



Federal Communications Commission
Washington, D.C. 20554
June 21, 2013

Ref. No. 1800B3-TSN

John F. Garziglia, Esq.
Womble Carlyle Sandridge & Rice, PLLC
1401 I Street, N.W.
7th Floor
Washington, DC 20005

Dawn M. Sciarrino, Esq.
Sciarrino & Shubert, PLLC
5425 Tree Line Drive
Centreville, VA 20120

Re: KYPT(FM), Daniel, Wyoming
Facility ID No. 166004
File No. BMPH-20081020AIH
File No. BLH-20090722AAK

**Application for Minor Modification to
New FM Broadcast Station
Application for License to Cover**

Dear Counsel:

We have before us a previously granted application to modify the facilities of new broadcast station KYPT(FM) ("KYPT"), to change the community of license from Wamsutter, Wyoming, to Daniel, Wyoming.¹ Also before us is the application of Martin Dirst ("Dirst"), the KYPT permittee, for a license to cover the construction permit for the modified facilities.²

We also have before us a number of pleadings filed against the aforementioned applications by Robert R. Rule d.b.a. Rule Communications ("Rule"), licensee of, *inter alia*, station KPIN(FM), Pinedale, Wyoming. The following Rule pleadings are currently before us:

1. Petition for Reconsideration of grant of the minor modification application ("Petition");³
2. Complaint to the Commission's Enforcement Bureau ("Complaint");⁴
3. Informal Objection to application for license ("License Objection");
4. Objection to June 18, 2009, Tolling Notification;
5. Further Objection to License Application and Request to Cancel Authorization Pursuant to 47 U.S.C. § 312(g) ("Further Objection").

¹ File No. BMPH-20081020AIH ("Modification Application").

² File No. BLH-20090722AAK ("License Application").

³ The Modification Application was granted in *Martin Dirst*, Letter (MB Apr. 9, 2009) ("*Staff Decision*").

⁴ Because the Complaint pertains to a pending application or applications, the Enforcement Bureau has referred it to the Media Bureau, Audio Division, for disposition.

The various pleadings overlap inasmuch as many of the issues are raised in more than one pleading. To the extent that certain pleadings have procedural issues they will be addressed on a pleading-by-pleading basis. To the extent that certain issues and allegations are raised in multiple pleadings, we shall discuss those issues on their merits separately.

Background. Station KYPT was originally auctioned as an FM allotment on Channel 282C at Wamsutter, Wyoming, in FM Broadcast Auction 62 (“Auction 62”), which concluded on January 31, 2006. The winning bidder for the Wamsutter allotment was White Park Broadcasting, Inc. (“WPB”). The original construction permit was granted June 28, 2006, and expired June 28, 2009.⁵ WPB assigned the Wamsutter permit to Dirst in 2007.⁶ Dirst filed the Modification Application on October 20, 2008, proposing to change the station’s community of license from Wamsutter to Daniel, Wyoming, a Census Designated Place in Sublette County, Wyoming. Despite Rule’s Informal Objection to the Modification Application (“Permit Objection”), subsequent Petition seeking reconsideration of the grant of that application, and challenge to Dirst’s tolling notification based on the pending challenges to the Modification Application, Dirst (allegedly, according to Rule) constructed the facilities of the station, was assigned the call letters KYPT(FM), and filed the License Application to cover the construction permit at Daniel.

Discussion. *Petition for Reconsideration.* 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 additional facts not known or existing at the time of the petitioner’s last opportunity to present such matters.⁷ Neither is the case here.

Dirst, in the Modification Application, noted that Daniel is a Census Designated Place (with a 2000 Census population of 89), and further stated that Daniel has business establishments (some of which identified themselves with the community of Daniel), a library, a community center, and a volunteer fire department. Dirst also briefly outlined the history of the community. In his Permit Objection, Rule’s principal argument was that Daniel was not a licensable community. Rule’s rebuttal to Dirst’s claim of community status amounted to a series of opinions and conclusory statements, e.g., that Daniel is “little more than a wide spot in the road,” that it “is a left-over community from the days of the horse and buggy,” and that he is “familiar” with only two businesses in Daniel (except for The Daniel Junction, a gas station / convenience store / motel noted by Dirst that Rule states, without further evidence, is “not part of the location of Daniel itself”).⁸ Rule also argued that the move would create gray area to four people, and that this represented “almost 4% of the 96 persons that will receive a first local transmission service” from the KYPT move, thus any proposed public interest benefit is canceled out by the detriment of the gray area.⁹ The staff, noting that the test for community status is not a stringent one, found that Dirst presented sufficient indicia of community status to qualify Daniel for allotment purposes.¹⁰ Moreover, the staff found that the new local transmission service to a population of 89 outweighed the

⁵ File No. BNPH-20060310AAU.

⁶ File No. BAPH-20071102ASU. The application was granted December 21, 2007, and the transaction was consummated on January 14, 2008.

⁷ See 47 C.F.R. § 1.106(c),(d). See also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (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).

⁸ Declaration of Robert R. Rule, attached to Permit Objection, paragraphs 5, 7-8.

⁹ Permit Objection at 5.

¹⁰ *Staff Decision* at 2.

loss of second reception service to four persons, and further found the population of four losing second reception service to be *de minimis*.¹¹

On reconsideration, Rule makes essentially the same arguments regarding Daniel's lack of community status. A petition for reconsideration is not a venue for the mere re-argument of points previously advanced and rejected.¹² While the presumption that a Census Designated Place is a licensable community is rebuttable,¹³ Rule's rebuttal consists and consisted of little more than his subjective impressions of Daniel, its character, and its community boundaries, with no objective evidence to support those impressions. Furthermore, to borrow Rule's phraseology, the "wide spot in the road" that is Daniel has only gotten wider: Daniel's population increased over 50 percent between the 2000 and 2010 Censuses, to a current population of 150. We also take official notice of the facts that Daniel has its own ZIP Code (83115), and that the authoritative Sublette County Website states that "the county has three incorporated towns, Big Piney, Marbleton, and Pinedale; and has several other smaller community centers, including Bondurant, Cora, Boulder, and Daniel."¹⁴

To the extent that Rule cites the standards introduced in the more recent *Rural Radio* proceeding,¹⁵ these too are unavailing. While it is true, as Rule states, that *Rural Radio* does not allow community of license changes that will leave white or gray area, it is also true that the new *Rural Radio* standards do not apply to any modification application to change a station's community of license filed before April 20, 2009 (the release date of the *Rural NPRM*), or in which a decision had been released before March 3, 2011 (the release date of the *Rural Second R&O*).¹⁶ Both cutoff dates apply to the Modification Application,¹⁷ thus the absolute prohibition against white and gray area in *Rural Radio* does not apply here. We affirm the staff's finding that a gray area of four people is *de minimis*, and does not preclude grant of the Modification Application.¹⁸

¹¹ *Id.*

¹² See *S&L Teen Hospital Shuttle*, Order on Reconsideration, 17 FCC Rcd 7899, 7900 (2002).

¹³ See, e.g., *Fortuna Foothills and Wellton, Arizona*, Memorandum Opinion and Order, 19 FCC Rcd 4619, 4619 (MB 2004) (citing *Stock Island, Florida*, Report and Order, 8 FCC Rcd 343 (MMB 1993); *East Hemet, Indio, Rancho California, Sun City, and Temecula, California*, Report and Order, 4 FCC Rcd 7895 (MMB 1989); *Hannahs Mill and Milledgeville, Georgia*, Memorandum Opinion and Order, 7 FCC Rcd 3944 (MMB 1992)).

¹⁴ See Sublette County – Official Website – Our County, <http://www.sublettewyo.com/?nid=183> (accessed June 18, 2013).

¹⁵ *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Notice of Proposed Rule Making, 24 FCC Rcd 5239 (2009) ("*Rural NPRM*"), First Report and Order and Further Notice of Proposed Rule Making, 25 FCC Rcd 1583 (2010), Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556 (2011) ("*Rural Second R&O*"), Third Report and Order, 26 FCC Rcd 17642 (2011), Second Order on Reconsideration, 27 FCC Rcd 12829 (2012) ("*Rural Second Order on Recon*") (collectively "*Rural Radio*").

¹⁶ *Rural Second Order on Recon*, 27 FCC Rcd at 12842-43.

¹⁷ The Modification Application was filed on October 20, 2008, and the *Staff Decision* was released April 9, 2009.

¹⁸ See, e.g., *Ehrenberg, First Mesa, Kachina Village, Munds Park, Wickenburg, and Williams, Arizona*, Report and Order, 28 FCC Rcd 1262, 1265 (MB 2013) (provision of second fulltime reception service to 264 persons was *de minimis* when that number constituted only 0.02 percent of proposed gain area). In this case, the lost second fulltime reception service to four persons constitutes approximately 0.1 percent of the total reception gain population of 4,530 set forth in the Modification Application. Additionally, we reject Rule's description of the *Staff Decision*'s comparison of the loss of second reception service to four person to the local transmission service provision to the total Daniel population of 89 as an "apples and oranges" comparison, given that Rule himself made the same comparison in the Permit Objection. Permit Objection at 5.

While we deny Rule's Petition,¹⁹ we are compelled to note that in opposition to the Petition, Dirst stated that construction of the modified facilities was "well underway."²⁰ Such an assertion, of course, is irrelevant to our consideration of the Petition: an applicant constructs facilities at his own risk during the pendency of challenges to his application. However, the fact that Dirst elected to make such a statement in turn opened the door to a further round of allegations by Rule.

Alleged Misstatements of Fact: Station Construction / NEPA Compliance. Rule, in three separate pleadings, alleges misstatements of fact by Dirst regarding the construction of station KYPT. The first, referenced above, is Dirst's statement that construction of station KYPT at Daniel was "well underway." Rule testifies that he traveled to the coordinates of the KYPT tower site on June 1, 2009, and found no construction there, finding only "a barren portion of land to the north of a hilltop in a gully."²¹ Rule therefore alleges, in the Complaint and the Further Objection, that Dirst willfully misrepresented that he was in the process of constructing the KYPT facility when he made this statement, in an effort to evoke sympathy from the Bureau when ruling on the Petition.²² Rule further alleges, in the License Objection and Further Objection, that Dirst falsely certified in his License Application that he constructed station KYPT according to its construction permit, claiming that the facility was not built at the authorized coordinates.²³ Additionally, in all three pleadings – the License Objection, the Further Objection, and the Complaint – Rule asserts that because the KYPT facility was not constructed at the correct coordinates, Dirst's environmental certification is invalidated.²⁴ Dirst claimed that the KYPT facility was constructed in an antenna farm, and thus was excluded from environmental processing under Note 3 to Section 1.1306 of the Rules.²⁵ Rule asserts that the only antenna farm in the vicinity, where his transmitter for station KPIN(FM) is located, is on Bureau of Land Management ("BLM") land located some distance from the coordinates for station KYPT, and is further subject to certain notification requirements for new construction. Rule states he received no notification as an occupant of the Mt. Airy antenna farm and is aware of no public notice.²⁶

Dirst responds that construction was well underway at the time he made the statement in dispute, even though he had not broken ground for the transmitter site. At that time, according to Dirst, he had spent almost \$60,000 on equipment for the station, much of which (including the transmitter, EAS and other equipment, as well as the tower and antenna) had been delivered to Sublette Communications' (Dirst's lessor) Pinedale, Wyoming, location.²⁷ Dirst reiterates that he relied on his consulting engineer's assessment that the site where the KYPT transmitter would be located was an antenna farm, and as such was excluded from environmental processing under Note 3 to Section 1.1306 of the Rules.²⁸ Finally,

¹⁹ We also deny the portions of the Further Objection that re-raise the same issues discussed here, for the same reasons.

²⁰ Opposition to Petition for Reconsideration at 1-2.

²¹ Declaration of Robert R. Rule, Exhibit 2 to Complaint, paragraph 4.

²² *Id.* paragraph 2; Complaint at 1.

²³ License Objection at 2-4; Further Objection at 9.

²⁴ *Id.* at 8; License Objection at 4-5; Complaint at 3-5.

²⁵ 47 C.F.R. § 1.1306 Note 3.

²⁶ Declaration of Robert R. Rule, Exhibit 2 to Complaint, paragraphs 7-11.

²⁷ Dirst Response to Complaint at 2 and attached Declaration of Martin Dirst, paragraphs 4-5; attached Declaration of Jeff Alexander, paragraph 2.

²⁸ 47 C.F.R. § 1.1306 Note 3. See Dirst Response to Complaint at 3-4 and attached Declaration of Martin Dirst, paragraphs 2-3.

Dirst provides evidence from the lessor of the KYPT site that authorization was received from BLM to construct the KYPT facility at the Mt. Airy site.²⁹

In reply, Rule quotes the definition of “construction” from the *Encarta Dictionary: English (North America)*,³⁰ as meaning the “act or process of constructing – the building of something, especially a large structure such as a house, road, or bridge.” Rule contends that the acquisition and storage of equipment and materials does not constitute the “act or process of constructing.”³¹ Rule further repeats his assertion that Dirst’s proposed tower location is some distance from the antenna farm Dirst claimed as the KYPT site.³²

As to Rule’s first claim of alleged misrepresentation, we decline to engage in the sort of hair-splitting required to determine whether the “act or process of constructing” only begins when ground is broken for a tower or transmitter building, commences when the permittee first orders or pays for the equipment to be installed, or is initiated at some point in between. While Rule attributes a supposed motive to Dirst in making the alleged misrepresentation, and we have already noted that Dirst’s construction claim was gratuitous and irrelevant to our consideration of the Petition, Rule nevertheless falls short of establishing a logical motive for Dirst to deliberately mislead the Commission as to what is scarcely a material fact. The fact that Dirst had taken steps to procure the equipment needed for the KYPT site, and had those materials available in the general vicinity of the site, is enough to negate any assertion that Dirst willfully misrepresented the state of construction, despite any semantic differences Rule might have with Dirst’s description of the situation.³³

Rule’s second claim is more substantive. Rule provided maps showing the transmitter coordinates set forth in the Modification Application, and staff review confirmed Rule’s assertion that the coordinates so set forth were some distance from the Mt. Airy antenna site. It appeared that Dirst may have confused NAD83 coordinates with the correct NAD27 coordinates. Accordingly, the staff sent Dirst an inquiry letter dated December 13, 2011,³⁴ seeking the following information:

1. The date construction of the KYPT(FM) transmitter facilities was completed.
2. The exact NAD27 coordinates of the KYPT(FM) transmitter facilities as constructed.
3. Any photographs depicting the KYPT(FM) transmitter facilities as constructed and as currently situated.
4. A map showing the location of KYPT(FM) transmitter site as constructed, as well as any other antenna structures within three (3) degrees of latitude and/or longitude.

²⁹ See Declaration of Jeff Alexander (attached to Dirst Response to Complaint), paragraph 3.

³⁰ An online dictionary now known as the Bing Dictionary.

³¹ Reply to Response to Complaint at 2.

³² *Id.* at 2-4.

³³ See, e.g., *Scott & Davis Enterprises, Inc.*, Decision, 88 F.C.C.2d 1090, 1099 (Rev. Bd. 1982) (“Misrepresentation and lack of candor charges are very grave matters. They ought not be bandied about. The duty to come forward with a *prima facie* showing of deception is particularly strong where a misrepresentation issue is sought. (citation omitted) The petitioner must also make a demonstration of a desire, motive, or logical reason to mislead in order to have an issue added. The Commission will not infer actual or attempted deceptions or improper motives from an enumeration of alleged application errors, omissions, or inconsistencies, accompanied by speculation and surmise but lacking factual support.”).

³⁴ *Martin Dirst*, Letter, Ref. No. 1800B3-TSN (MB Dec. 13, 2011) (“Inquiry Letter”).

Dirst replied to the Inquiry Letter on January 13, 2012. He stated that the KYPT antennas were installed on June 25, 2009, and that the transmitter was installed on June 30, 2009. Dirst hired a surveyor to ascertain the exact NAD27 transmitter coordinates, which are 42 degrees 50 minutes 38.9 seconds North latitude and 109 degrees 55 minutes 28.4 seconds West longitude.³⁵ Photographs of the site, as well as maps provided by Dirst, show that the KYPT transmitter is located among a number of towers, many of which are similar in height and purpose to station KYPT's, including towers with FM broadcast antennas. Additionally, BLM has a specific "Communications Site Plan" for the Mt. Airy site, a copy of which was attached to Dirst's response.

While it is fair to state that Rule has zealously pursued his arguments with regard to Dirst's transmitter site, it is perhaps equally fair to observe that Rule's allegations were spurred by Dirst's less-than-completely-accurate engineering showings. The difference between the permitted and actual coordinates of the KYPT site, while within the three-second threshold set forth in Section 73.1690(b)(2) of the Rules,³⁶ was nonetheless the difference between being located squarely in the Mt. Airy site and in the "barren portion of land . . . in a gully" that the coordinates indicated and to which Rule testified. In short, Dirst's own carelessness and imprecision opened the door to Rule's attack. However, carelessness and "slipshoddiness" do not equate to an intent to deceive the Commission,³⁷ and nothing in Rule's voluminous pleadings raises an issue regarding such intent. We duly note the flaws in Dirst's description of the KYPT coordinates, and direct him to amend the License Application to show the actual NAD27 coordinates to the nearest second. However, that is all that the Commission's Rules require, and we reject Rule's claims of intentional misrepresentation in this regard. We likewise reject any allegations that the KYPT tower was built contrary to BLM or other local procedures as being beyond our jurisdiction in this matter.

Alleged Misstatements of Fact: Program Test Authority. Rule further alleges, in the License Objection, that Dirst misrepresented in the License Application that he was engaged in program tests, and that he was not operating with a minimum operating schedule under Section 73.1740(a) of the Rules.³⁸ Dirst replies that, at the time the License Application was filed, he had initiated program tests, but experienced interference "at the threshold" and therefore ceased tests, although he has conducted periodic program testing.³⁹ As Form 302 only allows a "yes" or a "no" response, and as Dirst claims to have been performing program tests at the time of filing, he responded "yes."⁴⁰ In reply, Rule states that Dirst has therefore admitted to the false certification of program test authority and did not address the minimum operating schedule issue.⁴¹

These are non-issues. Section 73.1620(a) of the Rules states that upon completion of construction, program tests *may* be conducted upon notification to the Commission and filing of a license

³⁵ *Id.* at 1 and Exhibit 2.

³⁶ 47 C.F.R. § 73.1690(b)(2) (as long as transmitter coordinates are within three seconds of longitude or latitude of the permitted coordinates, a new construction permit is not necessary).

³⁷ *See, e.g., Weigel Broadcasting Company*, Memorandum Opinion and Order, 2 FCCR 1206, 1211 (1987) (while misrepresentation and lack of candor require willfulness, "statements considered 'carelessness ... and exaggeration, puffing and slipshoddiness,' (citation omitted) or a 'faulty shading of recollection' (citation omitted) have been found to lack the necessary element of intent . . .").

³⁸ 47 C.F.R. § 73.1740(a). *See* License Objection at 1-2.

³⁹ Opposition to License Objection at 2.

⁴⁰ *Id.* at 2-3.

⁴¹ Reply to Opposition to License Objection at 1-3.

application.⁴² The language of the rule clearly indicates that program test authority is permissive rather than mandatory, thus neither tests nor minimum operating schedules are required, at least until a license is issued. Moreover, Rule has not testified as to the status of program tests at the time Dirst filed his License Application, only at times subsequent to that filing, thus we accept Dirst's statement that such tests were being conducted at the time he so certified in his Form 302.

Allegations Regarding Failure to Transmit Broadcast Signals / Minimum Operating Schedule / Main Studio. In the same vein as the above-noted allegations regarding program tests, Rule in his Further Objection raises a series of objections centered around station KYPT's lack of operation since filing the License Application. According to Rule, he "frequently" tuned to station KYPT's frequency but heard no broadcasts. Additionally, Rule states that he observed no operational equipment or activity at either the old or new offices of Sublette Communications, Dirst's studio lessor, during multiple visits ending as recently as May 3, 2012, finding only a piece of paper with the station's call sign and a cell phone number; he further states that the transmitter site cannot be a studio because it is inaccessible to the general public.⁴³ Rule thus argues that, because KYPT has not transmitted broadcast signals in over three years, under Section 312(g) of the Communications Act and Section 73.1740(c) of the Rules its authorization must be revoked. He likewise argues that the authorization must be revoked because the station has no main studio and has not maintained a minimum operating schedule under Section 73.1740(a) of the Rules.⁴⁴

Dirst, in opposition, states that both Section 312(g) and Section 73.1740(a) apply only to licensees, not to permittees.⁴⁵ Dirst also contends that the Instructions to Form 302 require only a certification as to the location of the proposed main studio, not the construction of an actual main studio, and challenges the sufficiency of Rule's declaration insofar as Rule does not specify to whom he spoke during his multiple visits to the studio location.⁴⁶

Rule's legal analysis of Dirst's pre-licensing operation of station KYPT falls short of the precision Rule demanded of Dirst in his descriptions of the state of station KYPT's construction. Rule states that both Section 312(g) of the Act and Section 73.1740(c) of the Rules "are clear that any broadcast station that fails to transmit broadcast signals for any consecutive twelve month period has its *authorization* expire as a matter of law."⁴⁷ As Dirst correctly notes, this misstates the law. Neither

⁴² 47 C.F.R. § 73.1620(a) (emphasis added).

⁴³ Declaration of Rule, attached to Further Objection, paragraphs 1-4. We note that Rule takes us to task for not asking, in the December 2011 Inquiry Letter, about the KYPT main studio. Further Objection at 5. At that time, however, the only "evidence" in the record for the lack of a studio was Rule's August 6, 2009, Declaration, attached to the License Objection, which amounted to little more than Rule's conclusion that there was no KYPT main studio because Pinedale is a small town and if there were a studio somewhere in Pinedale Rule would have heard about it. See Declaration of Robert Rule, attached to License Objection, third unnumbered paragraph ("Daniel, Wyoming has but a few people living there, and Pinedale, Wyoming is a small town. I have been a resident of Pinedale for seven years now. Pretty much everyone knows what everyone else is doing in this region. I have asked numerous people in this region if they know of the construction of a studio for a new radio station, and no one knows anything about this."). While Rule's observations regarding the nature of small-town life in Wyoming may be accurate as far as they go, his vague statements relating informal polling of unknown numbers of unidentified individuals fell far short of evidence sufficient to prompt Commission inquiry.

⁴⁴ License Objection at 2.

⁴⁵ Opposition to Further Objection at 3-4.

⁴⁶ *Id.* at 5-6.

⁴⁷ Further Objection at 4 (emphasis added).

Section 312(g) nor Section 73.1740(c) contains any reference to “authorizations.” Both the statute and the rule refer to the loss of a license.⁴⁸ As station KYPT is not yet licensed, these statutory and regulatory provisions do not apply to it. Likewise, because program test authority is permissive and not mandatory, as discussed above, the minimum operating schedule provisions of the Rules do not apply to a yet-to-be-licensed station.

With regard to the allegations that Dirst neglected to construct a main studio, the situation is somewhat less clear. Rule’s May 2012 declaration does not suffer from the defects in his earlier August 2009 declaration regarding the lack of a main studio; he states that he made repeated visits to both of Dirst’s lessor’s office locations and did not observe anything resembling an operational studio from which programming could originate, although one location was ostensibly identified as the KYPT studio. Moreover, Dirst does not state, in opposition, that the studio is, in fact, constructed and operational.

Dirst is correct that Question 5 in Section III of FCC Form 302-FM does only ask if the main studio *location* complies with Section 73.1125 of the Rules, and that the Instructions to that question largely speak in terms of the “proposed” main studio. However, Question 7 in Section III requires certification that the station was constructed as authorized in the underlying construction permit. While the construction permit does not specifically set forth the requirement of a main studio, the Commission does require that a radio station have a main studio capable of program origination,⁴⁹ and the staff has returned license applications as unacceptable for filing when the main studio has not been constructed prior to filing the license application.⁵⁰ We note that, in *Alpert*, the applicants that did not construct the main studio prior to filing were allowed to amend their license applications, which were reinstated *nunc pro tunc*.⁵¹

Given the lapse of time between Dirst’s Opposition to the Further Objection and the date of this letter, we cannot rule out that Dirst may have constructed a rule-compliant main studio. However, the record at the present time does not support this conclusion. We recognize the incongruity of Rule’s complaint that Dirst has not fully constructed a KYPT facility, the construction of which Rule has attempted to prevent from virtually the moment Dirst first proposed moving the station from Wamsutter to Daniel, Wyoming. At the same time, however, we note that we waived the construction deadline for station KYPT in the face of Rule’s numerous challenges,⁵² and that nonetheless Dirst filed the License

⁴⁸ See 47 U.S.C. § 312(g) (“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”); 47 C.F.R. § 73.1740(c) (“The license of any broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.”). See also *William L. Zawila*, Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order, 18 FCC Rcd 14938, 14944 (2003) (finding that the term “station license” in Section 312(g) of the Act refers to a license and not a construction permit).

⁴⁹ See *Amendment of Sections 73.1125 and 73.1130 of the Commission’s Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026, *corrected*, 3 FCC Rcd 5717 (1988) (“A station must maintain a main studio which has the capability adequately to meet its function . . . of serving the needs and interests of the residents of the station’s community of license. To fulfill this function, a station must equip the main studio with production and transmission facilities that meet applicable standards, maintain continuous program transmission capability, and maintain a meaningful management and staff presence.”).

⁵⁰ See, e.g., *Dan J. Alpert, Esq.*, Letter, 27 FCC Rcd 14836, 14837-39 (MB 2012) (“*Alpert*”).

⁵¹ *Id.*

⁵² Rule, demonstrating once again the zeal with which he has confronted Dirst and KYPT at every juncture, filed a June 22, 2009, Objection to Dirst’s tolling notification, reiterating that objection in the Further Objection, arguing

Application, carrying with it the representation that the station has, in fact, been fully constructed as authorized in the construction permit.

Rather than return the License Application as unacceptable for filing, then, especially given our directive above that Dirst amend the License Application to state the proper transmitter coordinates, we will refrain from granting the License Application for 30 days from the date of this letter, within which time Dirst must file an amended FCC Form 302-FM, amending the transmitter coordinates and specifically certifying that the station has been constructed as authorized in the underlying construction permit, including a rule-compliant and functioning main studio. Should an acceptable amended License Application not be timely filed, we will return the original License Application as unacceptable for filing.

Conclusion: Pursuant to the foregoing, Rule's Further Objection to License Application and Request to Cancel Authorization Pursuant to 47 U.S.C. Section 312(g) IS GRANTED to the extent set forth herein and IS DENIED in all other respects. Rule's Petition for Reconsideration of grant of the KYPT Modification Application, Informal Objection to the KYPT License Application, and Complaint ARE DENIED. Rule's Objection to Dirst's Tolling Notification IS DISMISSED AS MOOT.

Within 30 days of the date of this letter, Dirst is directed to file an amended License Application (FCC Form 302-FM), setting forth the correct coordinates of station KYPT(FM), Daniel, Wyoming, as constructed, and certifying that KYPT(FM) has been constructed as authorized in the underlying construction permit, including but not limited to main studio facilities. Failure to file an acceptable amended License Application within the prescribed time period shall result in the License Application being RETURNED as unacceptable for filing.

Sincerely,



Peter H. Doyle 
Chief, Audio Division
Media Bureau

that 47 C.F.R. § 73.3598(b)(2) only allows tolling of the original construction permit, not any modification thereto, thus Rule's attack on the modified construction permit does not give rise to a tolling event. Additionally, Rule challenges the tolling notification on the ground that it was filed more than 30 days after Rule filed the Petition. Further Objection at 9-11. Rule's arguments are unavailing, because the staff did not toll the construction period under 47 C.F.R. § 73.3598(b), but rather waived the construction deadline under 47 C.F.R. § 73.3598(a). Moreover, as noted above Dirst filed the License Application. Rule's arguments regarding tolling are thus both inaccurate and moot.