

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

In re Application of

N CONTENT MARKETING, LLC)	BMLH-20090105AGN
)	BSTA-20201112AAF
)	
FM Station WLDR-FM)	Facility Id. 24974
Traverse City, Michigan)	

To: Federal Communications Commission
Attn: Media Bureau, Audio Services Division

PETITION FOR CANCELLATION OF LICENSE

Blarney Stone Broadcasting, Inc. (“Blarney Stone”) hereby files this petition requesting the Commission cancel the license for WLDR-FM, Traverse City, Michigan, pursuant to Section 312(g) of the Communications Act of 1936, as amended.¹ WLDR has been silent for more than one consecutive year and in accordance with Section 312(g), the station license for WLDR expired as a matter of law at the end of the one year period. In support thereof, the following is respectfully submitted.

Introduction

N Content Marketing, LLC (“N Content”) is the licensee of WLDR. The broadcast license for WLDR authorizes the Station to operate from a tower site owned by Blarney Stone. On October 24, 2019, N Content terminated its local marketing agreement with Blarney Stone

¹ Blarney Stone has standing (to the extent it is required) to file this pleading because of its interest in stations in the same market as WLDR. Blarney Stone is the (1) the licensee of WGRY-FM, Roscommon, Michigan, Facility Id. No. 23085, WMQU(AM), Grayling, Michigan, Facility Id. No. 16830 and WQON(FM), Grayling Michigan, Facility Id. No. 23086; (2) provides programming pursuant to a Local Marketing Agreement for WWMN(FM), Facility Id. No. 10809, licensed to Thompsonville, Michigan and WYPV(FM), Facility Id. No. 53920, licensed to Mackinaw City; and (3) has a Joint Sales Agreement for WJNL(AM), Facility Id. No. 4599, licensed to Kingsley, Michigan, WHAK(AM), Facility Id. No. 29286, licensed to Rogers City, Michigan, WJML(AM), Facility Id. No. 63483, licensed to Petoskey, Michigan, and W266CS, Facility Id. No. 147731, licensed to Traverse City, Michigan.

and ceased operations.² Blarney Stone owns WLDR's broadcast and transmission equipment, which has remained at the licensed site since October 24, 2019.

WLDR has been silent since October 24, 2019 through at least November 1, 2020.³ N Content refused the opportunity to broadcast WLDR on the same tower at normal market rates many times during the past 12 months.⁴ N Content has not filed a request for special temporary authority for WLDR to remain silent or operate at variance to its licensed facilities between October 24, 2019 and November 11, 2020. On November 12, 2020, N Content filed an Engineering STA for WLDR to operate at a tower site at variance to the station's licensed facility.⁵ In explaining the "extraordinary circumstances" that warranted FCC approval of the Engineering STA, N Content stated that:

"WLDR-FM no longer has a lease agreement on its licensed tower site and presently does not have access to the licensed site."

Nowhere in the Engineering STA did N Content tell the Commission that N Content made the decision to take WLDR silent more than one year ago. Based on this inaccurate and incomplete representation, on November 16, 2020, the Commission granted the Engineering STA.

The License for WLDR-FM Has Expired

The broadcast license for WLDR-FM automatically expired when the station remained silent for more than one consecutive year. Section 312(g) states in relevant part 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".⁶

² See Declaration of Gerald J. Coyne, attached as Exhibit 1.

³ See *Id.*

⁴ See *Id.*

⁵ File No. BSTA-20201112AAF.

⁶ 42 USC §312(g).

Commission precedent establishes that a licensee cannot avoid the “automatic forfeiture” provision of Section 312(g) by using unauthorized facilities.⁷ A broadcast station is subject to Section 312(g)’s license forfeiture provision if, for twelve or more consecutive months, that station (a) fails to operate; (b) operates with unauthorized facilities; or (c) operates with a combination of the two.⁸

The record clearly establishes that WLDR has been silent for over 12 consecutive months. Attached as Exhibit 1 is the Declaration of Jerry Coyne, owner of Blarney Stone. Mr. Coyne states that WLDR ceased broadcasting from its licensed tower site on October 24, 2019 and that the transmission equipment and broadcast equipment remain on the tower premises until the present date.⁹ WLDR remained silent from that date until at least November 1, 2020 and has not broadcast since N Content terminated the local marketing agreement in 2019 until November 1, 2020.¹⁰ Even if WLDR did broadcast between October 24, 2019 and November 12, 2020 when N Content filed the Engineering STA, the station operated with unauthorized facilities, which is the equivalence of remaining silent. N Content failed to file and receive approval for any Engineering STA during that time. N Content’s late filed Engineering STA does not remedy the fact that WLDR was silent for more than one continuous year.

⁷ See *Great Lakes Community Broadcasting, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 8239, 8244-47 (MB 2009) (“*Great Lakes*”) (finding that “construction with unauthorized facilities does not override the ‘automatic forfeiture’ provision in our Rules”) (citing *Eagle Broadcasting Group, Ltd. v. FCC*, 563 F.3d 543, 545 (D.C. Cir. 2009) (affirming the Commission’s determination that station’s broadcast license had expired pursuant to Section 312(g) of the Act, due to its failure to broadcast at its authorized facilities for one year) and *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 603 (2008) (affirming staff decision that station’s license had expired as a matter of law due to the station’s failure to broadcast at its authorized facilities for one year)).

⁸ *Great Lakes*, 24 FCC Rcd at 8244-47.

⁹ See Declaration of Gerald J. Coyne.

¹⁰ See *Id.*

Conclusion

The language of Section 312(g) is clear and unambiguous. If a broadcast station remains silent for one consecutive year, the license expires automatically. Silence includes unauthorized broadcast operation by a station. WLDR remained silent for more than one consecutive year. Accordingly, the Commission must cancel the license for WLDR.

WHEREFORE, FOR THE FOREGOING REASONS, Blarney Stone Broadcasting, Inc. hereby requests that the Commission cancel the license for WLDR and rescind all authorizations associated with the station.

Respectfully submitted,

BLARNEY STONE BROADCASTING, INC.

By:



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November 18, 2020

Its Attorney

EXHIBIT 1

**DECLARATION OF
GERALD J. COYNE**

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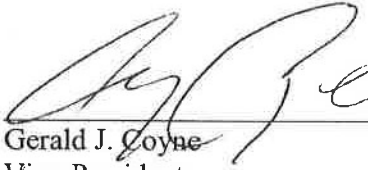
My name is Gerald J. Coyne, Vice-President of Blarney Stone Broadcasting, Inc. ("Blarney Stone"). This Declaration is submitted in support of the "Petition for Cancellation of License" that Blarney Stone is filing with the Commission.

N Content Marketing, LLC ("N Content") is the licensee of WLDR-FM, Traverse City, Michigan, Facility Id. No. 24974. Blarney Stone is the owner of the tower site and transmitter building from which the WLDR antenna is mounted and the station's transmission equipment housed.

On October 24, 2019, Roy Henderson, the principal of N Content Marketing, LLC terminated N Content Marketing's local management agreement with Blarney Stone and decided to cease operations of WLDR. Blarney Stone owns the broadcast and retransmission equipment for WLDR, which remains at the tower site. N Content refused the opportunity to broadcast WLDR on the same tower at normal market rates many times during the past 12 months. WLDR has not resumed operations since October 24, 2019 through at least November 1, 2020.

I have reviewed the pleading and to the best of my information, knowledge, and belief the information contained therein is complete and accurate. This declaration is submitted under the penalty of perjury.

By:



Gerald J. Coyne
Vice-President
Blarney Stone Broadcasting, Inc.

November 18, 2020

CERTIFICATE OF SERVICE

I, David G. O'Neil, hereby certify that a true and correct copy of the foregoing "Petition for Cancellation of License" was sent via first class mail (unless otherwise indicated) this 18th day of November 2020 to the following:

John C. Trent, Esq.
Putbrese Hunsaker & Trent, P.C.
200 South Church Street
Woodstock, VA 22664
(Counsel for N Content Marketing, LLC)



David G. O'Neil