



Federal Communications Commission
Washington, D.C. 20554

February 1, 2019

In Reply Refer to:
1800B3-ATS

Wilsonville Radio Project
c/o Ms. Remember D. Watts
4930 SE 75th Avenue
Portland, OR 97206

In re: **Wilsonville Radio Project**
Station DKXVY-LP, Wilsonville, OR
File Nos. BLL-20170123FKW,
BLSTA-20180806AAR
Facility ID No. 196592

Petition for Reconsideration

Dear Ms. Watts:

We have before us the Petition for Reconsideration (Petition) filed by Wilsonville Radio Project (WRP)¹ seeking reinstatement of its expired license for Station DKXVY-LP, Wilsonville, Oregon (Station).² For the reasons set forth, we deny the Petition.

Background. The Station went silent on August 4, 2017, and WRP filed a request for Special Temporary Authority (STA) for the Station to remain silent the same day.³ On August 23, 2017, the Media Bureau (Bureau) granted WRP's STA request for a period of 180 days and advised WRP that "the broadcast license for Station KXVY-LP will automatically expire as a matter of law if broadcast operations do not resume by 12:01 a.m., August 5, 2018."⁴ On February 20, 2018, WRP requested an extension of its authority to remain silent,⁵ which the Bureau granted on March 1, 2018. That grant again advised WRP that "the broadcast license for Station KXVY-LP will automatically expire as a matter of law if broadcast operations do not resume by 12:01 a.m., August 5, 2018."⁶

On Sunday, August 5, 2018,⁷ WRP submitted an engineering STA in which it sought authority to operate from a temporary facility.⁸ WRP explained that its "consultant engineer was delayed in securing additional specialty parts required to re-mount the antenna properly on the tower at the licensed location, which required additional review with the tower company to see if the structure could accommodate

¹ WRP filed the Petition on January 2, 2019.

² *Wilsonville Radio Project*, Letter Order (MB Dec. 3, 2018) (*Staff Letter*).

³ File No. BLSTA-20170804ABA (claiming that the Station ceased operations because it lost use of its licensed site).

⁴ Letter from Lisa Scanlan, Deputy Chief, Audition Division, Media Bureau, FCC to Simon Springall, Wilsonville Radio Project (MB Aug. 23, 2017).

⁵ File No. BLESTA-20180220AAN.

⁶ Letter from Lisa Scanlan, Deputy Chief, Audition Division, Media Bureau, FCC to Simon Springall, Wilsonville Radio Project (MB Mar. 1, 2018).

⁷ WRP states that the "Engineering STA was prepared August 2 to place the station back on the air by August 4, 2018. Because August 4, 2018 landed on a Saturday, the Engineering STA was prepared and submitted that weekend, materializing within FCC CDBS the next official business day of August 6, 2018." Petition at 2. The Bureau staff has reviewed its database records and determined that the Engineering STA was in fact prepared in CDBS on Sunday, August 5.

⁸ File No. BLSTA-20180806AAR (Engineering STA).

KXVY-LP's new antenna and associated fixtures.”⁹ WRP thus sought authority to broadcast from a temporary site.¹⁰ WRP also filed a Resumption of Operations on August 5, 2018 (Resumption Notice),¹¹ stating that “broadcast has resumed upon concurrently filed eng STA.” Subsequently, WRP informed the Bureau staff that “[w]ork has been completed and operations have returned to normal operation.”¹²

On December 3, 2018, the Bureau issued the *Staff Letter*, in which it held that the Station did not resume operations from an authorized location prior to the expiration of its license on August 5, 2018.¹³ The *Staff Letter* noted that the Station could not have operated from its licensed facility, given that WRP claimed to have lost use of that site, and that the Bureau had not granted WRP authority to operate from an alternative site.¹⁴ Finally, the *Staff Letter* stated that unauthorized operations do not count as a resumption of operations for the purposes of Section 312(g) of the Communications Act of 1934, as amended.¹⁵ Because the Station's license expired on August 5, 2018, the *Staff Letter* dismissed the Engineering STA, cancelled the Station's license, and deleted its call sign in CDBS.¹⁶

In the Petition, WRP argues that the Bureau erred in holding that the Station's license expired pursuant to Section 312(g). WRP states that it “diligently worked to place the licensed location on the air by August 5 but was encumbered by circumstances outside of its control within tower mounting.”¹⁷ WRP states that it prepared the Engineering STA and the Resumption Notice before the Station's license expired,¹⁸ and that the Station resumed operations on August 4 at the facilities specified in the Engineering STA.¹⁹ WRP further argues the *Staff Letter* failed to reflect that the Station had resumed operations pursuant to the Engineering STA prior to the expiration of its license.²⁰ Finally, WRP argues that the public interest would be served by reinstating the Station's license.²¹

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 the petitioner's last opportunity to present such matters.²² WRP has not met this burden.

⁹ *Id.* at Attach. 6.

¹⁰ *Id.*

¹¹ WRP states that it “prepared and signed Resumption of Operations on Saturday August 4, 2018 (prior to the 12:01 AM, August 5, 2018 deadline) . . . This was submitted that weekend” Petition at 3. The Bureau staff has reviewed its database records and determined that the Resumption Notice was in fact prepared in CDBS on Sunday, August 5.

¹² Email from Remember D. Watts to Dale Bickel, Audio Division, Media Bureau, FCC (Sep. 3, 2018, 16:11 PDT).

¹³ *Staff Letter* at 2.

¹⁴ *Id.*

¹⁵ 47 U.S.C. § 312(g) (Section 312(g)).

¹⁶ *Staff Letter* at 2.

¹⁷ Petition at 2.

¹⁸ *Id.* at 2-3.

¹⁹ *Id.* at 3.

²⁰ *Id.* at 3-4.

²¹ *Id.*

²² 47 CFR § 1.106(c); *WWIZ, 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); *Davis & Elkins Coll.*, Memorandum and Order, 26 FCC Rcd 15555, 15556, para. 5 (MB 2011).

Pursuant to Section 312(g), if a broadcast station fails to transmit broadcast signals with its authorized facilities 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, unless extended or reinstated by Commission action.²³ Moreover, “[w]ell-established Commission precedent dictates that licensees cannot avoid the statutory deadline set forth in Section 312(g) through the use of unauthorized facilities”²⁴ and “an unauthorized transmission counts for nothing.”²⁵

WRP is incorrect in claiming that it avoided the automatic expiration of its license by commencing operations pursuant to the Engineering STA on August 4, 2018. As discussed in the *Staff Letter*, the Bureau had not granted WRP authority to operate pursuant to the Engineering STA, and any operations at the facility specified in the Engineering STA were unauthorized.²⁶ Moreover, the Engineering STA was in fact filed *after* the Station’s license expired, and it was never granted. Rather, it was dismissed as moot in the *Staff Letter* due to the license expiration. The Station’s unauthorized operations cited in the Petition thus did not prevent the Station’s license from expiring.²⁷

Finally, although WRP does not specifically invoke the “equity and fairness” provision of Section 312(g), we disagree that reinstating the Station’s license is appropriate. In deciding whether to apply Section 312(g)’s “equity and fairness” exception to automatic license expiration after one year of non-operation, we conduct a case-by-case factual analysis to determine whether reinstatement would promote equity and fairness. We have exercised this discretion only when the failure to timely resume broadcasts was for a compelling reason beyond the licensee’s control.²⁸ WRP’s issues with tower mounting days before the expiration of the Station’s license were due to its own failure to timely locate an appropriate transmitter site and promptly obtain the parts needed for the Station’s operation at the new site within the year-long period in question. The Commission has declined to reinstate licenses where, as here, the failure to transmit an authorized broadcast signal was “due to the licensee’s own actions, finances, and/or business judgments.”²⁹ Thus, we cannot find that reinstatement of the Station’s license would be consistent with relevant precedent.³⁰

²³ 47 U.S.C. § 312(g).

²⁴ See, e.g., *James McCluskey, Ph.D.*, Letter Order, 27 FCC Rcd 6252, 6254-55 (MB 2012).

²⁵ *Eagle Broadcasting Group, Ltd. v. FCC*, 563 F.3d 543, 553 (D.C. Cir. 2009) (affirming Commission determination that license had expired pursuant to Section 312(g) and licensee’s broadcasts from an unauthorized facility were not licensed operations for the purposes of Section 312(g)).

²⁶ *Staff Letter* at 2.

²⁷ See *WJBW, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 2301, 2302-03, para. 4 (2017) (affirming Bureau decision that station’s license expired pursuant to Section 312(g) where station filed for STA after close of business on day before license expired and resumed operations from STA site without Bureau approval).

²⁸ *Id.* at n.6.

²⁹ *Kingdom of God, Inc.*, Memorandum Opinion and Order, 31 FCC Rcd 7522, 7527, para. 11 (2016).

³⁰ Even if WRP’s Petition had made a *prima facie* case supporting reconsideration, we find that there are significant questions as to whether the Station ever operated with its licensed facilities. However, we need not investigate those issues in light of the outcome here.

Conclusion. For the reasons set forth above, IT IS ORDERED that the Petition for Reconsideration filed by Wilsonville Radio Project on January 2, 2019, IS DENIED.

Sincerely,



Albert Shuldiner
Chief, Audio Division
Media Bureau

cc: Wilsonville Radio Project
c/o Mr. Simon Springall
7577 SW Vlahos Drive
Wilsonville, OR 97070