit No. 0000114527	
Filing Date 03/30/2022	Grant Date 03/30/2022	Expiration Date 04/01/2028

Community of License City: OPP State: AL	Frequency (MHz) 95.3	Station Channel 237	Station Class D
Primary Station WAMI OPP AL		Via Wired	
Hours of Operation: Unlimited			

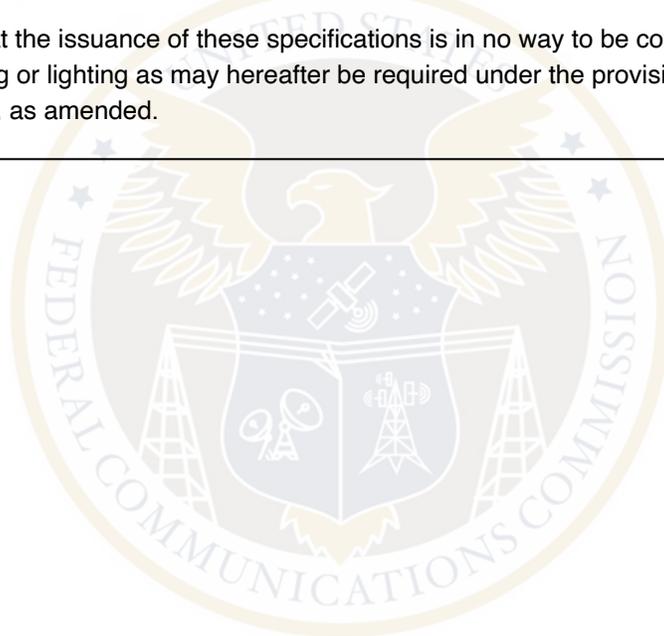
Transmitter Certified for compliance per 74.1250 or verified for compliance per 73.1660 of the Commission's Rules.	Transmitter Output Power 0.014 kW
Antenna Type Non-Directional	Antenna Coordinates (NAD 83) Latitude 31-18-32.4 N Longitude 86-15-22.8 W
Antenna Description BEXT,TFLBDI,1.0	
Major Lobe Directions 160	

	Horizontally Polarized Antenna	Vertically Polarized Antenna
Effective Radiated Power in the Horizontal Plane (kW)		0.010
Height of Radiation Center Above Ground (meters)		10
Height of Radiation Center Above Mean Sea Level (meters)		109.0
Height of Radiation Center Above Average Terrain (meters)		

Antenna Structure Registration Number Not Required	Overall Height of Antenna Structure Above Ground (meters) 20
---	---

Obstruction Marking and Lighting Specifications for Antenna Structure

It is expressly understood that the issuance of these specifications is in no way to be considered as precluding additional or modified marking or lighting as may hereafter be required under the provisions of Section 303 (q) of the Communications Act of 1934, as amended.



Special Operating Conditions or Restrictions

The permittee/licensee in coordination with other users of the site must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic fields in excess of FCC guidelines.

- Grant of this license application is conditioned upon the continuous operation of the licensed facility for the twelve-month period following grant, including specifically: (a) operation of the station in accordance with the station's FCC authorization with (i) an antenna mounted on a pole, tower, or other structure that is attached to a durable, non-movable structure, (ii) the antenna connected to a permanent power source, and (iii) if located on public property, advance approval by a written governmental authorization; and (b) operation of the station each day in accordance with the FCC's rules for minimum operating schedule (47 C.F.R. § 73.1740(a) for FM stations, 47 C.F.R. § 73.561(a) for NCE-FM stations and 47 C.F.R. § 73.850(b) for LPFM stations) without recourse to the procedures set out in 47 C.F.R. §§ 73.1740(a)(4), 73.561(d), and 73.850(d). The failure of the station to operate in compliance with any of the foregoing requirements will result in the rescission of this grant, dismissal of the license application and the forfeiture of the associated construction permit pursuant to 47 C.F.R. § 73.3598(e) unless the licensee rebuts the resulting presumption that the authorized facilities were temporarily constructed. Evidence of non-temporary construction could include, but is not limited to, station logs, utility bills, lease documents, photographs of the installed antenna/transmitter/studio equipment, and other relevant documentation.
- Pursuant to Revitalization of the AM Radio Service, Notice of Proposed Rule Making, 28 FCC Rcd 15221, 15227, para. 14 (2013), and First Report and Order, 30 FCC Rcd 12145, 12154, para. 17 and n. 43 (2015), the permittee and any successor in interest (licensee, transferee, or assignee) shall be subject to the following restrictions: (1) this facility may only, in perpetuity, be used to rebroadcast the authorized facilities of the AM primary station set forth in this authorization, except that it may also originate nighttime programming if the AM primary station set forth in this authorization is not authorized regular nighttime service, and then only during periods of the broadcast day when the primary AM station is not regularly authorized to operate; (2) if the AM primary station is operating with reduced facilities, this cross-service FM translator facility may only operate if its coverage contour conforms to the limits set forth in 47 CFR Section 74.1201(g) as applied to the reduced facilities of the AM primary station; (3) the authorization for this facility may not be assigned or transferred except in conjunction with the primary AM station set forth in this authorization; and (4) if the authorization of the AM primary station set forth in this authorization is rescinded, revoked, surrendered, subject to special temporary authorization (STA) to remain silent, or is otherwise suspended from operation, the authorization of this cross-service FM translator station shall likewise be rescinded, revoked, surrendered, silent for the duration of the AM primary station's STA to remain silent, or suspended from operation. Minor modifications of this authorization are permitted, provided that the translator meets all of the preceding conditions. Grant of this authorization is conditioned on the common ownership, in perpetuity, of this facility and the specified AM primary station. Any violation of this condition shall result in the rescission of the grant of this authorization and the dismissal, with prejudice, of the associated application and, if applicable, cancellation of the associated construction permit.

Subject to the provisions of the Communications Act of 1934, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this license, the licensee is hereby authorized to use and operate the radio transmitting apparatus herein described.

This license is issued on the licensee's representation that the statements contained in licensee's application are true and that the undertakings therein contained so far as they are consistent herewith, will be carried out in good faith. The licensee shall, during the term of this license, render such broadcasting service as will serve the public interest, convenience, or necessity to the full extent of the privileges herein conferred.

This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequency designated in the license beyond the term hereof, nor in any other manner than authorized herein. Neither the license nor the right granted hereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934. This license is subject to the right of use or control by the Government of the United States conferred by Section 606 of the Communications Act of 1934.



EXHIBIT 4



**UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

(FOR CHIEF, AUDIO DIVISION, MEDIA BUREAU)

DATE: 03/01/2018

<input checked="" type="checkbox"/> CONSENT TO ASSIGNMENT: <input type="checkbox"/> CONSENT TO TRANSFER:	FROM: CHRISTOPHER W JOHNSON
	TO: BRANTLEY BROADCAST ASSOCIATES LLC
Licensee/Permittee: (for transfer only)	

<u>CLASS</u>	<u>SIGN</u>	<u>CALL</u>	<u>FACILITY</u>	<u>FILE#</u>	<u>STATION</u>	<u>LOCATION</u>	<u>AUXILIARY</u>
			<u>ID</u>				<u>STATIONS</u>
AM	WAMI		66212	BAL-20170801AIN	OPP,	AL	ALL CURRENTLY AUTHORIZED AUXILIARY STATIONS

Assignors and Transferors are reminded that 47 CFR § 73.3615 requires that a biennial ownership report be filed by each licensee of a commercial or non-commercial AM, FM, TV, Class A, or LPTV broadcast station and any entity that holds an attributable interest in the licensee pursuant to § 73.3555 as of October 1 of each odd-numbered year. The Media Bureau has previously announced that the 2017 biennial ownership reports for both commercial and non-commercial stations must be filed between December 1, 2017, and March 2, 2018. Accordingly, for any assignment or transfer of control applications consummated after October 1, 2017, but on or before March 2, 2018, the proposed Assignor/Transferor must nonetheless file a biennial Form 323 or Form 323-E by the extended March 2, 2018, deadline. Ownership information should be reported as of October 1, 2017. Please note, this biennial ownership filing requirement is in addition to the post-consummation report, which is required of the Assignee or Transferee. See 47 CFR § 73.3615.

Commission records reflect that station WAMI (AM); Fac. ID No. 66212 has been off the air since June 23, 2017. Therefore, the license for this station will expire as a matter of law if the station does not resume broadcast operations by June 24, 2018, 12:01AM. See Pub. Law No. 104-104, 110 Stat. 56, Sec. 403(1), codified at 47 U.S.C. Section 312(g)

Under authority of the Communications Act of 1934, as amended, the consent of the Federal Communications Commission is hereby granted to the transaction indicated above.

The Commission's consent to the above is based on the representations made by the applicants that the statements contained in, or made in connection with, the application are true and that the undertakings of the parties upon which this transaction is authorized will be carried out in good faith.

The actual consummation of voluntary transactions shall be completed within 90 days from the date hereof, and notice in letter form thereof shall promptly be furnished to the Commission by the seller or buyer showing the date the acts necessary to effect the transaction were completed. Upon furnishing the Commission with such written notice, this transaction will be considered completed for all purposes related to the above described station(s).

FCC Form 323, Ownership Report, must be filed within 30 days after consummation, by the licensee/permittee or assignee.

ADDITIONAL REQUIREMENTS FOR ASSIGNMENTS ONLY:

Upon consummation the assignor must deliver the permit/license, including any modifications thereof to the assignee.

It is hereby directed that, upon consummation, a copy of this consent be posted with the station authorization(s) as required by the Commission's Rules and Regulations.

The assignee is not authorized to construct nor operate said station(s) unless and until notification of consummation in letter form has been forwarded to the Commission.

EXHIBIT 5



Federal Communications Commission
Washington, D.C. 20554

NOV 15 2017

In reply refer to: 1800B3-VM

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Paul H. Reynolds
Valleydale Broadcasting, LLC
2711 Pelham Parkway
Pelham, AL 35124

In re: **WZNN(FM), Maplesville, AL**
Facility ID No. 183374
Notice of license expiration

Dear Mr. Reynolds:

We have before us a request for Special Temporary Authority (STA) for Station WZNN(FM), Maplesville, Alabama (Station), licensed to Valleydale Broadcasting, LLC (VB) requesting authority to operate using a temporary site and facility.¹ Upon review of the record before us, we find that the Station's license expired as a matter of law under Section 312(g) of the Communications Act of 1934, as amended (Act).² Accordingly, we cancel the Station's license, delete the Station's call sign and dismiss the STA request as moot.

Background. On February 16, 2016, VB filed an STA to remain silent, stating that the Station went silent on November 25, 2015 because it had been "forced to dismantle its transmitter location due to a disagreement with the property owner."³ VB requested an extension of STA on August 29, 2016, again noting its lost transmitter site as its reason for silence.⁴ On November 22, 2016, VB filed a notice of Resumption of Operations, stating that the Station had resumed operation using its "licensed facility."

On June 27, 2017, VB filed an application for construction permit, proposing a minor change of facilities.⁵ Frontdoor Broadcasting, LLC (Frontdoor) opposed this application, alleging that the Station had not been operating for over a year.⁶ Frontdoor includes a letter from the Station's tower site owner stating that VB removed its tower in November 2015, and stopped paying rent for the site at that time. The site owner also stated that the electric meter at the site indicated that electrical service had been stopped in 2015 and had not resumed. Finally, the site owner indicated that she had observed a nearby site being used to operate a radio station.⁷

¹ See File No. BSTA-20171025ABA.

² 47 U.S.C. § 312(g) (Section 312(g)); *Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543 (D.C. Cir. 2009); *A-O Broad. Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603 (2008).

³ File No. BLSTA-20160216ABI, granted on March 2, 2016, with a notice that the period of silence from December 25, 2015 to February 16, 2016, was unauthorized.

⁴ File No. BLESTA-20160829ABK, granted on September 15, 2016.

⁵ File No. BPH-20170627ABF (dismissed on Oct. 26, 2017).

⁶ See Comments in Opposition to File No. BPH-20170627ABF (dismissed on Oct. 26, 2017).

⁷ See Comments in Opposition, File No. BPH-20170627ABF at p.3 and Ex. 2.

On October 25, 2017, VB filed a technical STA request which states that after being silent for almost 12 months, the Station resumed operation from an alternate site on November 22, 2016, and has operated from that site since that date.⁸ VB does not explain why its resumption notice stated that the Station was using its licensed facility. Frontdoor again opposes this application.⁹

Discussion. Section 312(g) of the Act 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....”¹⁰ Well-established Commission precedent dictates that licensees cannot avoid the statutory deadline set forth in Section 312(g) through the use of unauthorized facilities.¹¹ Thus, a station is subject to Section 312(g)'s license expiration provision if: (a) the station fails to operate for twelve consecutive months or longer; (b) the station operates with unauthorized facilities for such a period; or (c) a combination of the prior two situations occurs for such a period.¹²

Based on our records, and VB's admissions in its October 25, 2017, STA request, we conclude that the Station was silent (or failed to operate with authorized facilities) for over one year, and that the Station's license expired at 12:01 a.m., November 26, 2016.

Having determined that the Station's license expired, we decline to exercise our discretion to reinstate under §312(g). Although the Commission retains discretion under Section 312(g) to extend or reinstate such license “to promote equity and fairness,”¹³ our discretion under that provision of Section 312(g) is severely limited.¹⁴ The Commission has exercised its authority to reinstate an expired license to “promote equity and fairness” only where the station failed to provide service for 12 consecutive months due to compelling reasons beyond the licensee's control.¹⁵ Conversely, the Commission has declined to reinstate licenses where, as here, the failure to transmit a broadcast signal was due to the licensee's own actions, finances, and/or business judgments.¹⁶ In particular, we note that VB has never explained why it did not apply for

⁸ See File No. BSTA-20171025ABA.

⁹ See Informal Objection to File No. BSTA-20171025ABA.

¹⁰ See *Implementation of Section 403(l) of the Telecommunications Act of 1996*, 11 FCC Rcd 16499 (1996); see also 47 CFR § 73.1740(c).

¹¹ See *Eagle Broad. Group*, 563 F.3d at 553 (“Under the statute, unauthorized and unlicensed transmissions are no better than silence”); see also *James McCluskey, Ph.D.*, Letter Order, 27 FCC Rcd 6252, 6254-55 (MB 2012) (“an unauthorized transmission counts for nothing”).

¹² *Id.*

¹³ 47 U.S.C. § 312(g).

¹⁴ See *A-O Broad.*, 23 FCC Rcd at 617, para. 27 (“This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited”).

¹⁵ See, e.g., *V.I. Stereo Commc'ns 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).

¹⁶ See, e.g., *A-O Broad.*, 23 FCC Rcd at 617, para. 27 (reinstatement not warranted when site loss was a

an STA to operate the Station from an alternate site in 2016, but instead claimed that the Station had resumed operation from its licensed site. We find that exercise of discretion to reinstate an expired license is especially unwarranted when VB violated Section 301 of the Act by operating the Station from an alternate facility, without FCC approval, falsely claimed in November of 2016 that the Station returned to the air “with its licensed facility,” and only notified the Commission of the Station’s unauthorized operation after opposing comments were filed notifying us of the situation.¹⁷ The “unclean hands” doctrine – which “closes the doors of a court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief”¹⁸ – can be applied in appropriate circumstances in administrative proceedings,¹⁹ and VB’s conduct in this proceeding mitigates against any “equity and fairness” finding in its favor.²⁰

Conclusion/Actions. For the reasons set forth above, we find that the license of WZNN(FM), Maplesville, Alabama (Facility ID No. 183374), EXPIRED by operation of 47 U.S.C. § 312(g) on or about 12:01 a.m. November 26, 2016. In addition, File No. BSTA-20171025ABA IS DISMISSED. Accordingly, the Commission's public and internal databases will be modified to reflect that expiration, and we HEREBY DELETE the Station’s call sign, WZNN(FM). All authority to operate this facility IS TERMINATED and any operation of the facility must cease immediately. Valleydale Broadcasting, LLC (and its principals, R3 Partners, LLC, Paul H. Reynolds, Joan K. Reynolds., Lee S. Reynolds, and Lyle S. Reynolds, 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 facilities application—FCC Form 301, 302 (any version), 349, or 350—it files with the Commission for a period of five years from the date of this *Letter Order*.

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 (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). *See also Kingdom of God*, Letter, 29 FCC Rcd 11589 (MB 2014) (Bureau rejects KOG’s request for reinstatement of its permit for LPTV Station WKGK-LP, Kokomo, Indiana, expired pursuant to Section 312(g), under the “equity and fairness” language, finding that “the ultimate reason for the station’s silence was due to KOG’s business decision not to promptly find a permanent and suitable transmitter site,” and concluding that KOG’s silence was not the result of compelling reasons beyond the licensee’s control, but, rather, “due to the licensee’s own actions, finances and/or business judgments.”).

¹⁷ *See Eagle Broad. Group*, 563 F.3d at 554 (discretion not warranted because “it does not require legal counsel or any level of sophistication to avoid making false statements on simple matters of fact”); *cf.*, *John L. White*, Notice of Apparent Liability for Forfeiture and Order, 24 FCC Rcd 12541, 12543 (MB 2009) (312(g) discretion appropriate when, among other factors, licensee did not misrepresent regarding its operation).

¹⁸ *Precision Instrument Manufacturing Co. v. Automotive Maintenance Machinery Co.*, 324 U.S. 806, 815 (1945).

¹⁹ *See, e.g., Daniel A. Edelman, Esq.*, 19 FCC Rcd 12741, 12742-3, para. 5 (2004); *see also WKAT, Inc. v. FCC*, 296 F.2d 375, 383 (D.C. Cir. 1961) (*WKAT*).

²⁰ *See, e.g., FCC v. WOKO, Inc.*, 329 U.S. 323, 329 (1946), cited in *WKAT*, 296 F.2d at 383 (counterbalancing considerations of public interest in the service involved might justify award despite misbehavior).

It is imperative to the safety of air navigation that any prescribed painting and illumination of the Station's tower shall be maintained.²¹

If you have any questions concerning the content of this letter, please contact Victoria McCauley, Attorney, by phone (202-418-2136), or e-mail (Victoria.McCauley@fcc.gov).

Sincerely,


Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: M. Scott Johnson, Esq.

²¹ See 47 CFR Sections 17.6 and 73.1740(a)(4).

EXHIBIT 6



Federal Communications Commission
Washington, DC 20554
November 1, 2018

In reply refer to: 1800B3-VM

Mr. Paul H. Reynolds
Valleydale Broadcasting, LLC
2711 Pelham Parkway
Pelham, AL 35124

In re: DWZNN(FM), Maplesville, AL
Facility ID No. 183374
Petition for Partial Reconsideration

Dear Mr. Reynolds:

This letter concerns the Petition for Partial Reconsideration (Petition) filed on December 14, 2017, by Valleydale Broadcasting, LLC (VB),¹ former licensee of Station DWZNN(FM), Maplesville, Alabama (Station), of the November 15, 2017, letter² cancelling the Station's license pursuant to Section 312(g) of the Communications Act of 1934, as amended (Act).³ The Letter Order also included the following provision (Paragraph 9):

Valleydale Broadcasting, LLC (and its principals, R3 Partners, LLC, Paul H. Reynolds, Joan K. Reynolds., Lee S. Reynolds, and Lyle S. Reynolds, 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 facilities application—FCC Form 301, 302 (any version), 349, or 350—it files with the Commission for a period of five years from the date of this *Letter Order*.⁴

The Petition requests that the requirements of Paragraph 9 be eliminated. Frontdoor Broadcasting, LLC (Frontdoor), opposes the Petition,⁵ and VB filed a reply.⁶ Based on the foregoing, the Petition is denied.

Background. Commission records show that the Station went silent on November 25, 2015 because it had been "forced to dismantle its transmitter location due to a disagreement with the property owner."⁷ On August 29, 2016, VB stated again that its lost transmitter site was its reason for silence, in an

¹ Petition for Partial Reconsideration (VB Dec. 14, 2017).

² *Letter from Peter H. Doyle, Chief, Audio Division to Mr. Paul H. Reynolds*, Nov. 15, 2017 (Ref. No. 1800B3-VM) (Letter Order).

³ 47 U.S.C. §312(g).

⁴ *Id.* at 3, Para. 9; *see* 47 U.S.C. § 319 and 47 CFR § 73.1015.

⁵ Opposition to Petition for Partial Reconsideration (Frontdoor, Dec. 28, 2017) (Frontdoor December 2017 Opposition). Frontdoor also filed a Request for Leave to File a Response to VB's Reply and a Response on February 9, 2018. We have not granted leave to file and have not included this pleading in our determination.

⁶ Reply to Opposition to Petition for Partial Reconsideration (VB Jan. 12, 2018).

⁷ File No. BLSTA-20160216ABI, granted on March 2, 2016, with a notice that the period of silence from December 25, 2015 to February 16, 2016, was unauthorized.

extension of silent STA.⁷ On November 22, 2016, VB filed a notice of Resumption of Operations, stating that the Station had resumed operation using its “licensed facility.”⁸

Commission records also show that on June 27, 2017, VB filed an application for construction permit, proposing a minor change of facilities.⁹ Frontdoor opposed this application, alleging that the Station had not been operating for over a year.¹⁰ On October 26, 2017, at VB’s request, the Bureau dismissed this application.

On October 25, 2017, VB then filed a technical STA request including an exhibit in which VB admitted that the Station had been operating from the site specified in the request (rather than its licensed site) starting on November 22, 2016.¹¹ VB did not explain why its resumption notice filed on November 22, 2016 stated that the Station was using its licensed facility. Frontdoor again opposed that application.¹²

In the Letter Order, the Bureau held that Commission records and VB’s admission supported a conclusion that the Station was silent (or failed to operate with authorized facilities) for over one year, and that the Station’s license expired at 12:01 a.m., November 26, 2016.¹³ The Letter Order also determined that the Bureau would not exercise its discretion under Section 312(g) of the Act because the failure to operate was due to the licensee’s own actions, including unauthorized operation in violation of Section 301 of the Act, and falsely certifying that the Station was operating from its licensed facility.¹⁴ The Bureau also noted that VB never explained its actions and it only notified the Commission of its unauthorized operation after Frontdoor filed its opposing comments.¹⁵

VB now argues that it should not be required to comply with Paragraph 9 because it has a history of compliance with the Commission’s Rules, its transgression was inadvertent, was not done in bad faith, and amounted to a mere failure to file an STA to operate at variance from its license prior to commencing operation.¹⁶ VB also claims that it did not have an opportunity to rebut the arguments in Frontdoor’s

⁷ File No. BLESTA-20160829ABK, granted on September 15, 2016.

⁸ Notice of Resumption of Operations, November 22, 2016.

⁹ File No. BPH-20170627ABF.

¹⁰ Frontdoor included a letter from the Station’s tower site owner stating that VB removed its tower in November 2015 and stopped paying rent for the site at that time. The site owner also stated that the electric meter at the site indicated that electrical service had been stopped in 2015 and had not resumed. Finally, the site owner indicated that she had observed a nearby site being used to operate a radio station. *See* Comments in Opposition, File No. BPH-20170627ABF at p.3 and Ex. 2.

¹¹ *See* File No. BSTA-20171025ABA.

¹² *See* Informal Objection to File No. BSTA-20171025ABA.

¹³ Letter Order at 2.

¹⁴ *Id.*

¹⁵ *Id.* at 3.

¹⁶ VB also claims that the fact that the STA was in compliance with the rules and would have been granted if timely should weigh in its favor. Petition at 3.

opposition and that the Commission's decision was based only on the opposing comments.¹⁷ Finally, VB argues that the license cancellation was punishment enough and it should not be subjected to the "stigma and stain to its reputation" and "unspecified consequences and processing delays" that compliance with Paragraph 9 will cause.¹⁸

Frontdoor argues that the decision should stand because VB knowingly submitted false information to the Commission and willfully violated the rules for an extended period of time when it engaged in unauthorized operation of the Station for almost a year.¹⁹

Discussion. 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 changed circumstances or unknown additional facts not known or existing at the time of petitioner's last opportunity to present such matters.²⁰ VB has failed to meet this burden.

None of the arguments raised in the Petition shows a material error in the Bureau's decision or raise facts that were not available at the time the Bureau issued the Letter Order. Contrary to VB's allegation that it had no opportunity to respond, we note that it chose to ignore Frontdoor's opposition to the construction permit alleging that it had been silent or operating with unauthorized facilities. In fact, instead of responding to Frontdoor's allegations, VB requested dismissal of its construction permit application, and filed the technical STA with an exhibit admitting its unauthorized operation in an apparent attempt to avoid cancellation of the Station's license pursuant to §312(g) of the Act.²¹ At that time, VB ignored its false statement in the resumption notice and merely characterized its filing of the STA request as untimely.²² VB offered no explanation for its false representation on the resumption notice or the failure to file the STA request for almost a year.²³

¹⁷ *Id.* at 4-5. VB proffers some new information to explain its operation from the alternate site and the misunderstanding among the parties regarding filing an STA to operate at that site.

¹⁸ *Id.* at 6.

¹⁹ Frontdoor December 2017 Opposition at 5. Frontdoor also raises the issue of unauthorized operation of FM Station WTID, also owned by the same principals as in the present case. In that case, the licensee of WTID, Great South Wireless, LLC, requested that the license be cancelled on February 8, 2018, which we granted on February 16, 2018.

²⁰ See 47 CFR § 1.106; *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 3 (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); and *National Ass'n of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415, para. 4 (2003).

²¹ VB stated in the STA, "Valleydale Broadcasting LLC ('Valleydale') filed a notice of resumption of service on November 22, 2016 before the one year silent period expired. However, Valleydale inadvertently failed to file a STA request for this new location on a timely basis. Valleydale respectfully requests that the commission accept this STA request at this time. WZNN has continued to operate from this location and with the specified facilities since Nov. 22, 2016." File No. BSTA-20171025ABA, Exh. 4.

²² *Id.*

²³ VB attempts to explain its behavior for the first time in the Petition. Its explanation is that the misrepresentation on the resumption notice was the owner's mistake at that time, and the failure to file the STA was a misunderstanding between the owner and an employee when they built the STA facility. This untimely information does not support reconsideration. We have often admonished parties seeking reconsideration, "[w]e cannot allow

We reject VB's argument that it should not be required to comply with Paragraph 9 because it acted in good faith and it has suffered enough by losing the Station's license.²⁴ The staff properly held that the Station's license had expired by operation of law based on the combined silence and unauthorized operation. The requirement to comply with Paragraph 9 was based on the false claim of licensed operation that VB would not have admitted had it not been for the complaints filed by Frontdoor. The fact that VB now argues that the falsehood lacked the requisite intent²⁵ because it was inadvertent does not provide a basis for mitigation.²⁶ Fraudulent intent can be found from "the fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity."²⁷ Here, VB admits that it knew it made a false statement on its resumption notice, but it does not explain why it waited over a year to correct it and file a request for STA. That failure provides ample support for the staff to require a reminder of its action whenever VB or its principals file an application over the next five years requiring the staff to undertake a review of the applicant's qualifications, including character qualifications.

Conclusion/Actions. Accordingly, IT IS ORDERED that the Petition for Partial Reconsideration filed by VB on November 16, 2017, IS DENIED.

Sincerely



Albert Shuldiner
Chief, Audio Division
Media Bureau

cc: M. Scott Johnson, Esq.

the appellant to sit back and hope that a decision will be in its favor, and then, when it isn't, to parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed." *Colorado Radio Corp. v. Federal Communications Commission*, 73 App. D.C. 225, 227, 118 F. 2d 24, 26 (1941).

²⁴ We also reject the argument that it has a "history of compliance" with our rules. See notes 6 and 19, *supra*; see also *Valleydale Broad., LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for a Forfeiture, 27 FCC Rcd 10143 (MB 2012) (\$3,000 forfeiture imposed on Valleydale for failing to timely file a post-auction Form 301 application, as required by Sections 73.3573(f)(5)(i) and 73.5005(a) of the Rules).

²⁵ See *Fox River Broad., Inc.*, Order, 93 FCC 2d 127, 129 (1983); *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7435 (2004) (*Discussion Radio*).

²⁶ See *Lake County Cmty. Radio*, Forfeiture Order, 31 FCC Rcd 7659, 7660, para. 6 (MB 2016) (violations resulting from inadvertent error are willful violations); *S. California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para. 3 (1991), *recon. den.*, 7 FCC Rcd 3454 (1992) (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); see also *Commil USA, LLC v. Cisco Systems, Inc.*, 135 S. Ct. 1920, 1930 (2015) ("In the usual case, 'I thought it was legal,' is no defense.").

²⁷ *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991) (quoting *Leflore Broad. Co. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980)); see also *Discussion Radio*, 19 FCC Rcd at 7435.

EXHIBIT 7



Federal Communications Commission
Washington, D.C. 20554

November 29, 2018

In reply refer to: 1800B3-VM

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Lee Reynolds
Shelby Broadcast Associates, LLC
5256 Valleybrook Trace
Birmingham, AL 35244

In re: W243AP, Mooresville, AL
Facility ID No. 157069

Notice of license expiration

Dear Mr. Reynolds:

We have before us a request for Special Temporary Authority (STA) for Station W243AP, Mooresville, Alabama (Station), licensed to Shelby Broadcast Associates, LLC (SBA) requesting authority to operate using a temporary site and facility.¹ On August 2, 2018, the Audio Division, Media Bureau (Bureau) issued a letter of inquiry (LOI)² into the Station's operation, to which SBA responded on September 7, 2018 (LOI Response). Upon review of the record before us, we find that the Station's license expired as a matter of law under Section 312(g) of the Communications Act of 1934, as amended.³ Accordingly, we cancel the Station's license, delete the Station's call sign and dismiss the STA request as moot.

Background. On July 10, 2017, SBA filed an STA to remain silent, stating that the Station went silent on July 1, 2017 because it had "lost access to its tower site."⁴ At that time, SBA was warned that the Station license would automatically expire if broadcast operations did not resume by 12:01 a.m. on July 2, 2018.⁵ SBA requested an extension of STA on January 29, 2018, again noting its lost transmitter site as its reason for silence.⁶ The Bureau's response again warned SBA of the 12:01 a.m. July 2, 2018 deadline to resume operation.⁷ On June 11, 2018, SBA filed an application for STA to operate the Station with an antenna height of ten meters above ground level at 34-38-19 North Latitude, 86-52-41 West Longitude (Mooresville Road Site). That application was granted on June 14, 2018.⁸ SBA filed a notice of resumption of operation on June 29, 2018, stating that the Station had resumed operating on that date. On July

¹ See File No. BSTA-20180702AAH.

² See Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau to Mr. Lee S. Reynolds, Aug. 2, 2018, (Ref. 1800B3-VM).

³ 47 U.S.C. § 312(g) (Section 312(g)); *Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543 (D.C. Cir. 2009); *A-O Broad. Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603 (2008).

⁴ File No. BLSTA-20170710ABP, granted on Aug. 3, 2017.

⁵ See Letter from Lisa Scanlan, Deputy Chief, Audio Division, Media Bureau to Mr. Lee S. Reynolds, Ref. 1800B3-KC (Aug. 3, 2017).

⁶ File No. BLESTA-20180129AIO, granted on Feb. 16, 2018.

⁷ See Letter from Lisa Scanlan, Deputy Chief, Audio Division, Media Bureau to Mr. Lee S. Reynolds, Ref. 1800B3-DW (Feb. 16, 2018).

⁸ FCC File No. BSTA-20180611ABA.

2, 2018, SBA filed a new STA application, proposing operation from a site approximately 0.1 miles from the Mooresville Road Site, on land apparently owned by the same property owner. At that time SBA stated: "The property owner of the tower site has mandated a slight site modification of the STA facility to another location on his property."⁹ On July 10, 2018, SBA filed another STA application seeking silent authority, stating that the Station went silent as of July 2, 2018, while awaiting grant of the July 2, 2018 STA request to operate from the new location.¹⁰

On August 2, 2018, the Bureau sent the LOI to SBA requiring that SBA provide evidence documenting the Station's operational status as of June 28 to July 3, 2018.¹¹ SBA submitted the LOI Response on September 7, 2018. The LOI Response indicates that the Station was not built at the Mooresville Road Site for which it received authorization. The LOI Response states that after SBA filed its resumption notice, it realized there was a discrepancy between the site in the STA and the actual site used from June 28 to July 3, 2018. SBA explained that measurements were taken from two different points, resulting in the facility being constructed 138 feet from the authorized site location (the Mooresville Road Site).¹²

Discussion. Section 312(g) of the Act 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...."¹³ Well-established Commission precedent dictates that licensees cannot avoid the statutory deadline set forth in Section 312(g) through the use of unauthorized facilities.¹⁴ Thus, a station is subject to Section 312(g)'s license expiration provision if: (a) the station fails to operate for twelve consecutive months or longer; (b) the station operates with unauthorized facilities for such a period; or (c) a combination of the prior two situations occurs for such a period.¹⁵

Based on our records and SBA's admissions in the LOI Response, we conclude that the Station was silent (or failed to operate with authorized facilities) for over one year, and that the Station's license expired at 12:01 a.m., July 2, 2018.

⁹ Based on this representation, the status of SBA's June 29, 2018 resumption notice was changed from granted to accepted.

¹⁰ File No. File No. BLSTA-20180710AAR.

¹¹ The LOI requested evidence to indicate the transmitter site location (with exact coordinates), effective radiated power and antenna height above ground level for that period. The LOI also requested all authorizations from any land owner to use the Mooresville Road Site or any other site owned by such land owner and all communications in 2018 between such land owner and any representative of SBA. SBA was also required to include copies of all of SBA's records for the Station from June 1 to July 10, including engineering records, invoices, receipts, logs, photographs, text messages, emails and other communications relating to or referring to the Station.

¹² LOI Response at 11.

¹³ See *Implementation of Section 403(l) of the Telecommunications Act of 1996*, 11 FCC Rcd 16499 (1996); see also 47 CFR § 73.1740(c).

¹⁴ See *Eagle Broad. Group*, 563 F.3d at 553 ("Under the statute, unauthorized and unlicensed transmissions are no better than silence"); see also *James McCluskey, Ph.D.*, Letter Order, 27 FCC Rcd 6252, 6254-55 (MB 2012) ("an unauthorized transmission counts for nothing").

¹⁵ *Id.*

Having determined that the Station's license expired, we decline to exercise our discretion to reinstate under Section 312(g). Although the Commission retains discretion under Section 312(g) to extend or reinstate such license "to promote equity and fairness,"¹⁶ our discretion under that provision of Section 312(g) is severely limited.¹⁷ The Commission has exercised its authority to reinstate an expired license to "promote equity and fairness" only where the station failed to provide service for 12 consecutive months due to compelling reasons beyond the licensee's control.¹⁸ Conversely, the Commission has declined to reinstate licenses where, as here, the failure to transmit a broadcast signal was due to the licensee's own actions, finances, and/or business judgments.¹⁹ Here, we note that SBA was lackadaisical in its approach to getting the Station back on the air, waited until the last minute to construct an alternate facility, and improperly constructed the temporary facility in the wrong location. In addition, SBA misconstrues Section 73.1690(b)(2) as a three-second "tolerance" in the location a licensee can construct without needing new FCC approval. We expect licensees to construct at the coordinates specified in their authorization. The rule exists as a simplified process for licensees to correct coordinates in the event later measurements, such as a survey, find a small discrepancy. Even allowing for this "tolerance," the temporary facility was actually constructed at a location outside that area. We find that exercise of discretion to reinstate an expired license is especially unwarranted when SBA violated Section 301 of the Act by operating the Station from an alternate facility without FCC approval, falsely claimed on July 2, 2018, that the site modification was due to the property owner's "mandate," and only notified the Commission of the Station's unauthorized operation after the Bureau demanded specific information in the LOI.²⁰ The "unclean hands" doctrine – which "closes the doors of a court of equity to one tainted with

¹⁶ 47 U.S.C. § 312(g).

¹⁷ See *A-O Broad.*, 23 FCC Rcd at 617, para. 27 ("This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited").

¹⁸ See, e.g., *V.I. Stereo Commc'ns Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006) (reinstatement warranted where station's silence resulted from hurricane destruction); *Community Bible Church*, Letter Order, 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 Order, 22 FCC Rcd 6578 (MB 2007) (reinstatement warranted where extended silence resulted from licensee's compliance with a court order).

¹⁹ See, e.g., *A-O Broad.*, 23 FCC Rcd at 617, para. 27 (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 Order, 25 FCC Rcd 10686 (MB 2010) (reinstatement not warranted where the licensee chose not to operate financially struggling station while offering it for sale); *Kirby Young*, Letter Order, 23 FCC Rcd 35 (MB 2008) (reinstatement not warranted where the licensee was not financially able to restore operations after transmitter failed). See also *Kingdom of God*, Letter Order, 29 FCC Rcd 11589 (MB 2014) (Bureau rejects KOG's request for reinstatement of its permit for LPTV Station WKGK-LP, Kokomo, Indiana, expired pursuant to Section 312(g), under the "equity and fairness" language, finding that "the ultimate reason for the station's silence was due to KOG's business decision not to promptly find a permanent and suitable transmitter site," and concluding that KOG's silence was not the result of compelling reasons beyond the licensee's control, but, rather, "due to the licensee's own actions, finances and/or business judgments.").

²⁰ See *Eagle Broad. Group*, 563 F.3d at 554 (discretion not warranted because "it does not require legal counsel or any level of sophistication to avoid making false statements on simple matters of fact"); cf., *John L. White*, Notice of Apparent Liability for Forfeiture and Order, 24 FCC Rcd 12541, 12543 (MB 2009) (312(g) discretion appropriate when, among other factors, licensee did not misrepresent regarding its operation).

inequitableness or bad faith relative to the matter in which he seeks relief”²¹ – can be applied in appropriate circumstances in administrative proceedings,²² and SBA’s conduct in this proceeding mitigates against any “equity and fairness” finding in its favor.²³

Conclusion/Actions. For the reasons set forth above, we find that the license of W243AP, Mooresville, Alabama (Facility ID No. 157069), EXPIRED by operation of 47 U.S.C. § 312(g) on or about 12:01 a.m., July 2, 2018. In addition, File Nos. BSTA - 20180702AAH, BALFT - 20180709ABM, and BLSTA - 20180710AAR ARE DISMISSED. Accordingly, the Commission’s public and internal databases will be modified to reflect the license expiration, and we HEREBY DELETE the Station’s call sign, W243AP. All authority to operate this facility IS TERMINATED and any operation of the facility must cease immediately.

It is imperative to the safety of air navigation that any prescribed painting and illumination of the Station’s tower shall be maintained.²⁴

If you have any questions concerning the content of this letter, please contact Victoria McCauley, Attorney, by phone (202-418-2136), or e-mail (Victoria.McCauley@fcc.gov).

Sincerely,



Albert Shuldiner
Chief, Audio Division
Media Bureau

²¹ *Precision Instrument Manufacturing Co. v. Automotive Maintenance Machinery Co.*, 324 U.S. 806, 815 (1945).

²² See, e.g., *Daniel A. Edelman, Esq.*, Memorandum Opinion and Order, 19 FCC Rcd 12741, 12742-3, para. 5 (2004); see also *WKAT, Inc. v. FCC*, 296 F.2d 375, 383 (D.C. Cir. 1961) (*WKAT*).

²³ See, e.g., *FCC v. WOKO, Inc.*, 329 U.S. 323, 329 (1946), cited in *WKAT*, 296 F.2d at 383 (counterbalancing considerations of public interest in the service involved might justify award despite misbehavior).

²⁴ See 47 CFR §§ 17.6 and 73.1740(a)(4).

EXHIBIT 8



Federal Communications Commission
Washington, D.C. 20554

DATE

DA 19-676
Released: July 19, 2019

In Reply Refer to:
1800B3-BB

Lee J. Peltzman, Esq.
Shainis & Peltzman, Chartered
1850 M Street, N.W.
Suite 240
Washington, DC 20036

In re: DW243AP, Mooresville, AL
Facility ID No. 157069
File Nos. BSTA-20180702AAH,
BLSTA-20180710AAR

**Shelby Broadcast Associates, LLC
Petition for Reconsideration**

Dear Counsel:

We have before us the Petition for Reconsideration (Petition) of Shelby Broadcast Associates, LLC (SBA), former licensee of Station DW243AP, Mooresville, Alabama (Station), seeking reconsideration of the Media Bureau (Bureau) letter decision¹ cancelling the Station's license, terminating the authority of the Station to operate, deleting that Station's call sign, and dismissing SBA's pending applications, including requests for Special Temporary Authority (STA).² For the reasons set forth below, we deny the Petition.

Background. As noted in the *Letter Order*, on July 10, 2017, SBA filed an STA for the Station to remain silent, citing the inability to access its tower site.³ The Station received its Silent Authority STA on August 3, 2017, requiring that the Station resume its authorized broadcast operations before 12:01 a.m. on July 2, 2018, twelve months from the date it went silent, in order to prevent the expiration of its license as a matter of law.⁴ SBA requested an extension of the STA on January 29, 2018 and was reminded again of the statutory deadline of July 2, 2018 by the Bureau.⁵

During June 2018, an SBA representative agreed upon a temporary location for the Station with PFI Group of Rogersville, Alabama (PFI). SBA then filed an STA request on June 11, 2018 to operate

¹ *Shelby Broadcasting Associates, LLC*, Letter Order, Ref. 1800B3-VM (MB Nov. 29, 2018) (*Letter Order*).

² File Nos. BSTA-20180702AAH (July 2, 2018 STA Request) and BLSTA-20180710AAR (July 10, 2018 STA Request).

³ File No. BLSTA-20170710ABP, granted on Aug. 3, 2017.

⁴ *Letter from Lisa Scanlan, Deputy Chief, Audio Division, Media Bureau to Mr. Lee S. Reynolds*, Ref. 1800B3-KC (Aug. 3, 2017) (citing 47 U.S.C. 312(g) (“[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 . . . , except that the Commission may extend or reinstate such station license . . . to promote equity and fairness”).

⁵ File No. BLESTA-20180129AIO, granted on Feb. 16, 2018; *Letter from Lisa Scanlan, Deputy Chief, Audio Division, Media Bureau to Mr. Lee S. Reynolds*, Ref. 1800B3-DW (Feb. 16, 2018) (citing 47 U.S.C. 312(g)).

the Station at a temporary site with coordinates specified as 34-38-19 North Latitude, 86-52-41 West Longitude (Mooresville Road Site). The Bureau granted that STA on June 14, 2018.⁶

On June 29, 2018, SBA filed a notice of resumption of operation. Three days after that resumption notice was filed (at which point SBA's July 2, 2018 resumption deadline had passed), SBA filed a new STA request for a site roughly one-tenth of a mile (416 feet) away from the Mooresville Road Site.⁷ In the July 2, 2018 STA Request, SBA claimed that PFI had "mandated a slight site modification of the STA facility to another location on [its] property."⁸ Given the proximity of these separate filings, the Bureau sent a Letter of Inquiry (*LOI*) to SBA, requiring SBA to provide evidence of the Station's operational status from June 28 to July 3, 2018.⁹ SBA's response indicated that the authorized STA site—the Mooresville Road Site—was not the site used from June 28 to July 3, 2018.¹⁰ The response also stated that after SBA filed its resumption notice, it realized the facility was actually built at a location 138 feet beyond the three-second "tolerance zone of [Section] 73.1690(b)(2) by [138 feet]" as measured from the authorized Mooresville Road Site.¹¹

In the *Letter Order*, the Bureau held that the Station's license had expired pursuant to Section 312(g) of the Communications Act of 1934, as amended (Act) because the Station had not broadcast from an authorized site for a 12-month period.¹² The *Letter Order* noted that for a station's broadcasting to qualify, it must be in accordance with authorized STAs, and thus SBA's broadcasting had to be at the authorized Mooresville Road Site.¹³ The *Letter Order* further rejected SBA's request that we exercise our discretion "to promote equity and fairness" under Section 312(g) despite SBA's location violation because such discretion has only been used in limited cases where the station could not provide service due to "compelling reasons beyond the licensee's control," and not because of a station's business judgments and arrangements, as was the case here.¹⁴ The Bureau rejected SBA's argument that Section 73.1690(b)(2) of the FCC's rules (Rules) allowed it a three-second "tolerance" in the location of its site, noting that the rule is a means to correct coordinates where subsequent measurements find a small discrepancy, and in any case the facility constructed by SBA was outside the three-second tolerance.¹⁵ Further, the Bureau explained that SBA's position was not supported by "equity and fairness" because SBA knowingly violated Section 301 of the Act by operating a station at a new site without Commission

⁶ File No. BSTA-20180611ABA (June 2018 STA Request).

⁷ July 2, 2018 STA Request.

⁸ *Id.*

⁹ Letter of Inquiry from Albert Shuldiner, Chief, Audio Division, Media Bureau, to Mr. Lee S. Reynolds (Aug. 2, 2018).

¹⁰ Letter of Inquiry Response, from Shelby Broadcast Associates LLC, to Albert Shuldiner, Chief, Audio Division, Media Bureau, at 11 (Sep. 7, 2018).

¹¹ *Id.*

¹² *Letter Order* at 2, (citing 47 U.S.C. § 312).

¹³ *Id.* at 3 (citing 47 U.S.C. § 301).

¹⁴ *Id.* at 3 (citing *V.I. Stereo Commc'ns Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006) (reinstatement warranted where station's silence resulted from hurricane destruction); *Community Bible Church*, Letter Order, 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 Order, 22 FCC Rcd 6578 (MB 2007) (reinstatement warranted where extended silence resulted from licensee's compliance with a court order)).

¹⁵ *Letter Order* at 3; *see also* 47 CFR § 73.1690(b)(2) (construction permit required for changes in a full-service FM station's coordinates beyond three seconds latitude or longitude).

approval.¹⁶ The Bureau further noted that SBA did not acknowledge it operated the Station from an unauthorized site until after the Bureau had already noticed the discrepancy and issued the *LOI*.¹⁷ Accordingly, the Bureau declined to exercise its discretion under Section 312(g) to reinstate the Station's license.

In the Petition, SBA argues that the Bureau misapplied Section 312(g) and misinterprets Section 73.1690(b)(2) of the Rules. It explains that the agreement between PFI and SBA was reached because there were existing lighting poles on the Mooresville Road Site, which SBA could use in constructing its temporary station.¹⁸ However, PFI subsequently reneged on the agreement, as another business arrangement required immediately taking down the lighting poles.¹⁹ SBA emphasizes that it could not construct its temporary station at the FCC-authorized Mooresville Road Site, but instead, SBA had to construct a free-standing tower at a different location on PFI's property.²⁰ SBA further states that "[t]he tower was completed on June 29, 2018, and, shortly prior to 2 p.m. on that date, Station W243AP resumed broadcast operations."²¹ But in constructing the temporary tower, two SBA representatives miscommunicated and the tower was placed 138 feet beyond the 3-second latitude/longitude measurement error allowed under Section 73.1690(b)(2) of the Rules.²² Yet even though SBA principal Lee Reynolds was aware of the discrepancy between the Station's location and the FCC-approved coordinates "[i]mmediately after the Station resumed operations,"²³ he did not file an updated STA request with the correct coordinates until July 2, 2018—after the Station's resumption deadline had passed.²⁴

SBA further argues that even though it constructed its facility 138 feet outside the bounds of Section 73.1690(b)(2), the Bureau should exercise its equitable authority under Section 312(g) of the Act—allowing SBA to count its unauthorized June 28 to July 3, 2018 transmission and retain its license.²⁵ SBA bases its argument first on the idea that "[e]very station filing a License Application to correct coordinates is acknowledging that it has operated with facilities which are at variance with those in its license."²⁶ SBA argues that because it did not transmit with unauthorized facilities—merely from an unauthorized location—this is not sufficiently "outrageous" conduct that would justify rejecting relief on the basis of equity and fairness.²⁷ SBA also asserts that Lee Reynolds did not hide unauthorized operations, because the only unauthorized aspect of the transmission was the Station's location, which he applied to change three days later.²⁸ Next, SBA cites the opinions of the communications engineers it had talked with, claiming their understanding of the three-second limit to Section 73.1690(b)(2) to not require

¹⁶ *Letter Order* at 3 (citing *Daniel A. Edelman, Esq.*, Memorandum Opinion and Order, 19 FCC Rcd 12741, 12742-3, para. 5 (2004); *FCC v. WOKO, Inc.*, 329 U.S. 323, 329 (1946) (counterbalancing considerations of public interest in the service involved might justify award despite misbehavior)).

¹⁷ *Letter Order* at 3.

¹⁸ Petition at 2.

¹⁹ *Id.* at 3.

²⁰ *Id.*

²¹ Petition at 4.

²² *Letter Order* at 2.

²³ Petition at 4.

²⁴ *Letter Order* at 1-2.

²⁵ Petition at 6.

²⁶ *Id.*

²⁷ *Id.* at 7.

²⁸ *Id.* at 8.

that a location discrepancy be unintentional. In addition, because the error put the tower 138 feet outside the range permitted by Section 73.1690(b)(2), SBA argues the discrepancy to be *de minimis* and worthy of equity, in light of the facts of this case.²⁹

Discussion. The Bureau will consider a petition for reconsideration only when the petitioner shows either a material error in the original order or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.³⁰ Here, SBA has neither demonstrated that the *Letter Order* erred in holding that the Station's license expired under Section 312(g) of the Act, nor provided additional facts as to why the Commission should reinstate the station to promote equity and fairness.

At issue is whether SBA's operation of the Station at coordinates not authorized by the June 2018 STA were in fact authorized by virtue of Section 73.1690(b)(2). We find that the *Letter Order* correctly interpreted Section 73.1690(b)(2) as providing a streamlined process for correcting small discrepancies in coordinates (up to three seconds) in the event later measurements indicate an error on a station's authorization.³¹ By contrast, a change in a broadcast tower's authorized height or location is governed by Section 73.1690(b)(1), which requires submission and approval of a minor change application, "except for replacement of an existing tower with a new tower of identical height and geographic coordinates."³² SBA fails to cite any case law supporting its interpretation of Section 73.1690(b)(2), and further fails to explain how its interpretation of that rule can be squared with the language of Section 73.1690(b)(1). Moreover, the *Letter Order* correctly pointed out that even SBA's interpretation of the Rule does not support SBA's position because SBA constructed the temporary tower at a location that differed by more than three seconds from the coordinates of the Mooresville Road Site.³³

Rather than build the Station at the FCC-authorized Mooresville Road Site, SBA *deliberately* built the tower at different coordinates—because PFI did not allow it to construct at the Mooresville Road Site—without applying for an updated STA until after the Section 312(g) deadline had passed.³⁴ As extensive precedent indicates, operating an alternate facility without Commission approval does not qualify as resuming a station's broadcast.³⁵

SBA also attempts to distinguish its case from case law by emphasizing that its actions were not "outrageous," as in previous cases. However, our discretion under 312(g) is severely limited and SBA has failed to cite any comparable case where the Commission applied that discretion to reinstate a license.³⁶ Here, the tower was so far from its approved coordinates that it was beyond even the three-

²⁹ *Id.*

³⁰ 47 CFR § 1.106(c); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 397 U.S. 967 (1966); *Davis & Elkins Coll.*, Memorandum and Order, 26 FCC Rcd 15555, 15556, para. 5 (MB 2011).

³¹ 47 CFR § 73.1690(b)(2); *Letter Order* at 3.

³² 47 CFR § 73.1690(b)(1).

³³ *Letter Order* at 3.

³⁴ *Id.* at 1-2.

³⁵ See *Eagle Broad. Group, LTD*, 563 F.3d 543, 553 (D.C. Cir. 2009) ("Under the statute, unauthorized and unlicensed transmissions are no better than silence"); *Roy E Henderson*, Memorandum Opinion and Order, 33 FCC Rcd 7365 (2018).

³⁶ See *A-O Broad. Corp.*, 23 FCC Rcd 603, 617, para. 26 (2008) ("This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited."). Well-established precedent shows that "the Commission has refused to exercise discretion under Section 312(g) where the failure to resume station operations was due to the licensee's own actions, finances, and/or business judgments." *Wilks License Co.*, Letter Order, 29 FCC Rcd 4903, 4905-06 (MB 2014). See also *A-O, supra*, 23 FCC Rcd at 617, para. 27 ("In particular,

second latitude/longitude tolerance allowed in cases of measurement error under the Rule that SBA has attempted to invoke. Although SBA contends this distance to be *de minimis*, there is no case law supporting that claim. SBA's unlicensed broadcasting violated Section 301 of the Act, and its failure to resume authorized Station broadcasting within twelve months of July 1, 2017 meant that its license expired under Section 312(g) of the Act. To contend that the Station's "death penalty" is unjustified and inequitable is to dismiss the significance of extended station silence under Section 312(g) and SBA's many shortcomings in completing its resumption process in accordance with the Rules.

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED, that the Petition for Reconsideration filed by Shelby Broadcast Associates, LLC on January 30, 2019 IS DENIED.

Sincerely,



Albert Shuldiner
Chief, Audio Division
Media Bureau