



Federal Communications Commission
Washington, D.C. 20554

July 26, 2016

In Reply Refer to:
1800B3-DL

Mr. Jose R. Ekonomo
411 Rock Lodge Road
Gaithersburg, MD 20877

In re: EKO Media Group, Inc.
Station DWRJE(AM), Dover, Delaware
Facility ID No. 21632
File No. BL-14484

Petition for Reconsideration

Dear Mr. Ekonomo:

We have before us the Petition for Reconsideration (Petition) filed on February 11, 2016, by EKO Media Group, Inc. (EKO). EKO seeks reconsideration of the Public Notice¹ issued by the Media Bureau, Audio Division (Bureau), advising EKO that its license for Station DWRJE(AM), Dover, DE (Station) had expired pursuant to Section 312(g) of the Communications Act of 1934, as amended (Act).² For the reasons discussed below, we deny the Petition.

Background: The Station has been operating pursuant to Special Temporary Authority (STA) since 1998 when the licensee at the time—Vin Lor Broadcasting, Inc.³—was forced to remove two of its three towers because new owners purchased the Station's licensed tower site.⁴ In its license renewal application filed on March 21, 2014, EKO indicated that the station had gone silent on January 14, 2014, stating that "the power company disconnected the power at the stations transmitter site because the site owner⁵ had not paid the power bills for several months."⁶ On July 18, 2014, EKO requested STA to remain silent, again noting that the power had been cut to the tower site authorized in its most recent STA request, and stated that "the landlord also took down the single tower at the site from which [the Station] had been broadcasting pursuant to the [STA]"⁷ EKO filed a Notice of Resumption of Operations on January 14, 2015, indicating that the Station had resumed operations the day before. EKO filed an STA request on May 7, 2015, informing the Commission that it had been operating the station at a variance from its license facilities since January 14, 2015, and requesting STA to continue operating at

¹ *Broadcast Actions*, Public Notice, Report No. 48654 (MB Jan. 19, 2016) (312(g) *Public Notice*).

² 47 U.S.C. § 312(g).

³ The Station's license was subsequently assigned to a series of licensees, with EKO ultimately obtaining the license from K-5 Communications, LLC (K-5). *See* File Nos. BAL-20010125ABN; BAL-20040120AGQ; BAL-20050824AEK; BAL-20091112AND; BALFT-20110429AAA.

⁴ *See* File No. BSTA-19980821YD. The Station's subsequent licensees, including EKO, have regularly filed requests for additional STA to operate the Station at a variance from its licensed facility.

⁵ EKO indicates that in the Petition that the "land lord . . . is also who sold me the station." It is unclear whether he is referring to K-5 itself or to its owner, Vince Klepac.

⁶ *See* File No. BR-20140321AES.

⁷ *See* File No. BLSTA-20140718ACT (*Silent STA Request*).

a variance from its licensed facility,⁸ which the Bureau granted on June 30, 2015.⁹

On December 2, 2015, the Bureau issue an Operational Status Inquiry Letter to EKO and stated that the Bureau had been informed that the Station “may be currently off the air” even though its records indicated it was operating.¹⁰ The Bureau informed EKO that it must, within 30 days, provide documentation of the Station’s operational status since January 14, 2014, including locations, engineering information, financial information, facility information, dates and times that the Station was off-air, and an explanation of the circumstances necessitating that the Station be taken off the air.¹¹ On January 11, 2016, EKO untimely filed a response, which was not addressed to the correct member of the Bureau staff.¹² On January 13, 2016, the Bureau updated the Commission’s database, CDBS, to indicate that the Station’s license had expired as a matter of law pursuant to Section 312(g) and deleted the Station’s call sign.¹³ On January 14, 2016, the Bureau responded to the *OSI Response* informing EKO that the Station’s license had been cancelled.¹⁴ The Bureau also noted that EKO had failed to timely respond to the *OSI Letter* and that the *OSI Response* failed to provide most of the information EKO was required to submit.¹⁵

EKO asserts in the Petition—which is mostly a verbatim copy of the *OSI Response*—that the Station went silent due to problems with EKO’s landlord, who EKO claims refuses to transfer the lease for the land that EKO purchased.¹⁶ EKO claims that it is unable to find a suitable location to build a new transmission tower, and that although the Station has “been operating irregularly since January 2014” it has “had transmissions” for one day every six months.¹⁷ EKO argues that in order to further the public interest, the Bureau should reinstate the Station’s license and grant another STA authorizing EKO to continue operation of the Station without a transmission tower for the sole purpose of operating FM Translator W286BS.¹⁸ EKO supports its argument by claiming that the Station is its owner’s main source of income, provides entertainment and education locally, and that approving the Petition would not cause harm to any other party.¹⁹ Finally, EKO argues that it is “unfair” that although it paid its

⁸ See File No. BSTA-20150507AAY. This STA request also noted that the Station went silent in January 2014 because the power to the transmitter site had been cut-off, and that “power was restored at the site in early January 2015.”

⁹ *EKO Media Group, Inc.*, Letter Order (MB June 30, 2015).

¹⁰ Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, FCC to Jose Roberto Ekonomo, EKO Media Group, Inc. (MB Dec. 2, 2015) (*OSI Letter*).

¹¹ *Id.*

¹² See Letter from Jose Ekonomo, EKO Media Group, to Jerome Manarchuck, Audio Division, Media Bureau, Jan. 11, 2016 (*OSI Response*). Although the *OSI Response* is dated January 2, 2016, the Commission’s Mail Room date stamp indicates it was received on January 11, 2016.

¹³ See 312(g) *Public Notice*.

¹⁴ See Email from Jerome Manarchuck (MB Jan. 14, 2016) (“[w]e did not receive a response within 30 days and the letter response we did receive provided very little regarding the information that was requested.”) (*Manarchuck Email*).

¹⁵ *Id.*

¹⁶ Petition at 1.

¹⁷ *Id.* at 1-2.

¹⁸ *Id.* at 2. Although EKO requests additional STA to operate the Station, there is currently no STA request pending before the Bureau. Station W286BS is also licensed to EKO and rebroadcasted the Station.

¹⁹ *Id.*

regulatory fees, the Station's license was still cancelled, while "internet radio" stations continue to operate without paying such fees.²⁰

Discussion: The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order or raises new facts or changed circumstances not known or existing at the time of the petitioner's last opportunity to present such matters.²¹

Section 312(g) of the Act provides that "[i]f a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period."²² We reject EKO's claims that it "had transmissions one day every six months," because it provides no documentation to support its claim despite express requests from Commission staff to do so.²³ Even if we were to accept it as true, though, simply transmitting a signal once every six months would not constitute sufficient broadcast operations to end the Station's extended period of silence because "[a] station must disseminate radio communications intended to be received by the public in order to be considered to have resumed operations."²⁴ EKO's argument falls far short of demonstrating that it has transmitted broadcast communications to be received by the public over the 12-month period of apparent radio silence. Finally, we note that EKO also offers no explanation of how the Station was able to broadcast transmissions once every six months given its repeated statements that the power to the tower site was shut down from January 2014 until January 2015, and that the landlord dismantled the only tower EKO used to broadcast pursuant to STA.²⁵ Unauthorized transmissions cannot be used to avoid Section 312(g) license expiration,²⁶ thus, if EKO did transmit broadcast signals from an unauthorized site, they would not qualify as broadcast transmissions for the purposes of Section 312(g).

Section 312(g) of the Act states that the Commission may extend or reinstate a license despite 12 months of silence "to promote equity and fairness."²⁷ The Commission has exercised its authority to reinstate an expired license in only rare circumstances, each of which involved silence for compelling reasons beyond the licensee's control.²⁸ We reject EKO's arguments that the public interest would be

²⁰ *Id.*

²¹ 47 CFR § 1.106(c); *WWJZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 397 U.S. 967 (1966); *Board of Trustees, Davis & Elkins Coll.*, Memorandum and Order, 26 FCC Rcd 15555, 1556, para. 5 (MB 2011).

²² 47 U.S.C. 312(g). See also 47 CFR § 73.1740(c)

²³ *OSI Letter; Manarchuck Email*, see also *OCC Acquisitions, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 6147, 6150, para. 10 (2002) (affirming dismissal of license where station failed to provide information documenting resumption of operations); *Modesto Graffiti Radio Project*, Letter Order, DA 16-741 (MB June 30, 2016) (*Modesto*) (same).

²⁴ *Modesto* at 3 (citing *ETC Commc'ns, Inc.*, Letter Order, 24 FCC Rcd 3021, 3022 (MB 2009) (holding that conducting equipment tests or transmitting an equipment test pattern does not prevent automatic expiration of a license pursuant to Section 312(g)).

²⁵ See *Silent STA Request*. Additionally, had EKO actually resumed Station operations and then again gone silent, it would have been required to notify the Commission. See 47 CFR § 73.1740(a)(4) (requiring a licensee to notify the Commission within ten days of discontinuing station operation).

²⁶ See *Eagle Broad. Grp., Ltd. v. FCC*, 563 F.3d 543, 553 (D.C. Cir. 2009).

²⁷ 47 U.S.C. § 312(g).

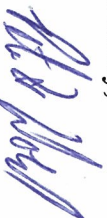
²⁸ See, e.g., *V.I. Stereo Commc'ns Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006) (reinstatement warranted where station's silence attributable to destruction of towers in hurricane and substantial

served in reinstating its license because the Station provides education and entertainment to the community. These statements are unsupported and, even if true, would not serve as a basis for reinstating EKO's license because Section 312(g) "reflects the will of Congress that, where a broadcast licensee fails to provide such promised service for a period of 12 consecutive months, its authorization will automatically terminate so that it may ultimately become available to others that will, in fact, provide such service."²⁹

In light of the inconsistent and contradictory nature of EKO's representations to the Commission and its refusal to provide the necessary documentation requested by Commission staff, we find no credibility in EKO's claim that the Station has not been silent for 12 consecutive months.

Conclusion/Actions. Accordingly, for the IT IS ORDERED that the Petition for Reconsideration filed on February 11, 2016, by EKO Media Group, Inc., IS DENIED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

damage to subsequently rebuilt towers in additional hurricanes); *Cnty. Bible Church*, Letter Order, 23 FCC Rcd 15012, 15014 (MB 2008) (reinstatement warranted where licensee took all steps needed to return to air from replacement site prior to 12 months of silence but nevertheless remained off air to promote air safety after discovering and diligently reporting that FCC and FAA records contained incorrect tower information for which it was not responsible); *Mark Chapman, Court-Appointed Agent*, Letter Order, 22 FCC Rcd 6578 (MB 2007) (reinstatement warranted where extended silence resulted from licensee's compliance with a court order).

²⁹ *Christian Broad. Of East Point, Inc.*, Memorandum Opinion and Order, 30 FCC Rcd 13975, 13976, para. 4 (2014); *see also Buffalo Baptist Church*, Memorandum Opinion and Order, 31 FCC Rcd 2393, 2394, para. 2 (2016) (declining to reinstate an expired license based on equity and fairness when petitioner received two clear written warnings regarding the impending 312(g) expiration date).