



Federal Communications Commission  
Washington, D.C. 20554

May 1, 2014

*In Reply Refer to:*  
1800B3-ATS

Charles D. Hatley, Esq.  
Hanover Law, P.C.  
888 16<sup>th</sup> Street, N.W., Suite 800  
Washington, DC 20006

In re: DKCRX(AM), Roswell, New Mexico  
Rosendo Casarez, Jr.  
Facility ID No. 57700  
File Nos. BR-20131112BWH,  
BLSTA-20131121AKO

**Petition for Reconsideration**

Dear Counsel:

We have before us: 1) the Petition for Reconsideration ("Petition") filed on November 22, 2013, by Rosendo Casarez, Jr. ("Casarez"), former licensee of Station DKCRX(AM), Roswell, New Mexico ("Station"), seeking reconsideration of an October 23, 2013, Public Notice<sup>1</sup> announcing that his license for the Station had expired on October 1, 2013; 2) the above referenced license renewal application for the Station ("2013 Renewal Application"); and 3) the above referenced request for Special Temporary Authority ("STA") to operate the Station ("STA Request"). For the reasons stated below, we deny the Petition and dismiss the 2013 Renewal Application and STA Request as moot.

**Background.** Section 73.3539(a) of the Commission's Rules ("Rules") requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."<sup>2</sup> An application for renewal of the Station's license should have been filed by April 1, 2013, four months before the October 1, 2013, expiration date.<sup>3</sup> No such application was filed, and on September 30, 2013, the staff notified Casarez that the Station's license would expire the following day, and thus: (1) all authority to operate the Station would be terminated as of that day; and (2) the Station's call letters would be deleted from the Commission's database.<sup>4</sup> On October 23, 2013, the staff issued the *Public Notice* that announced the expiration of the Station's license.

Casarez filed the Petition on November 22, 2013, requesting that the Commission reinstate his license. He explains that he was unable to timely file a renewal application for the Station because his studio was destroyed on March 18, 2010,<sup>5</sup> when a 10,000 gallon water tank on the roof of the studio

<sup>1</sup> See *Broadcast Actions*, Public Notice, Report No. 48100 (MB 2013) ("*Public Notice*").

<sup>2</sup> 47 C.F.R. § 73.3539(a).

<sup>3</sup> The Station was, at the time, operating on an expired license. Casarez filed an untimely renewal application for the Station's prior license term on August 17, 2005. See File No. BR-20050817ADA ("2005 Renewal Application"). On October 26, 2010, the Commission advised Casarez that the application was being held because of delinquent debt owed to the Commission, and that it would be dismissed if the debt was not paid within 30 days. See *Letter to Rosendo Casarez, Jr. from Peter H. Doyle*, Ref. 1800B3-SH (MB Oct. 26, 2010). On May 29, 2012, the staff dismissed the 2005 Renewal Application. See *Letter to Rosendo Casarez, Jr. from James Bradshaw* (MB May 29, 2012). However, the staff failed to cancel the Station's license and delete its call sign in the Commission's database.

<sup>4</sup> See *Letter from Peter H. Doyle to Rosendo Casarez, Jr.*, Ref. 1800B3-VM (MB Sep. 30, 2013); *Radio License Expirations*, Public Notice, 28 FCC Rcd 13975 (MB 2013).

<sup>5</sup> In the Petition, Casarez states that the studio was destroyed on March 18, 2013. However, a newspaper clipping attached to the Petition states that the accident occurred on March 18, 2010. See Petition at Exhibit A. Additionally,

building exploded, destroying all the equipment and records in the studio. Casarez thus seeks acceptance of the untimely 2013 Renewal Application and reinstatement of his license for the Station based on the “extraordinary circumstances” presented by this event.

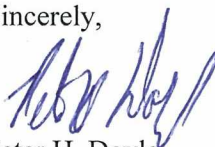
**Discussion.** Section 312(g) of the Communications Act of 1934, as amended, provides that “if a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary . . . .”<sup>6</sup> Casarez indicates that the Station went silent on March 18, 2010, following the destruction of its studio. However, Casarez has failed to show that the Station resumed operation at any time within the twelve-month limit for broadcast station silence established by Section 312(g) of the Act. Accordingly, we find that the Station’s license expired as a matter of law on March 18, 2011, under Section 312(g) of the Act.

Finally, notwithstanding the fact that the Station was apparently silent for more than 12 consecutive months, the Commission retains discretion under Section 312(g) of the Act to extend or reinstate such license “to promote equity and fairness.”<sup>7</sup> However, we find that the exercise of that discretion is not warranted here, where the Station has apparently been silent for more than three years<sup>8</sup> and Casarez failed to either notify the Commission that the Station had ceased broadcasting or seek an STA to remain silent.

**Conclusion/Actions.** For the reasons set forth above, IT IS ORDERED that the November 22, 2013, Petition for Reconsideration filed by Rosendo Casarez, Jr. is DENIED. IT IS FURTHER ORDERED that the license renewal application (File No. BR-20131112BWH) and request for Special Temporary Authority (File No. BLSTA-20131121AKO) ARE DISMISSED as moot.

Any operation of the DKCRX(AM) facilities is unauthorized and must cease immediately. Finally, it is imperative to the safety of air navigation that any prescribed painting and illumination of the Station’s towers be maintained until the towers are dismantled. Accordingly, Rosendo Casarez Jr. must maintain the towers in the manner prescribed by the Rules and the terms of the expired license.<sup>9</sup>

Sincerely,



Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Rosendo Casarez, Jr.

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Casarez states in the STA Request that the studio was destroyed on March 18, 2010. *See* STA Request at Exhibit 38. We will interpret the March 18, 2013, date in the Petition as a typographical error.

<sup>6</sup> *See Implementation of Section 403(l) of the Telecommunications Act of 1996*, 11 FCC Rcd 16499 (1996); *see also* 47 C.F.R. § 73.1740(c).

<sup>7</sup> 47 U.S.C. § 312(g).

<sup>8</sup> *See CWH Broadcasting, Inc.*, Letter, 27 FCC Rcd 2920, 2924 (MB 2012) (exercise of discretion under Section 312(g) not warranted “where the Station was either silent or operating with noncompliant facilities for more than three years”); *Scott D. MacArthur*, Letter, 25 FCC Rcd 1842, 1844 (MB 2010) (exercise of discretion not warranted “where for nearly four years the station was either silent or engaging in unauthorized operation.”); *Creative Media, Inc.*, Letter, 21 FCC Rcd 689, 691 (MB 2006) (exercise of discretion not warranted where station was silent for nearly 18 months).

<sup>9</sup> *See* 47 U.S.C. § 303(q) and 47 C.F.R. § 17.6.