



Federal Communications Commission
Washington, DC 20554
November 1, 2018

In reply refer to: 1800B3-VM

Mr. Paul H. Reynolds
Valleydale Broadcasting, LLC
2711 Pelham Parkway
Pelham, AL 35124

In re: DWZNN(FM), Maplesville, AL
Facility ID No. 183374
Petition for Partial Reconsideration

Dear Mr. Reynolds:

This letter concerns the Petition for Partial Reconsideration (Petition) filed on December 14, 2017, by Valleydale Broadcasting, LLC (VB),¹ former licensee of Station DWZNN(FM), Maplesville, Alabama (Station), of the November 15, 2017, letter² cancelling the Station's license pursuant to Section 312(g) of the Communications Act of 1934, as amended (Act).³ The Letter Order also included the following provision (Paragraph 9):

Valleydale Broadcasting, LLC (and its principals, R3 Partners, LLC, Paul H. Reynolds, Joan K. Reynolds., Lee S. Reynolds, and Lyle S. Reynolds, as well as any entity in which any of them holds an interest that is within the scope of the ownership and control disclosure standard set forth in 47 CFR § 1.2112) SHALL SUBMIT a copy of this *Letter Order* with every facilities application—FCC Form 301, 302 (any version), 349, or 350—it files with the Commission for a period of five years from the date of this *Letter Order*.⁴

The Petition requests that the requirements of Paragraph 9 be eliminated. Frontdoor Broadcasting, LLC (Frontdoor), opposes the Petition,⁵ and VB filed a reply.⁶ Based on the foregoing, the Petition is denied.

Background. Commission records show that the Station went silent on November 25, 2015 because it had been "forced to dismantle its transmitter location due to a disagreement with the property owner."⁷ On August 29, 2016, VB stated again that its lost transmitter site was its reason for silence, in an

¹ Petition for Partial Reconsideration (VB Dec. 14, 2017).

² *Letter from Peter H. Doyle, Chief, Audio Division to Mr. Paul H. Reynolds*, Nov. 15, 2017 (Ref. No. 1800B3-VM) (Letter Order).

³ 47 U.S.C. §312(g).

⁴ *Id.* at 3, Para. 9; *see* 47 U.S.C. § 319 and 47 CFR § 73.1015.

⁵ Opposition to Petition for Partial Reconsideration (Frontdoor, Dec. 28, 2017) (Frontdoor December 2017 Opposition). Frontdoor also filed a Request for Leave to File a Response to VB's Reply and a Response on February 9, 2018. We have not granted leave to file and have not included this pleading in our determination.

⁶ Reply to Opposition to Petition for Partial Reconsideration (VB Jan. 12, 2018).

⁷ File No. BLSTA-20160216ABI, granted on March 2, 2016, with a notice that the period of silence from December 25, 2015 to February 16, 2016, was unauthorized.

extension of silent STA.⁷ On November 22, 2016, VB filed a notice of Resumption of Operations, stating that the Station had resumed operation using its “licensed facility.”⁸

Commission records also show that on June 27, 2017, VB filed an application for construction permit, proposing a minor change of facilities.⁹ Frontdoor opposed this application, alleging that the Station had not been operating for over a year.¹⁰ On October 26, 2017, at VB’s request, the Bureau dismissed this application.

On October 25, 2017, VB then filed a technical STA request including an exhibit in which VB admitted that the Station had been operating from the site specified in the request (rather than its licensed site) starting on November 22, 2016.¹¹ VB did not explain why its resumption notice filed on November 22, 2016 stated that the Station was using its licensed facility. Frontdoor again opposed that application.¹²

In the Letter Order, the Bureau held that Commission records and VB’s admission supported a conclusion that the Station was silent (or failed to operate with authorized facilities) for over one year, and that the Station’s license expired at 12:01 a.m., November 26, 2016.¹³ The Letter Order also determined that the Bureau would not exercise its discretion under Section 312(g) of the Act because the failure to operate was due to the licensee’s own actions, including unauthorized operation in violation of Section 301 of the Act, and falsely certifying that the Station was operating from its licensed facility.¹⁴ The Bureau also noted that VB never explained its actions and it only notified the Commission of its unauthorized operation after Frontdoor filed its opposing comments.¹⁵

VB now argues that it should not be required to comply with Paragraph 9 because it has a history of compliance with the Commission’s Rules, its transgression was inadvertent, was not done in bad faith, and amounted to a mere failure to file an STA to operate at variance from its license prior to commencing operation.¹⁶ VB also claims that it did not have an opportunity to rebut the arguments in Frontdoor’s

⁷ File No. BLESTA-20160829ABK, granted on September 15, 2016.

⁸ Notice of Resumption of Operations, November 22, 2016.

⁹ File No. BPH-20170627ABF.

¹⁰ Frontdoor included a letter from the Station’s tower site owner stating that VB removed its tower in November 2015 and stopped paying rent for the site at that time. The site owner also stated that the electric meter at the site indicated that electrical service had been stopped in 2015 and had not resumed. Finally, the site owner indicated that she had observed a nearby site being used to operate a radio station. *See* Comments in Opposition, File No. BPH-20170627ABF at p.3 and Ex. 2.

¹¹ *See* File No. BSTA-20171025ABA.

¹² *See* Informal Objection to File No. BSTA-20171025ABA.

¹³ Letter Order at 2.

¹⁴ *Id.*

¹⁵ *Id.* at 3.

¹⁶ VB also claims that the fact that the STA was in compliance with the rules and would have been granted if timely should weigh in its favor. Petition at 3.

opposition and that the Commission's decision was based only on the opposing comments.¹⁷ Finally, VB argues that the license cancellation was punishment enough and it should not be subjected to the "stigma and stain to its reputation" and "unspecified consequences and processing delays" that compliance with Paragraph 9 will cause.¹⁸

Frontdoor argues that the decision should stand because VB knowingly submitted false information to the Commission and willfully violated the rules for an extended period of time when it engaged in unauthorized operation of the Station for almost a year.¹⁹

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 changed circumstances or unknown additional facts not known or existing at the time of petitioner's last opportunity to present such matters.²⁰ VB has failed to meet this burden.

None of the arguments raised in the Petition shows a material error in the Bureau's decision or raise facts that were not available at the time the Bureau issued the Letter Order. Contrary to VB's allegation that it had no opportunity to respond, we note that it chose to ignore Frontdoor's opposition to the construction permit alleging that it had been silent or operating with unauthorized facilities. In fact, instead of responding to Frontdoor's allegations, VB requested dismissal of its construction permit application, and filed the technical STA with an exhibit admitting its unauthorized operation in an apparent attempt to avoid cancellation of the Station's license pursuant to §312(g) of the Act.²¹ At that time, VB ignored its false statement in the resumption notice and merely characterized its filing of the STA request as untimely.²² VB offered no explanation for its false representation on the resumption notice or the failure to file the STA request for almost a year.²³

¹⁷ *Id.* at 4-5. VB proffers some new information to explain its operation from the alternate site and the misunderstanding among the parties regarding filing an STA to operate at that site.

¹⁸ *Id.* at 6.

¹⁹ Frontdoor December 2017 Opposition at 5. Frontdoor also raises the issue of unauthorized operation of FM Station WTID, also owned by the same principals as in the present case. In that case, the licensee of WTID, Great South Wireless, LLC, requested that the license be cancelled on February 8, 2018, which we granted on February 16, 2018.

²⁰ See 47 CFR § 1.106; *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 3 (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); and *National Ass'n of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415, para. 4 (2003).

²¹ VB stated in the STA, "Valleydale Broadcasting LLC ('Valleydale') filed a notice of resumption of service on November 22, 2016 before the one year silent period expired. However, Valleydale inadvertently failed to file a STA request for this new location on a timely basis. Valleydale respectfully requests that the commission accept this STA request at this time. WZNN has continued to operate from this location and with the specified facilities since Nov. 22, 2016." File No. BSTA-20171025ABA, Exh. 4.

²² *Id.*

²³ VB attempts to explain its behavior for the first time in the Petition. Its explanation is that the misrepresentation on the resumption notice was the owner's mistake at that time, and the failure to file the STA was a misunderstanding between the owner and an employee when they built the STA facility. This untimely information does not support reconsideration. We have often admonished parties seeking reconsideration, "[w]e cannot allow

We reject VB's argument that it should not be required to comply with Paragraph 9 because it acted in good faith and it has suffered enough by losing the Station's license.²⁴ The staff properly held that the Station's license had expired by operation of law based on the combined silence and unauthorized operation. The requirement to comply with Paragraph 9 was based on the false claim of licensed operation that VB would not have admitted had it not been for the complaints filed by Frontdoor. The fact that VB now argues that the falsehood lacked the requisite intent²⁵ because it was inadvertent does not provide a basis for mitigation.²⁶ Fraudulent intent can be found from "the fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity."²⁷ Here, VB admits that it knew it made a false statement on its resumption notice, but it does not explain why it waited over a year to correct it and file a request for STA. That failure provides ample support for the staff to require a reminder of its action whenever VB or its principals file an application over the next five years requiring the staff to undertake a review of the applicant's qualifications, including character qualifications.

Conclusion/Actions. Accordingly, IT IS ORDERED that the Petition for Partial Reconsideration filed by VB on November 16, 2017, IS DENIED.

Sincerely



Albert Shuldiner
Chief, Audio Division
Media Bureau

cc: M. Scott Johnson, Esq.

the appellant to sit back and hope that a decision will be in its favor, and then, when it isn't, to parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed." *Colorado Radio Corp. v. Federal Communications Commission*, 73 App. D.C. 225, 227, 118 F. 2d 24, 26 (1941).

²⁴ We also reject the argument that it has a "history of compliance" with our rules. *See* notes 6 and 19, *supra*; *see also Valleydale Broad., LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for a Forfeiture, 27 FCC Rcd 10143 (MB 2012) (\$3,000 forfeiture imposed on Valleydale for failing to timely file a post-auction Form 301 application, as required by Sections 73.3573(f)(5)(i) and 73.5005(a) of the Rules).

²⁵ *See Fox River Broad., Inc.*, Order, 93 FCC 2d 127, 129 (1983); *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7435 (2004) (*Discussion Radio*).

²⁶ *See Lake County Cmty. Radio*, Forfeiture Order, 31 FCC Rcd 7659, 7660, para. 6 (MB 2016) (violations resulting from inadvertent error are willful violations); *S. California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para. 3 (1991), *recon. den.*, 7 FCC Rcd 3454 (1992) (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *see also Commil USA, LLC v. Cisco Systems, Inc.*, 135 S. Ct. 1920, 1930 (2015) ("In the usual case, 'I thought it was legal,' is no defense.").

²⁷ *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991) (quoting *Leflore Broad. Co. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980)); *see also Discussion Radio*, 19 FCC Rcd at 7435.