

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

In the Matter of	)	
	)	
Great Lakes Community Broadcasting, Inc.	)	
Applications for Construction Permits and	)	
Licenses for Noncommercial Educational FM	)	
Stations and FM Translator Stations:	)	
	)	
WQLO(FM), Lake Odessa, MI	)	File Nos. BNPED-19990928AAV
Facility ID No. 106632	)	and BLED-20080707AAD
	)	
WAAQ(FM) (formerly WAQQ(FM)),	)	File Nos. BPED-19980505MC, BLED-
Rogers Heights, MI	)	20050321ALM, BMLED-20050607ACP, and
Facility ID No. 90609	)	BMPED-20051222AAA
	)	
WJKQ(FM), Jackson, MI	)	File Nos. BPED-19990607ME
Facility ID No. 93649	)	and BLED-20030520AAE
	)	
WJCQ(FM), Jackson, MI	)	File Nos. BPED-19981224MB
Facility ID No. 92547	)	and BLED-20050607ACR
	)	
W220CW, Rogers Heights, MI	)	File Nos. BPFT-20010627AAV
Facility ID No. 94049	)	and BLFT-20040217ABX
	)	
W207BL, Pinnebog, MI	)	File Nos. BMPFT-20000328ABV
Facility ID No. 94130	)	and BLFT-20030508ACY
	)	
W206AZ, Fremont, MI	)	File Nos. BPFT-19990311TB
Facility ID No. 92895	)	and BLFT-20030508ABN
	)	
W205BQ, Brevort, MI	)	File Nos. BPFT-19990823TG
Facility ID No. 94126	)	and BMPFT-20000328ABW
	)	
Great Lakes Broadcast Academy, Inc.	)	
Applications for Construction Permits and	)	
Licenses for Noncommercial Educational FM	)	
Stations and FM Translator Stations:	)	
	)	
WPQZ(FM), Muskegon, MI	)	File Nos. BPED-19960502MD
Facility ID No. 81726	)	and BLED-20030520AAB
	)	
W206BF, Rogers Heights, MI	)	File Nos. BPFT-19990818TB
Facility ID No. 94048	)	and BLFT-20000626AEQ
	)	
W211BI, Ann Arbor, MI	)	File Nos. BPFT-19990823TH
Facility ID No. 94125	)	and BLFT-20021018AAQ

MEMORANDUM OPINION AND ORDER**Adopted: June 18, 2009****Released: June 19, 2009**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us: (1) the captioned authorizations and applications of Great Lakes Community Broadcasting, Inc. ("GLCB") and Great Lakes Broadcast Academy, Inc. ("GLBA"), both of which are controlled by James J. McCluskey, Ph.D.; (2) certain petitions, complaints, informal objections, requests for investigation, and related pleadings involving GLCB, GLBA and the captioned authorizations and applications; and (3) investigative records, including a letter of inquiry by the Audio Division of the Media Bureau to GLCB and GLBA, dated August 5, 2008 (the "LOI"), and their response filed on September 5, 2008 ("Response") and a supplemental filing by David C. Schaberg, engineering consultant to GLCB and GLBA, on November 10, 2008 ("Supplement to Response").¹

2. For the reasons stated below, we find that the construction permits for WQLO(FM), WAAQ(FM), WJCQ(FM), WPQZ(FM), W205BQ and W206AZ have expired. We also find that the licenses of W207BL and W211BI have expired pursuant to Section 312(g) of the Communications Act of 1934, as amended (the "Act").² We will delete these call letters and dismiss all pending applications for these stations. We will address the status of the remaining authorizations captioned above, together with all other Commission authorizations in which Dr. McCluskey and/or Mr. Schaberg currently hold an attributable interest, in a separate Order to Show Cause, Notice of Opportunity for Hearing and Hearing Designation Order ("HDO").

II. DISCUSSION**A. WQLO(FM), Lake Odessa, Michigan**

3. **Background.** GLCB applied for and received a construction permit for an NCE-FM station on 89.7 MHz at Lake Odessa, Michigan. The permit for the station, for which GLCB chose the call sign WQLO, was issued on July 11, 2005 and contained an expiration date of July 11, 2008. The permit stated: "[T]his 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."³

4. On July 7, 2008, GLCB filed an application for license for the station.⁴ That license application, signed by Mr. Schaberg as engineering consultant to GLCB, certified that the station was operating pursuant to automatic program test authority and that all terms, conditions, and obligations set forth in the underlying construction permit had been fully met.

5. Based on previous investigations of GLCB and GLBA, discussed below, the staff of the Audio Division asked representatives of the Enforcement Bureau to investigate the veracity of those

¹ Response to Inquiry and to Jackson Radio Works Complaint. Mr. Schaberg's November 10, 2008, letter to Kevin Martin, Chairman of the Commission at the time, contained a modified version of the Response.

² 47 U.S.C. § 312(g).

³ FCC Form 351A (file no. BNPED-19990928AAV).

⁴ Application on FCC Form 302-FM (file no. BLED-20080707AAD).

certifications. On July 10, 2008, those representatives monitored 89.7 MHz from approximately 10:30 a.m. to 11:30 a.m. in the Lake Odessa, Michigan area and detected no station operating in the area. They inspected the location specified in the construction permit and found an open farm field with no building, tower or electrical power source.

6. On July 22, 2008, the Audio Division, following a routine application acceptability review, sent a letter to Dr. McCluskey, noting that the license application was deficient because it was not signed by him as an officer of GLCB. On July 29, 2008, the application was amended to specify Dr. McCluskey as the signatory for GLCB. The amendment did not modify any of the certifications in the application indicating that the station was on the air with the authorized facilities. In an email to the Audio Division at 2:43 p.m. on July 29, 2008, with the file number for the application in the subject line, Mr. Schaberg stated: "I have received concurrence from Dr. McCluskey and have filed the corrected paperwork. Thank you, as always, for your assistance."

7. On August 5, 2008, the Audio Division sent to GLCB its LOI, containing the investigative report and pictures from the Enforcement Bureau and directing GLCB to explain the certifications in the application in light of that report.⁵ In its Response, signed by Dr. McCluskey, GLCB claimed that the license application and the amendment to that application were filed by mistake. GLCB claimed that Dr. McCluskey and Mr. Schaberg had been collaborating to clear up various "problems" in the authorizations of GLCB and GLBA.⁶ Dr. McCluskey states:

As part of the collaboration, a series of applications were compiled in the electronic queue which were designed to be ready to file at an appropriate time. Many of these were for translator modifications, but some, such as this application, were placed in queue to have the information readily available for our internal review. Mr. Schaberg is providing an affidavit with this filing relative to this situation and how it may have occurred.

Since [McCluskey and Schaberg] both knew that the station was not built and would not be completed before the expiration of the construction permit, provision was made for a request for a 6-month extension of time concurrent with the transfer of this permit to the Society for Accurate Information and Distribution Foundation ("SAID"). You will find this in subparagraph (b) of the Donation Agreement between the parties.

Further, because [McCluskey and Schaberg] both knew that the FCC was seriously and intently scrutinizing every move made by the licensee, it would have been entirely stupid to file the license request knowing that the station was not constructed. Both realized it was extremely likely that the Commission would have the site field inspected before granting the license.⁷

⁵ LOI at 5 and Ex. A. The LOI directed GLCB and GLBA to respond with affidavits or declarations under penalty of perjury in accordance with the requirements of 47 C.F.R. § 1.16. *Id.* at 9. The LOI warned that knowingly and willfully making any false statement or concealing any material fact in reply to the LOI is punishable by fine or imprisonment pursuant to 18 U.S.C. § 1001. *Id.*

⁶ Response at 2.

⁷ *Id.* No extension request or tolling request was ever submitted to the Commission. We also note that Dr. McCluskey, as early as 2003, was aware that Commission policy is not to grant extensions of construction permits.

(Continued . . .)

8. Mr. Schaberg, in his affidavit submitted with the Response, states:

WQLO has NOT been constructed. . . . I was mortified to learn that the application for license had been filed. It was put into the queue only as an internal reminder that this was a priority. The fact that my name appeared as a signatory on the filing also shows that this was not ready to file. Dr. McCluskey received a letter indicating that it was his name that needed to appear and, according to my conversation with him, simply complied with the request not knowing that this was not to be filed. As noted above, no effort had been made to construct the station and there was no reason to attempt to slide another application by when we both knew that the Commission was watching every move.⁸

9. After receiving the Response, the Audio Division checked the web logs for its electronic filing system, known as CDBS. Those web logs show that the application was started on July 2, 2008, at 6:04 p.m., from internet address 207.179.121.210. This internet address is registered to DS Broadcasting, 1804 Hillcrest, Lansing, MI 48910. Although Mr. Schaberg's correspondence lists his business address at 3105 S. Martin Luther King Boulevard, #169 in Lansing, Michigan, his Michigan driver's license and voter registration list his address as the 1804 Hillcrest address. The CDBS web log for the application shows a number of connections to the server for the application, but all were from the original internet address.

10. In order to put an application or amendment for a particular station on file through CDBS, the filer must enter a Federal Registration Number ("FRN") associated with that station. Once the filer enters the FRN and submits the filing, the CDBS system responds with a screen reporting that the filing was successfully submitted. WQLO has a single associated FRN, established in 2006. The web log shows that the FRN was entered from internet address 207.179.121.210 at 9:06 p.m. on July 4, 2008. The CDBS system records the application as submitted at that time, and received on July 7, at 12:01 a.m., the beginning of the next business day. The amendment to the application, substituting Dr. McCluskey for Mr. Schaberg as the signatory, was also prepared and filed exclusively from internet address 207.179.121.210. The amendment was started on July 29, 2008, at 2:37 p.m., and the FRN entry to submit the amendment occurred at 2:41 p.m. Mr. Schaberg's email to the Audio Division confirming the filing of the amendment was sent at 2:43 p.m. These facts contradict the claims of Dr. McCluskey and Mr. Schaberg that the license application and amendment were submitted by mistake, as well as the claim by Mr. Schaberg that Dr. McCluskey submitted the amendment on his own.

(footnote continued from previous page)

See infra at ¶ 41 (quotation from letter by Dr. McCluskey to Secretary of FCC (Nov. 5, 2003)). The Response and Supplement to Response requested the Commission to allow GLCB to transfer its authorizations, including the WQLO(FM) construction permit, to SAID, as proposed in applications filed with the Commission in 2008. *See* Broadcast Applications, Public Notice, Report No. 26766 at 1-2 (June 26, 2008), and Broadcast Applications, Public Notice, Report No. 26803 at 1 (Aug. 19, 2008). Although SAID has never filed any of its required ownership reports with the Commission pursuant to 47 C.F.R. § 73.3615(e)(1), SAID's applications and records of the Michigan Department of Labor and Economic Growth show that Mr. Schaberg is one of two directors of this foundation. *See, e.g.*, Application on FCC Form 340 (file no. BNPED-20071017AJB).

⁸ Affidavit of David C. Schaberg, dated Sep. 2, 2008, at 2. However, the Supplement to Response contains a different, unsigned version of this affidavit. That version, dated "August __, 2008," states: "WQLO has been constructed to allow for a license to be granted."

11. **Analysis.** Based on the facts discussed above, we find that: (a) WQLO was not constructed; (b) in an attempt to prevent the construction permit for WQLO from expiring, Dr. McCluskey and Mr. Schaberg submitted a license application for WQLO on July 7, 2008, four days before the expiration date, falsely certifying that the station had been constructed; (c) Dr. McCluskey and Mr. Schaberg reaffirmed the false certification in the July 29, 2008, amendment to the application filed by Mr. Schaberg, with the concurrence of Dr. McCluskey; and (d) when confronted with the showing in the LOI that WQLO had not been constructed, Dr. McCluskey and Mr. Schaberg falsely claimed that the application and the amendment had been submitted by mistake.

12. The matter of GLCB's character qualifications will be addressed in the HDO, rather than here, as part of the issue of whether the company's remaining authorizations should be revoked pursuant to Section 312(a) of the Act.⁹ For purposes of this decision, the most salient fact is that WQLO was never constructed in accordance with the construction permit. We need not reach the issue of their deceit in this proceeding.¹⁰

13. Pursuant to the automatic forfeiture provision set forth in Section 73.3598(e) of the Rules, the WQLO construction permit has been forfeited.¹¹ Accordingly, we will delete the WQLO call letters and dismiss the WQLO license application.

B. WAAQ(FM) (formerly WAQQ(FM)), Rogers Heights, Michigan

14. **Background.** On May 5, 1998, GLCB filed an NCE-FM construction permit application for a proposed station on 88.1 MHz at Rogers Heights, Michigan.¹² The application ultimately was granted and a construction permit, with the call sign WAAQ, was issued on December 17, 2003, with an expiration date of December 17, 2006. The construction permit authorized construction of the proposed station on a tower to be constructed at 43-37-05 NL, 85-32-40 WL (NAD83 coordinates will be used exclusively herein), with the radiation center of the antenna at 14 meters above ground level.¹³ The permit contained the same "automatic forfeiture" language as the WQLO permit.

15. On March 21, 2005, GLCB filed a license application for WAAQ.¹⁴ That license application certified that the station was operating pursuant to program test authority and that all terms, conditions, and obligations set forth in the underlying construction permit had been met. Dr. McCluskey signed the application as the President/Owner/CEO of GLCB and also as its consulting engineer.

16. On November 7, 2005, Mentor Partners, Inc. ("Mentor") filed an informal objection to the WAAQ license application.¹⁵ The Mentor Objection contained a sworn declaration and related

⁹ 47 U.S.C. § 312(a).

¹⁰ The Commission will refer this matter to a U.S. attorney's office for a potential prosecution. In addition, as noted above, the Media Bureau will be issuing an HDO to determine, *inter alia*, whether Dr. McCluskey and Mr. Schaberg are qualified to hold Commission authorizations and are subject to a forfeiture for submitting false certifications to the Commission. That HDO will specify that the proceeding largely will be held in abeyance pending the outcome of the referral of this matter to the U.S. attorney. *See infra*, n.5.

¹¹ *See* 47 C.F.R. § 73.3598(e).

¹² Application on FCC Form 340 (file no. BPED-19980505MC).

¹³ FCC Form 351A (file no. BPED-19980505MC).

¹⁴ Application on FCC Form 302-FM (file no. BLED-20050321ALM).

¹⁵ "Informal Objection and Request for Immediate Revocation of Operating Authority" (November 7, 2005) ("Mentor Objection").

documentation, including photographic evidence, showing that WAAQ had not been constructed at its authorized site. The authorized site was found to be a wooded area containing no building, tower or power source. Using a field strength meter and a GPS device, the President of Mentor found WAAQ to be operating from a location approximately 3.5 miles from the authorized site. Mentor claimed that the unauthorized site was short-spaced toward WIAA(FM), Interlochen, Michigan and toward a construction permit for WEJC-FM, White Star, Michigan.¹⁶

17. On December 22, 2005, GLCB filed an application for a minor change to the WAAQ construction permit.¹⁷ Mentor submitted an informal objection on March 3, 2006, reiterating the objections set forth in the Mentor Objection to GLCB's still pending license application.¹⁸ On May 24 and 25, 2006, representatives of the Enforcement Bureau inspected WAAQ. They found numerous violations of the Commission's Rules (the "Rules"), including operation from an unauthorized site approximately 0.283 miles from the site specified in the initial construction permit and in the still pending covering license application.¹⁹ This was not the unauthorized site specified in the Mentor Objection, but a second unauthorized site corresponding to the proposed site in the minor change application filed on December 22, 2005.²⁰

18. In the LOI, the Audio Division directed GLCB to explain whether the certifications in the still-pending WAAQ license application were false in light of the Enforcement Bureau's report. GLCB claims: "The station, when it was operating, was in compliance with its valid authorization except perhaps for the tower height."²¹ As determined by the Enforcement Bureau inspection, this claim is not true. GLCB also states: "In the spring of 2006, we lost our ability to operate from the original site and after the Commission field staff came to inspect, we removed our equipment."²² At no time did GLCB request authority for the station to be silent.

19. **Analysis.** Based on our investigation, we find that: (a) GLCB never constructed WAAQ at its authorized site; (b) GLCB submitted a license application for WAAQ falsely certifying that the station had been constructed at its authorized site; (c) GLCB attempted to obtain after-the-fact approval to operate from a different transmitter site once Mentor alerted the Commission to the false certifications in the WAAQ license application; (d) GLCB falsely claimed in its Response that the station had operated from its authorized site until 2006; (e) GLCB committed multiple Rule violations in its operation of WAAQ, as reflected in the Enforcement Bureau's report;²³ and (f) WAAQ has been off the air without Commission approval for approximately three years.²⁴

¹⁶ Mentor Objection at 3.

¹⁷ Application on FCC Form 340 (file no. BMPED-20051222AAA).

¹⁸ "Informal Objection and Request to Revoke Program Test Authority" (March 3, 2006).

¹⁹ The other Rule violations included lack of a main studio and absence of a management or staff presence, an incomplete public inspection file, lack of operational Emergency Alert System ("EAS") equipment, lack of monthly EAS tests, no personnel or remote control equipment to control the transmitter, failure to post the license, failure to designate a chief operator, and failure to have equipment performance measurements available. See 47 C.F.R. §§ 11.35, 11.61, 73.1125, 73.1230, 73.1300, 73.1350(b), (h), and (i), 73.1400, 73.1590, 73.1870 and 73.3527.

²⁰ See LOI at 2-3 and Ex. B.

²¹ Response at 5.

²² *Id.* at 4.

²³ See LOI, Ex. B.

²⁴ The only defense asserted by GLBC and GLBA in their Response is to claim that their pattern of constructing quasi-translators (if that) instead of the full-service NCE-FM stations authorized in their construction permits

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20. The matter of GLCB's character qualifications will be addressed in the HDO, rather than here, as part of the issue of whether the company's remaining authorizations should be revoked pursuant to Section 312(a) of the Act.²⁵ For purposes of this decision, the most salient fact is that WAAQ was never constructed in accordance with the construction permit. Commission precedent makes it clear that construction with unauthorized facilities does not override the "automatic forfeiture" provision in the Rules.²⁶ Accordingly, the WAAQ construction permit was forfeited as of December 17, 2006. We will delete the WAAQ call sign and dismiss all pending applications for WAAQ.

C. WJKQ(FM), Jackson, Michigan

21. **Background.** In 2003, GLCB received a construction permit for a new NCE-FM station on 88.5 MHz at Jackson, Michigan, for which GLCB chose the call sign WJKQ.²⁷ The permit provided for construction of the station on a tower located at 42-16-22 NL, 84-21-27 WL, with an antenna radiation center 24 meters above ground level.

22. In 2003, GLCB applied for a license for WJKQ, certifying that the station was operating pursuant to program test authority and that all terms, conditions, and obligations set forth in the construction permit were fully satisfied.²⁸ Dr. McCluskey signed the application as President and owner of GLCB and as GLCB's consulting engineer. That application was granted on February 5, 2004, and the station's license was renewed on September 20, 2004.

23. In 2005 and 2006, Jackson Radio Works ("Jackson") filed an informal objection and then a complaint that WJKQ had been constructed at an unauthorized location.²⁹ The complaint included a sworn declaration and related documentation to the effect that no tower, building or power source existed

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constitutes "compliance" with their authorizations because the facilities did not exceed the antenna heights and power levels specified in the authorizations, and therefore would not have caused interference to other stations. *See* Response at 5, 6, 7, 8, 9 and 10. We reject this argument. Except to the extent specifically provided in our Rules, we do not allow permittees to self-approve modifications to their construction permits. *See* 47 C.F.R. § 73.1690. Commission review and prior approval of engineering changes are necessary prior to construction. The Commission operates a national database of authorizations that allows all parties to know where and when broadcast spectrum is available. In an era of intense demand for broadcast spectrum, parties such as GLBC and GLBA cause substantial harm when they hoard spectrum by holding authorizations for full-service FM stations but operate minimal facilities that would not have been approved under our Rules had they been presented to us (or, worse, fail to operate any facilities). This case helps illustrate not only the wisdom of our review and approval requirements for modifications to construction permits, but also why we modified Section 73.3598 so that construction permits would no longer serve as open-ended options to construct stations. *See* 47 C.F.R. § 73.3598; *1998 Biennial Regulatory Review*, Report and Order, 13 FCC Rcd 23,056, 23,093 (1998) (modifying Section 73.3598 to provide for a three-year construction period, with limited opportunities to toll that period, and automatic forfeiture of the permit if the station is not constructed as authorized within that period, is "intended to strike a balance between our fundamental interests in expediting new service to the public and preventing the warehousing of scarce spectrum").

²⁵ 47 U.S.C. § 312(a).

²⁶ 47 C.F.R. § 73.3598(e); *see KSBN Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 20162 (2004), *recon. denied*, 23 FCC Rcd 2504 (2008).

²⁷ FCC Form 351A (file no. BPED-19990607ME).

²⁸ Application on FCC Form 302-FM (file no. BLED-20030520AAE (granted Feb. 5, 2004)).

²⁹ "Informal Objection" (April 29, 2005) and "Complaint of Violation of FCC Rules and Request for Immediate Revocation of Operating Authority" (August 17, 2006). GLCB filed a series of minor modification applications for the station, all of which were dismissed by the Audio Division on May 20, 2005.

at WJKQ's licensed site and that the station was operating from an unauthorized site approximately 0.4 kilometers east of the authorized site. On July 14, 2006, representatives of the Enforcement Bureau inspected the station. They found multiple Rule violations, including operation from an unauthorized site as indicated in the Jackson complaint.³⁰ On September 13, 2006, GLCB filed a minor modification application for authority to move the station to the site from which it had been operating.

24. In the LOI, the Audio Division directed GLCB to explain whether its license application for WJKQ was false in light of the findings of the Enforcement Bureau.³¹ In its Response, GLCB states:

This station was originally located on an existing tower (ASR 1224398) on the WEST side of US127 (due west of where the inconsistent coordinates are shown in the original construction permit. Those coordinates were determined with mapping but perhaps should have been drawn directly from the ASR). This is when the station was licensed. Because of a short-term agreement with the tower owner, the station was then moved to the east at what was Gold's Nursery at 1130 Munith Road. They allowed [GLCB] to construct a small tower and hastily put the antenna up.

The station was operated for only a few months when a tornado came through and bent the pole holding the antenna and causing damage to the transmitting equipment. The station operated very intermittently after that (spring of 2006) and not at all after [Dr. McCluskey] left for Texas in July of 2007.

[Dr. McCluskey] admits to being remiss in not filing a modification of construction permit to correct the coordinates in a timely manner. It was not until September of 2007 that notation was made that such an application had not been made. The application was intended to be filed before operating at this location and got overlooked.³²

25. The Antenna Survey Registration ("ASR") referenced in GLCB's Response indicate that the existing tower from which WJKQ allegedly operated for a brief time is located at 42-16-29 NL, 84-21-36 WL. This is approximately 0.3 kilometers from the site specified in the WJKQ construction permit.

26. Elsewhere in its Response, GLCB provides further information about WJKQ's operations:

WJKQ has been on the air continuously since May 19, 2008. Prior to this date, the station had operated only sporadically since 2006.³³

³⁰ LOI at Ex. C. The other Rule violations were similar to those identified in the inspection of WAAQ. *See* n. 18 *supra*.

³¹ LOI at 6 and Ex. C.

³² Response at 6. The Response includes a request for grant of the pending application for consent to assign the license for WJKQ to SAID, Mr. Schaberg's foundation (file no. BALED-20080623ABG). Jackson has filed a Petition to Deny that application, and GLCB's Response included an opposition to that Petition to Deny. The outcome of this assignment application will be addressed in the HDO.

³³ Response at 24.

WJKQ has been restored to operation at the coordinates shown in the requested modification of construction permit that is on file with the Commission.³⁴

27. Although the LOI specifically directed GLCB to provide documentation relating to the construction and operation of WJKQ,³⁵ including engineering records, GLCB provided no documents to support its narrative or to indicate with specificity when the station was off the air. At no time did GLCB request authority for the station to be silent.

28. **Analysis.** Based on our investigation, we find that: (a) WJKQ never operated from the transmitter site authorized in its construction permit or its license; (b) GLCB falsely certified in its license application for WJKQ that the station had been constructed in accordance with the terms and conditions of the construction permit; (c) the grant of the WJKQ license had become a final order prior to the filing of Jackson's informal objection and complaint, which alleged operation of WJKQ from an unauthorized site; (d) after receiving the WJKQ license, GLCB moved the station's transmitter site without prior approval; (e) GLCB committed multiple Rule violations in its operation of the station, as shown in the Enforcement Bureau's report,³⁶ and (f) WJKQ may have been off the air without Commission approval for more than a year.

29. The matter of GLCB's character qualifications will be addressed in the HDO, as part of the issue of whether the company's remaining authorizations should be revoked. The HDO will also address the question of whether WJKQ was off the air for more than a year and, if so, whether the station's license should be extended or reinstated pursuant to Section 312(g) of the Act.³⁷

D. WJCQ(FM), Jackson, Michigan

30. **Background.** GLCB applied for and received a construction permit for an NCE-FM station on 89.7 MHz at Jackson, Michigan. The permit for the station, for which GLCB chose the call sign WJCQ, was issued on December 13, 2004, and contained an expiration date of December 13, 2007. Like the permits discussed above, the permit stated: "[T]his 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."³⁸

31. On June 7, 2005, GLCB filed an application for license for the station.³⁹ That license application, signed by Dr. McCluskey as Owner/President/CEO of GLCB and as GLCB's consulting engineer, certified that the station was operating pursuant to program test authority and that all terms, conditions, and obligations set forth in the underlying construction permit had been fully met.

³⁴ *Id.* at 26 (Affidavit of David C. Schaberg).

³⁵ LOI at 6.

³⁶ *See* LOI, Ex. C.

³⁷ 47 U.S.C. § 312(g); *see Eagle Broadcasting Group, Ltd. v. FCC*, 563 F.3d 543, 545 (D.C. Cir. 2009) (affirming Commission's determination that station's broadcast license had expired pursuant to Section 312(g) of the Act, due to its failure to broadcast for one year); *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 for one year).

³⁸ FCC Form 351A (file no. BPED-19981224MB).

³⁹ Application on FCC Form 302-FM (file no. BLED-20050607ACR).

32. Jackson filed an informal objection in 2005 and then a complaint in 2006, alleging that WJCQ had been constructed at an unauthorized location.⁴⁰ The complaint included a sworn declaration and related documentation to the effect that no tower, building or power source existed at WJCQ's authorized site and that the station was operating from an unauthorized site (the Colonial Inn on Ann Arbor Road) approximately one kilometer from the authorized site. On February 15, 2006, representatives from the Enforcement Bureau monitored and located WJCQ with direction-finding equipment. They found the station to be operating from the Colonial Inn site, with possible commercial content.⁴¹

33. In the LOI, the Audio Division directed GLCB to explain whether its license application for WJCQ was false in light of the findings of the Enforcement Bureau.⁴² In its Response, GLCB states:

The original [WJCQ] construction permit was obtained for a site just west of Sergeant Road and north of I-94 to the northeast of Jackson. The site had been checked and the location prepared. A few small sections of communications tower were in place when township officials decided that [GLCB] could not build a permanent structure there. . . .

[Dr. McCluskey] then contacted local businesses to find a suitable location to put the station's transmitter nearby while finding another permanent location. He found a willing partner at the Colonial Motel located on Ann Arbor Road at the south end of Sergeant Road. However, this site offered a very low transmission point on a sign in the rear of the facility. Nonetheless, the equipment was installed and broadcasts commenced.

[Dr. McCluskey] admits to his failure to do either of the following: Obtain an STA [special temporary authority] to operate temporarily and/or to file a modification of license for a new construction permit. . . .

The station went silent before [Dr. McCluskey] left for Texas early in 2007 and remains [silent].⁴³

34. **Analysis.** Based on the Commission's investigation, we find that: (a) WJCQ never operated from the transmitter site authorized in its construction permit; (b) GLCB falsely certified in its license application for WJCQ that the station had been constructed in accordance with the terms and conditions set forth in the construction permit; and (c) WJCQ has been silent since early 2007.⁴⁴ The matter of GLCB's character qualifications will be addressed in the HDO, rather than here, as part of the issue of whether the company's remaining authorizations should be revoked pursuant to Section 312(a) of

⁴⁰ "Informal Objection" (April 29, 2005) and "Complaint of Violation of FCC Rules and Request for Immediate Revocation of Operating Authority" (August 17, 2006). On February 18, 2005, GLCB filed an application to modify the WJCQ construction permit. FCC Form 340 (file no. BMPED-20050218AAO). The Audio Division dismissed that application on June 16, 2005.

⁴¹ LOI, Ex. D.

⁴² *Id.* at 6 and Ex. D.

⁴³ Response at 7-8.

⁴⁴ See LOI, Ex. D, and GLCB's Response at 7-8.

the Act.⁴⁵ For purposes of this decision, the most salient fact is that WJCQ was never constructed in accordance with the construction permit. As we stated above, Commission precedent makes it clear that construction with unauthorized facilities does not override the “automatic forfeiture” provision in our Rules.⁴⁶ Accordingly, the WJCQ construction permit was forfeited as of December 13, 2007. We will delete the WJCQ call sign and dismiss all pending applications for WJCQ.

E. WPQZ(FM), Muskegon, Michigan

35. **Background.** In 1996, American Family Association (“AFA”) applied for and received a construction permit for a proposed NCE-FM station on 88.1 MHz at Muskegon, Michigan.⁴⁷ The application stated that the station, for which AFA chose the call sign WPQZ, would operate from the same tower as WMRR(FM), Muskegon Heights, Michigan.⁴⁸ WMRR operates from a tower (ASR 1000809) located at 43-16-38 NL, 86-20-05 WL, with an overall height above ground level of 152 meters (the “Clear Channel Tower”).

36. The WPQZ permit, issued on June 12, 2000, provided for operation from the Clear Channel Tower, with a radiation center 99 meters above ground level and effective radiated power of 580 watts. The permit contained an expiration date of June 12, 2003, and, like the others discussed herein, stated: “[T]his 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.”⁴⁹ In 2002, AFA and GLBA applied for and received Commission approval for consent to assign the construction permit for WPQZ to GLBA. That assignment was consummated on January 13, 2003.⁵⁰

37. GLBA filed a license application for WPQZ on May 20, 2003, certifying that the station was operating pursuant to program test authority and that all terms, conditions, and obligations set forth in the underlying construction permit had been fully met.⁵¹ That application was signed by Dr. McCluskey as the President and owner of GLBA and as its consulting engineer.

38. On June 13, 2003, Grand Rapids Cable Access Center (“GRCAC”), licensee of WYCE(FM), Wyoming, Michigan, filed a petition to dismiss the WPQZ license application and an application based on the presumed forfeiture of the WPQZ construction permit.⁵² GRCAC provided sworn declarations and documentary evidence showing that WPQZ was not on the air and that no construction activity for the station had occurred at the Clear Channel Tower site.

39. On July 30, 2003, the Audio Division directed GLBA to respond to the GRCAC Petition. In a letter filed with the Commission on August 25, 2003, GLBA states:

⁴⁵ 47 U.S.C. § 312(a).

⁴⁶ See 47 C.F.R. § 73.3598(e) and n. 25 *supra*.

⁴⁷ Application on FCC Form 340 (file no. BPED-19960502MD).

⁴⁸ *Id.* at 2.

⁴⁹ FCC Form 351A (file no. BPED-19960502MD).

⁵⁰ Application on FCC Form 314 (file no. BAPED-20021016AAG).

⁵¹ Application on FCC Form 302-FM (file no. BLED-20030520AAB).

⁵² “Petition to Dismiss License Application and Delete Call Sign” (June 13, 2003) (“GRCAC Petition”) and Application on FCC Form 340 (file no. BPED-20030613AAM).

Contrary to [GRCAC's] allegations, the above-referenced station was constructed on May 12, 2003 and made operational at that time. Application for license to cover was filed electronically on 20 May, 2003.

The station experienced technical difficulty with it's [sic] final amplifier which was removed from service on May 22, 2003.⁵³

40. In a letter filed with the Commission on September 15, 2003, GLBA requested additional time to file additional material in response to the GRCAC Petition.⁵⁴ On October 8, 2003, GLBA submitted a letter with several attached documents addressing the claims in the GRCAC Petition.⁵⁵ In particular, GLBA provides an unsworn statement from David J. Bishop, who stated:

Please be advised that Dr. McCluskey, on behalf of [GLBA] and station WPQZ-FM here in Muskegon, Michigan has paid rent for tower space on the tower that I own. The rent has been paid through the summer and is presently current.

I personally witnessed the coordinates on Dr. McCluskey's GPS to match the reading of 43° 16' 38.00" N Latitude and 86° 20' 5.000" W Longitude as indicated on the construction permit. WPQZ was put on the air at full power May 12, 2003.

41. In the GRCAC Reply, GRCAC provides sworn statements and documentary evidence showing that, as of September 18, 2003, GLBA had started operating WPQZ with a fiberglass whip antenna at Mr. Bishop's house near the Clear Channel Tower. Most significantly, Mr. Bishop provided to GRCAC a sworn declaration stating:

I am David J. Bishop. I reside at 3821 West Giles, Muskegon, Michigan 49445. Located next to my house is a tower, approximately 40 feet in height.

I rent space on the tower to Dr. James McCluskey and Great Lakes Broadcast Academy, Inc. to operate an FM station on 88.1 MHz. I am

⁵³ Letter from James J. McCluskey to Secretary of FCC (dated Aug. 14, 2003). The letter inexplicably referred to the station as "WMCQ formerly WPQZ" and contained an incorrect facility identification number and incorrect file numbers for the original construction permit and the pending license application.

⁵⁴ Letter from James J. McCluskey to Secretary of FCC (dated Sep. 4, 2003).

⁵⁵ Letter from James J. McCluskey to Secretary of FCC (dated Sep. 27, 2003). The attachments all were unsworn letters or emails. A letter from Pat Schulte of Thumb Radio states that he had done some tower work for Dr. McCluskey in the spring of 2003, but it does not specify the station or location or date of the work. An email from Scott Quitadamo, Director of Vertical Real Estate for Clear Channel, appears to indicate that the construction permit site for WPQZ is not the Clear Channel Tower site, but the email is directed to a Robert E. Goodrich and it does not specify a file number or other specific identifying information. A letter from Mr. Schaberg provides vague claims such as "the equipment that was used all was within the parameters of the station's authorization" instead of specific assertions that the station had been constructed at the Clear Channel Tower site, within the deadline set by the construction permit, in compliance with the terms of the construction permit. In addition, some of these documents were altered in significant respects in the version of the filing sent to GRCAC. See GRCAC "Reply" (Oct. 16, 2003) ("GRCAC Reply") at Ex. D and Ex. E.

being paid \$25.00 a month for space on the tower and space in my home for the station's transmitter, a computer and a few pieces of additional equipment. Attached to this statement are photographs of my home, the tower next to my home and the station's equipment in my home.

On approximately September 18, 2003, Dr. McCluskey presented to me, for my signature, a statement regarding WPQZ. Although I signed the statement, I did not write it. The statement said, among other [things], "WPQZ was put on the air at full power on May 12, 2003."

On further recollection, the May 12 date is not accurate. The station's equipment was not installed until late June or early July. It is my understanding that the station began broadcasting on September 18, 2003. It is also my understanding that the station is broadcasting at 10 watts.⁵⁶

42. By letter dated November 5, 2003, GLBA responded to the GRCAC Reply. GLBA states:

The icy and cold winter months in Michigan are [inclement] and not conducive to tower climbing. Because of weather conditions, GLBA only had about two months (as compared with 36 months) to complete construction of WPQZ-FM. Despite this, construction was completed within the required time. The Commission does not grant extensions to construction permits as a matter of policy. . . .

However, close examination of the coordinates in the reply filed by "GRCAC" have challenged us to further investigate this discrepancy ourselves. As evidenced by the e-mail we received from Scott Quitadamo of Clear Channel Broadcasting, Inc., he told us the WMRR tower did not match those coordinates. Our GPS unit indicated the correct coordinates to be at the tower next to the house at 3821 Giles road in Muskegon.

After further investigation, we have determined by using a different GPS unit that the information supplied in Mr. Quitadamo's e-mail message to us, as well as our own GPS unit were both in error.

To rectify this compounding of errors, we hereby request an extension to file a corrective amendment for WPQZ.⁵⁷

43. On November 20, 2003, representatives of the Enforcement Bureau conducted an inspection and found that WPQZ had been constructed at an unauthorized location, with the wrong antenna and antenna height, and apparently the wrong power level, before being dismantled.⁵⁸

⁵⁶ GRCAC Reply, Ex. H. GRCAC showed that the coordinates of Mr. Bishop's home are 43-16-39 N, 86-20-11 W.

⁵⁷ Letter from Dr. McCluskey to Secretary of FCC (dated Nov. 5, 2003).

⁵⁸ LOI at Ex. E. They also noted other Rule violations, including lack of a main studio and lack of a public inspection file.

44. On June 10, 2004, GLBA filed a modification application for WPQZ, proposing operation on an existing tower owned by SBA Towers II LLC ("SBA").⁵⁹ That tower is located at 43-16-38 NL, 86-18-39 WL. The application proposes operation with a radiation center located 33 meters above ground level.

45. In its LOI, the Audio Division directed GLBA to explain whether the WPQZ license application was false in light of the Enforcement Bureau's findings.⁶⁰ GLBA, in its Response, provided a new explanation that completely contradicted its prior explanation:

When [GLBA] acquired the construction permit from American Family Association, there was about 6 months left to construct. SBA Towers owned the authorized tower and [Dr. McCluskey] did not realize that it was SBA instead of Clear Channel who owns a tower very close by (1.94 km due east of CP site). It was Clear Channel with whom [Dr. McCluskey] made his agreement and constructed on that tower, again not realizing that it was the wrong tower.

Again, [Dr. McCluskey] constructed the facility according to what he believed to be accurate information. . . . [GRCAC's] objection caused the inspection of November 20, 2003. However, before the inspection, the station was "dismantled" and off the air, thus not operating from an "unauthorized" location.

The application of June, 2004, is for the correct site on the SBA tower (ASR 1251334). This would correct the "improper construction". The station has not operated since late summer of 2003. . . .

46. GLBA provided no documentation, such as a tower lease, to support its claim that the station was constructed on a tower owned by Clear Channel. The LOI specifically directed GLBA to provide all such documentation.⁶¹ GLBA did not provide any support for its claim that SBA rather than Clear Channel owns the tower at the authorized WPQZ coordinates. GLBA also did not explain the discrepancy between its Response and its prior claim that it had constructed the station on Mr. Bishop's tower rather than the Clear Channel Tower.

47. After reviewing GLBA's Response, the Audio Division made an inquiry to determine whether Clear Channel had ever leased space on the Clear Channel Tower or any other tower owned by the company in the area of the Clear Channel Tower to GLBA or Dr. McCluskey. Clear Channel reported that it had no knowledge of any noncommercial educational station operating at any time from 2003 to the present on any of its towers in the Muskegon area. A review of Clear Channel's records, maintained by the company's Director of Vertical Real Estate, showed no record of any agreement or even incomplete negotiation for WPQZ to use the Clear Channel Tower.⁶²

⁵⁹ Application on FCC Form 340 (file no. BMPED-20040610AAX).

⁶⁰ LOI at 6-7 and Ex. E.

⁶¹ *Id.* at 6-7.

⁶² Email from Richard Bodorff to Tom Hutton (May 21, 2009).

48. **Analysis.** Based on the Commission's investigation, we find that: (a) GLBA never constructed WPQZ at its authorized site; (b) GLBA could not have constructed WPQZ in accordance with its construction permit from Mr. Bishop's house; (c) to the extent it operated WPQZ, GLBA did so from an unauthorized location, with multiple Rule violations noted by the Enforcement Bureau; (d) GLBA falsely certified in its license application for WPQZ that the station had been constructed in accordance with the construction permit; (e) GLBA provided false, misleading and contradictory explanations of its construction and operation of WPQZ; and (f) WPQZ has been off the air without Commission authorization for nearly six years.

49. The matter of GLCB's character qualifications will be addressed in the HDO, rather than here, as part of the issue of whether the company's remaining authorizations should be revoked pursuant to Section 312(a) of the Act.⁶³ For purposes of this decision, the most salient fact is that WPQZ was never constructed in accordance with its construction permit. Commission precedent makes it clear that construction with unauthorized facilities does not override the "automatic forfeiture" provision of our Rules.⁶⁴ Accordingly, the WPQZ construction permit was forfeited as of June 12, 2003. We will delete the WPQZ call sign and dismiss all pending applications for WPQZ.

F. W220CW, Rogers Heights, Michigan

50. **Background.** This FM translator is licensed to GLCB to operate on 91.9 MHz at Rogers Heights, Michigan. All relevant applications for this translator state that the primary station being rebroadcast is WAAQ(FM), Rogers Heights, Michigan (Fac. ID 90609). In 2002, GLCB received a construction permit to modify the translator station to operate from 43-38-01 NL, 85-27-54 WL, with a circularly polarized antenna located 30 meters above ground level.⁶⁵ Like the other permits discussed herein, this permit contains automatic expiration language pursuant to Section 73.3598(e) of the Rules, providing that the permit would expire unless construction was completed and an application for license was filed by July 30, 2005. In 2004, GLCB filed a license application, certifying that all terms, conditions, and obligations set forth in the construction permit had been fully met.⁶⁶

51. The Mentor Objection, filed on November 7, 2005, provided a sworn declaration and related documentation indicating that W220CW was in operation from an unauthorized site with a vertically polarized antenna instead of a circularly polarized antenna. Mentor noted that this antenna switch allowed the station to operate with four times the authorized power in one polarization. Mentor also noted that the station was rebroadcasting WAQQ(FM) (formerly WAAQ(FM)), Onsted, Michigan (Fac. ID 93742), instead of WAAQ(FM), Rogers Heights, Michigan.⁶⁷

52. On May 24 and 25, 2006, representatives of the Enforcement Bureau inspected the station, but the absence of a GLCB representative prevented them from conducting a complete inspection of the power and equipment. The Enforcement Bureau's report does not mention operation from the wrong coordinates, but it notes that W220CW was operating with a vertically polarized antenna from a height of 24.8 meters above ground level and that the licensee failed to post its name and contact information at the site pursuant to Section 74.1265(b) of the Rules.⁶⁸

⁶³ 47 U.S.C. § 312(a).

⁶⁴ See 47 C.F.R. § 73.3598(e) and n. 25 *supra*.

⁶⁵ FCC Form 351A (file no. BPFT-20010627AAV).

⁶⁶ Application on FCC Form 350 (file no. BLFT-20040217ABX (granted Apr. 5, 2004)).

⁶⁷ Mentor Objection at 3-4.

⁶⁸ LOI at Ex. F; see 47 C.F.R. § 74.1265(b).

53. The LOI directed GLCB to explain the basis for the certifications in the W220CW license application in light of the Enforcement Bureau's report.⁶⁹ GLCB stated:

The issue of improper antenna use is because the circular antenna which was planned to be used proved to be defective and the only other available antenna at the time was a vertical. It was meant to be changed as soon as a proper antenna could be acquired.

It should here be noted that, from looking at the coordinates listed for WAAQ, W220CW and W206BF, all of which are to be located on the same tower, that there is a significant discrepancy between the coordinates. While the issue with WAAQ was addressed above, seeing these other two sets of coordinates had made [Dr. McCluskey] check his GPS units as they were used to determine coordinates for each station at different times and it is apparent that [Dr. McCluskey] received different readings each time he used GPS to determine what he believed to be the proper location.

To the best of present belief and knowledge, the correct coordinates for all three stations should be 43 37 58 n by 85 27 58 w.

[Dr. McCluskey] states that, at no time, did this facility operate with power and [effective radiated power] greater than those authorized in its license, but does admit the failure to post per 74.1265(b).

Further, the listing of WAAQ as the primary station for this translator was a short-term, temporary measure until service from WAQQ could be resolved (it was a distribution of service problem).⁷⁰

54. **Analysis.** Based on the Commission's investigation, we find that: (a) W220CW does not and never has operated in accordance with its most recent construction permit; (b) GLCB filed in 2004 a license application in which it falsely certified that the terms, conditions and obligations set forth in the Station W220CW construction permit had been fully met⁷¹; and (c) to the Commission's knowledge, GLCB has never corrected any of the Rule violations noted by the Enforcement Bureau.⁷²

55. The matter of GLCB's character qualifications will be addressed in the HDO, as part of the issue of whether the company's remaining authorizations, including W220CW, should be revoked pursuant to Section 312(a) of the Act. GLCB will be given a further opportunity to address these issues in that proceeding.⁷³

⁶⁹ LOI at 7 and Ex. F.

⁷⁰ Response at 11.

⁷¹ We note that grant of the license application became a final order prior to the Commission receiving information regarding the station's rule violations. Although the Commission has no authority to reconsider or review this now final action, these violations also will be considered in the forthcoming HDO.

⁷² See LOI at Ex. F; 47 C.F.R. §§ 1265(b), 1284(b). We note that even the most recent modification application for W220CW, dismissed in 2008, did not list the correct coordinates for the station's translator site. Application on FCC Form 349 (file no. BPFT-20080616ADL).

⁷³ See 47 U.S.C. § 312(c).

G. W206BF, Rogers Heights, Michigan

56. **Background.** This FM translator is licensed to GLBA. GLBA's construction permit application, granted in 2000, proposed operation from 43-37-58 NL, 85-27-53 WL, with a vertically polarized antenna 30 meters above ground level.⁷⁴ After receiving that permit, GLBA applied for a license, certifying that all terms, conditions, and obligations set forth in the underlying construction permit had been fully met.⁷⁵ The station has been authorized to operate at that location since GLBA received the license in 2000. GLBA subsequently filed modification applications in 2001 and 2006, and those applications were both granted, but no license has been issued for either of those construction permits.⁷⁶ The latter construction permit provides for operation from the same location as the license granted in 2000. In 2007, GLBA filed an application for license, certifying that all terms, conditions, and obligations set forth in the underlying construction permit had been fully met.⁷⁷

57. The Mentor Objection raised questions as to whether W206BF had been constructed in accordance with its construction permit. On May 24 and 25, 2006, representatives of the Enforcement Bureau inspected the station, but the absence of a GLBA representative prevented them from conducting a full inspection. They noted that the station could not have been constructed at the licensed location because it is under water. They found the station not to be operating, but noted that a circularly polarized antenna for the station appeared to be collocated with the W220CW antenna, at 16.8 meters above ground level. They noted the failure to post the licensee's name and contact information pursuant to Section 73.1625(b) of the Commission's rules.⁷⁸

58. The LOI directed GLBA to explain the certification in the 2000 license application for the station in light of the Enforcement Bureau's findings.⁷⁹ GLBA states:

Some of the issues relating to this translator are addressed [in the response involving W220CW], above.

However, to clarify the antenna issue, W206BF was operated with circular polarization. The height was below authorized as was the case for W220CW because of tower height restrictions placed by the local authorities. [Dr. McCluskey] admits that he should have filed amending permit applications for both stations.

[Dr. McCluskey] further states that at no time did W206BF operate with power and [effective radiated power] greater than those authorized but does admit to the failure to post per 74.1265(b).

59. **Analysis.** Based on the Commission's investigation, we find that: (a) W206BF was never constructed at its authorized transmitter site; (b) GLBA filed in 2000 a license application in which it falsely certified that all terms, conditions, and obligations set forth in the W206BF construction permit

⁷⁴ Application on FCC Form 349 (file no. BPFT-19990818TB).

⁷⁵ Application on FCC Form 350 (file no. BLFT-20000626AEQ (granted Sept. 25, 2000)).

⁷⁶ Applications on FCC Form 349 (file nos. BPFT-20010627AAU and BPFT-20061127AFB).

⁷⁷ Application on FCC Form 350 (file no. BLFT-20070124AJ0).

⁷⁸ LOI, Ex. G; *see* 47 C.F.R. § 74.1625(b).

⁷⁹ LOI at 7-8 and Ex. G.

had been fully met. However, grant of that application has become a final order;⁸⁰ and (c) to the Commission's knowledge, GLBA has never corrected any of the Rule violations noted by the Enforcement Bureau.

60. The matter of GLBA's character qualifications will be addressed in the HDO, as part of the issue of whether the company's remaining authorizations, including W206BF, should be revoked pursuant to Section 312(a) of the Act. GLBA will be given a further opportunity to address these issues in that proceeding.⁸¹

H. W207BL, Pinnebog, Michigan

61. **Background.** GLCB applied for and received a construction permit for this FM translator in 2000. That permit authorized construction of the station at 43-52-55 NL, 83-04-30 WL, with an antenna located 59 meters above ground level.⁸² On June 25, 2003, GLCB filed a license application for the station, certifying that all terms, conditions, and obligations set forth in the construction permit had been fully met.⁸³ That application was signed by Dr. McCluskey as President and owner of GLCB and as GLCB's consulting engineer. The Audio Division granted the license application on June 25, 2003.

62. Representatives of the Enforcement Bureau inspected the licensed location on September 20, 2006. They found an empty field at the licensed site for the station. They saw no evidence that the station was ever constructed in accordance with the construction permit. They did note a cellular tower located approximately 0.7 miles from the site.⁸⁴

63. The LOI directed GLCB to explain whether its license application was false in light of the findings of the Enforcement Bureau.⁸⁵ In its Response, GLCB states:

This translator was to be on the referred-to private tower slightly west of the licensed coordinates. When the original application (and subsequent license renewal) of this facility were granted, [Dr. McCluskey] thought that the station was at the stated location and had no reason to believe otherwise, having plotted the site on a USGS Quad map for the initial filing. At that time, on-line site verification and other internet resources were not available to [Dr. McCluskey] which might have shown the error.

The station was removed in late summer 2006 pending the ability to find a new transmitter location.⁸⁶

64. GLCB's Response provided no tower site lease or other documentation that the station actually was constructed. The LOI specifically directed GLCB to provide such documentation.⁸⁷

⁸⁰ The Commission has no authority to reconsider or review this now final action.

⁸¹ See 47 U.S.C. § 312(c).

⁸² FCC Form 351A (file no. BMPFT-20000328ABV).

⁸³ Application on FCC Form 350 (file no. BLFT-20030508ACY).

⁸⁴ LOI, Ex. H.

⁸⁵ LOI at 8 and Ex. H.

⁸⁶ Response at 12.

⁸⁷ LOI at 8.

65. **Analysis.** Based on the Commission's investigation, we find that: (a) W207BL never operated in accordance with its construction permit or license; (b) GLCB filed in 2003 a license application in which it falsely certified that all terms, conditions and obligations set forth in the W207BL construction permit had been fully met⁸⁸; and (c) W207BL has been off the air for nearly three years.

66. The matter of GLCB's character qualifications will be addressed in the HDO, as part of the issue of whether the company's remaining authorizations should be revoked. Pursuant to Section 312(g) of the Act, we find that the W207BL license has expired.⁸⁹ Based on GLCB's admitted failure to construct the station at the authorized site and its failure to seek or obtain approval to have the station off the air, we find that reinstatement of the station's license would not promote equity or fairness. We will delete the W207BL call sign and dismiss all pending applications for the station.

I. W211BI, Ann Arbor, Michigan

67. **Background.** GLBA applied for a construction permit for this FM translator station in 1999, proposing to construct the station at 42-16-55 NL, 83-44-35 WL, with an antenna located 4 meters above ground level.⁹⁰ The Commission issued the construction permit for W211BI on May 19, 2000. In 2002, GLBA filed a license application for W211BI, certifying that all terms, conditions, and obligations set forth in the construction permit had been fully met.⁹¹ The Audio Division granted that application in 2002.

68. On February 1, 2006, representatives of the Enforcement Bureau inspected the licensed location. They found no tower or antenna there and no indication that the station was ever constructed there.⁹²

69. In the LOI, the Audio Division directed GLBA to explain whether its license application for W211BI was false in light of the findings of the Enforcement Bureau.⁹³ In its Response, GLBA states:

This translator was originally located on a private parking lot lighting pole in a parking lot in downtown Ann Arbor. At the end of the school year in 2005, [Dr. McCluskey] was notified he could no longer use the site. The equipment was removed and is presently stored.⁹⁴

70. GLBA provided no site lease or other documentation indicating that the station actually was constructed. The LOI specifically directed GLBA to provide such documentation.⁹⁵

71. **Analysis.** Based on the Commission's investigation, we find that W211BI has been off the air for approximately four years without Commission approval. Pursuant to Section 312(g) of the

⁸⁸ We note that grant of that application has become a final order.

⁸⁹ See n. 36 *supra*.

⁹⁰ Application on FCC Form 349 (file no. BPFT-19990823TH).

⁹¹ Application on FCC Form 350 (file no. BLFT-20021018AAQ).

⁹² LOI at Ex. I.

⁹³ *Id.* at 8 and Ex. I.

⁹⁴ Response at 12.

⁹⁵ LOI at 8.

Act, we find that the W211BI license has expired.⁹⁶ Based on GLBA's failure to seek or obtain approval to have the station off the air, we find that reinstatement of the station's license would not promote equity or fairness. We will delete the W211BI call sign.

J. W206AZ, Fremont, Michigan

72. **Background.** GLCB applied for and received a construction permit for this FM translator in 1999. The application proposed construction of the station at 43-30-20 NL, 85-54-10 WL, with an antenna located 5 meters above ground level.⁹⁷ The construction permit was issued on November 2, 1999, and contained an expiration date of November 2, 2002. Like the other permits discussed above, the permit stated: "[T]his 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."⁹⁸

73. GLCB filed a license application on May 8, 2003, after the expiration of the construction permit. The license application, signed by Dr. McCluskey as President and owner and as GLCB's consulting engineer, certified that all terms, conditions, and obligations set forth in the underlying construction permit were fully met.⁹⁹ The Audio Division granted a license for W206AZ on June 25, 2003.

74. On November 17, 2003, GLCB filed an application for a construction permit to modify W206AZ.¹⁰⁰ That construction permit was issued on February 4, 2004 and expired on February 4, 2007.¹⁰¹ On March 9, 2007, GLCB filed a license application, certifying that the station had been constructed in accordance with the construction permit.¹⁰²

75. On May 24, 2006, representatives of the Enforcement Bureau inspected the licensed site for W206AZ. They found no tower or antenna at the licensed site, which was on the grounds of a resort called "The Shack." Their monitoring found no operation of the translator in the area. There was no indication the station ever had been constructed.¹⁰³

76. The LOI directed GLCB to explain whether its license application was false in light of the findings of the Enforcement Bureau.¹⁰⁴ In its Response, GLCB states:

This translator was built in a timely manner at the original location using a temporary crank-up tower so that it could become licensed before the expiration of the construction permit. However, [Dr. McCluskey] acknowledges to a late filing of the license application (which was subsequently granted). Before being able to permanently

⁹⁶ See n. 36 *supra*.

⁹⁷ Application on FCC Form 349 (file no. BPFT-19990311TB).

⁹⁸ FCC Form 351A (file no. BPFT-19990311TE).

⁹⁹ Application on FCC Form 350 (file no. BLFT-20030508ABN).

¹⁰⁰ Application on FCC Form 349 (file no. BPFT-20031117AAC).

¹⁰¹ The construction permit contained the same automatic forfeiture language contained in the original construction permit. FCC Form 351A (file no. BPFT-20031117AAC).

¹⁰² Application on FCC Form 350 (file no. BLFT-20070309ABI).

¹⁰³ LOI, Ex. J.

¹⁰⁴ *Id.* at 9-10 and Ex. J.

place a tower, he obtained another site at the Shack in Jugville and filed an amendment.

The coordinates were obtained from USGS Quad maps but not verified on the ground. Review for this response indicates that they were incorrect. Therefore, when the inspector looked in May of 2006, he would not have seen the actual construction because of the densely wooded area. The actual site became the side of the structure about 100 feet south of the coordinates listed. The station operated from there until the structure and the station were struck by lightning. The equipment has been removed but the antenna should still be located on the structure unless the owner has removed it.¹⁰⁵

77. **Analysis.** Based on the Commission's investigation, we find that: (a) W206AZ never operated in accordance with its original construction permit or license; (b) GLCB filed in 2003 a license application in which it falsely certified that all the terms, conditions and obligations set forth in the W206AZ construction permit had been met¹⁰⁶; (c) the subsequent construction permit for W206AZ automatically expired on February 4, 2007; and (d) the station has been off the air, without Commission approval, for an unknown period of time.

78. The matter of GLCB's character qualifications will be addressed in the HDO, as part of the issue of whether the company's remaining authorizations should be revoked. Pursuant to Section 73.3598(e) of the Rules, we find that the most recent construction permit for W206AZ expired on February 4, 2007, and therefore the pending license application¹⁰⁷ will be dismissed. The question of how long W206AZ has been off the air and the applicability of Section 312(g) of the Act¹⁰⁸ will be addressed in the HDO.

K. W205BQ, Brevort, MI

79. **Background.** Our review of GLCB files in this matter shows that GLCB applied for a construction permit for this proposed FM translator station in 1999 and was granted that construction permit in 2000.¹⁰⁹ Later in 2000, GLCB applied for and received a construction permit for a minor modification of the proposed station.¹¹⁰ The initial construction permit was set to expire on March 9, 2003, and the minor modification construction permit stated: "The authority granted herein has no effect on the expiration date of the underlying construction permit."¹¹¹ Both permits stated: "[T]his construction permit will be subject to automatic forfeiture unless construction is complete and an application for license to cover is filed prior to expiration."¹¹² GLCB filed no license application for this proposed station.

¹⁰⁵ Response at 13.

¹⁰⁶ We note that grant of that application has become a final order.

¹⁰⁷ Application on FCC Form 350 (file no. BLFT-20070309ABI).

¹⁰⁸ 47 U.S.C. § 312(g).

¹⁰⁹ FCC Form 351A (file no. BPFT-19990823TG).

¹¹⁰ FCC Form 351A (file no. BMPFT-20000328ABW).

¹¹¹ *Id.*

¹¹² *Id.*

80. **Analysis.** This construction permit expired on March 9, 2003, and was automatically forfeited as of that date.¹¹³ Accordingly, we will delete the call letters for the proposed station.

III. ORDERING CLAUSES

81. Accordingly, IT IS ORDERED that the construction permits for the following stations are found to have EXPIRED and been forfeited, with the result that the permittee must terminate all operations thereon, the associated call signs will be deleted and all pending applications relating to the construction permits will be dismissed: (a) WQLO(FM), Lake Odessa, MI (Facility ID No. 106632); (b) WAAQ(FM), Rogers Heights, MI (Facility ID No. 90609); (c) WJCQ(FM), Jackson, MI (Facility ID No. 92547); (d) WPQZ(FM), Muskegon, MI (Facility ID No. 81726); and (e) W205BQ, Brevort, MI (Facility ID No. 94126).

82. IT IS FURTHER ORDERED that the construction permit (FCC file number BPFT-20031117AAC) issued on February 4, 2004 for W206AZ, Fremont, MI (Facility ID No. 92895) is found to have EXPIRED and been forfeited on February 4, 2007, with the result that the licensee must terminate all operations authorized pursuant to that construction permit and all pending applications relating to that construction permit will be dismissed.

83. IT IS FURTHER ORDERED that the following licenses are found to have EXPIRED, with the result that the licensee must terminate all operations thereon, the associated call signs will be deleted and all pending applications relating to the licenses will be dismissed: (a) W207BL, Pinnebog, MI (Facility ID No. 94130); and (b) W211BI, Ann Arbor, MI (Facility ID No. 94125).

84. IT IS FURTHER ORDERED that the “Informal Objection and Request for Immediate Revocation of Operating Authority” and the “Informal Objection and Request to Revoke Program Test Authority” filed by Mentor Partners, Inc. ARE GRANTED to the extent indicated herein and ARE OTHERWISE DENIED.

85. IT IS FURTHER ORDERED that the “Informal Objection” and the “Complaint of Violation of FCC Rules and Request for Immediate Revocation of Operating Authority” filed by Jackson Radio Works, Inc. ARE GRANTED to the extent indicated herein and ARE OTHERWISE DENIED.

86. IT IS FURTHER ORDERED that the “Petition to Dismiss License Application and Delete Call Sign” and “Informal Objection” filed by Grand Rapids Cable Access Center ARE GRANTED to the extent indicated herein and ARE OTHERWISE DENIED.

87. IT IS FURTHER ORDERED that a copy of this *Memorandum Opinion and Order* shall be sent to Great Lakes Community Broadcasting, Inc., P.O. Box 334, Stanwood, MI 49346, and to Great Lakes Broadcast Academy, Inc., P.O. Box 334, Stanwood, MI 49346, with copies to Mentor Partners, Inc., 18720 16 Mile Road, Big Rapids, MI 49307, David D. Oxenford, Esq., Davis Wright Tremaine LLP,

¹¹³ See 47 C.F.R. § 73.3598(e).

1919 Pennsylvania Avenue, N.W., Suite 200, Washington, DC 20006, and Matthew H. McCormick, Esq., Fletcher Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau