



Federal Communications Commission
Washington, D.C. 20554

January 3, 2008

DA 08-17

In Reply Refer to:

1800B3-JP

Released: January 3, 2008

Kirby Young
Full Armor Ministries, Inc.
705 Pierce Street
Eveleth, MN 55734

In re: DWEEP(AM), Virginia, Minnesota
Facility ID: 70307
File Nos. BR-19961204WF
BR-20060802AUY

Petition for Reconsideration

Dear Mr. Young:

We have before us Full Armor Ministries, Inc. ("FAMI") and the City of Virginia, Minnesota's (the "City") jointly-filed July 31, 2006, Petition for Reconsideration ("Petition") of the staff action terminating FAMI's authority to operate Station WEEP(AM) (the "Station") and deleting the Station's call sign.¹ For the reasons set forth below, we deny the petition for reconsideration.

Background. Section 73.3539(a) of the Commission's Rules (the "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." An application for renewal of the Station's license should have been filed by December 1, 2004, four months prior to the Station's April 1, 2005, license expiration date. No such application was received by the Commission staff for processing before the Station's license expired. Thereafter, on June 27, 2006, the staff wrote to the Licensee, indicating that the Station's license had expired and that (1) all authority to operate the Station was terminated; and (2) the Station's call letters were deleted from the Commission's data base.² FAMI was advised that any further operation of the Station was unauthorized and must cease immediately. FAMI filed a timely petition for reconsideration of the Staff Letter on July 31, 2006, and an Application for Renewal of License on August 2, 2006 ("Renewal Application").

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 additional facts, not known or existing at the time of petitioner's last opportunity to present such matters.³ In its Petition, FAMI and the City state the following: (1) the Station's transmitter failed in November 2002 and FAMI did not have the financial resources to return the Station to the air; (2) in May 2003, FAMI and the City entered into an agreement whereby FAMI would sell the Station's property, equipment, and license to the

¹ FAMI and the City filed a Supplement to Petition for Reconsideration on August 14, 2006.

² *Letter to FAMI*, Ref 1800B3-JDB (MB Jun. 27, 2006) (the "Staff Letter").

³ 47 C.F.R. § 1.106, and *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sum nom.*, *Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

City; (3) when FAMI initially attempted to file an assignment application with the Commission a freeze on such applications was in place;⁴ (4) when the freeze was lifted, FAMI failed to file the appropriate assignment application thus the City could not return the Station to the air because it did not have the proper Commission authorization; (5) in December 2004, when the Renewal Application was due, “the station was off the air and the ownership of the license was in flux. . . . [FAMI] was not aware that under these unique circumstances it was required to file an application for license renewal.” FAMI states that there appears to be no bar to the acceptance of the late-filed Renewal Application because the Rules specifically contemplate and accommodate late-filed renewal applications by pushing back the petition to deny deadline for late-filed renewal applications.⁵

In the Petition, FAMI also acknowledges that the Station has been silent since November 2002,⁶ and that Section 312(g) of the Communications Act of 1934, as amended (the “Act”)⁷ would require automatic cancellation of the license. FAMI requests that the Commission exercise its discretion under Section 312(g) of the Act to reinstate the Station’s license. FAMI contends that fairness and equity would be served by reinstatement of the Station’s license so that the license could be assigned to the City. The City states that the Station is the only station licensed to the city of Virginia, Minnesota, and that the Station will be an important source of local news and information for its residents. FAMI and the City state that upon reinstatement of the license each is prepared to take all steps necessary to assign the license and return the Station to the air, including the filing of an assignment application.⁸

Section 312(g). Section 312(g) of the Act states that the license of a broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires automatically at the end of that period. However, the Commission has the discretion, following the automatic forfeiture, to reinstate the license (and associated authorizations/applications) upon an appropriate showing. FAMI states its license should be reinstated pursuant to this discretion outlined in Section 312(g) of the Act. Specifically, Section 312(g) of the Act states: “. . . the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness.”

We find that FAMI has not demonstrated circumstances that warrant either reconsideration of the Staff Letter or the exercise of our discretion under Section 312(g) of the Act. Specifically, FAMI admits that the Station has been silent since November 2002, longer than five years. FAMI does not claim that natural disasters or other compelling circumstances forced the cessation of the Station’s operations.⁹

⁴ See “Media Bureau Announces Processing Guidelines For Broadcast Station Applications,” Public Notice, 18 FCC Rcd 11319 (MB 2003) (establishing a freeze on the filing of assignment, transfer of control and certain modification applications beginning June 2, 2003, while the relevant application forms were revised and approved by OMB. The freeze was lifted upon approval of the forms on August 14, 2003).

⁵ Petition at 3, citing 47 C.F.R. §§ 73.3539(a) and 73.3516(e)(1).

⁶ Petition at 1-2. Commission records contain no indication that FAMI informed the agency of the Station’s cessation of operations.

⁷ 47 U.S.C. § 312(g).

⁸ Petition at 3.

⁹ See *V.I. Stereo Communications Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006) (license reinstated when station’s extended silence was attributable to the station’s towers being destroyed by a hurricane, and after being rebuilt, substantially damaged during three additional hurricanes); *Mark Chapman, Court-Appointed Agent*, Letter, 22 FCC Rcd 6578 (MB 2007) (license reinstated when station’s extended silence resulted from licensee’s compliance with an order issued by the Circuit Court of Jefferson County, Alabama).

Additionally, FAMI and the City's claim that the public interest will be served by preserving the sole station licensed to Virginia, Minnesota, is incorrect. Station WUSZ(FM) is licensed to Virginia, Minnesota, and thus the residents of that community have a readily available local source of information and are not dependent on the resumption of service from a station which has been silent for over five years. For these reasons, we decline to exercise our discretion under Section 312(g) of the Act, and we will deny FAMI and the City's Petition will be denied below.

Late-filed renewal. Because FAMI and the City's Petition is denied, and the Station's license remains forfeited, the license renewal application will be dismissed as moot. While FAMI is correct in its assertion that the Rules contemplate a late-filed renewal application, neither the Rules nor Commission precedent contemplate the acceptance and processing of a license renewal application filed after Section 312(g) forfeiture of the station's license. The Station's license remains forfeited. Thus, there is no license to renew.

Conclusion. For the above stated reasons, FAMI and the City's July 31, 2006, Petition for Reconsideration is DENIED; and the license renewal application (File No. BR-20060802AUY) IS DISMISSED AS MOOT.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Gregg P. Skall, Esq.