

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

2019 APR 10 PM 2:11

In re Applications of)	
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)	Received-FCC
UNIVERSAL BROADCASTING OF)	
NEW YORK, INC. (WTHE))	APR 10 2019
Mineola, New York)	
)	Bureau / Office
and)	File No. BAL-20190207AAE
)	
CANTICO NUEVO MINISTRY, INC.)	
)	
For Assignment of License)	
)	
UNIVERSAL BROADCASTING OF)	File No. BLSTA-20190211AAT
NEW YORK, INC. (WTHE))	
Mineola, New York)	

To: Chief, Media Bureau

REPLY TO OPPOSITION TO PETITION TO DENY

WIN Radio Broadcasting Corporation (WIN Radio) hereby replies to the Opposition by Universal Broadcasting of New York, Inc. (Universal) to WIN Radio's Petition to Deny the above-captioned application for consent to the assignment of the "license" for AM station WTHE, Mineola, New York, and Universal's request for authority to remain silent.

Much of Universal's Opposition is devoted to the aged saw about "standing" to file petition to deny its assignment application and the trope that petitions to deny a request for special temporary authority to remain silent "do not lie." For almost eighty years it has been established that a competitor has

“standing” to petition to deny an application for a rival radio station on the ground of economic injury. The competitor is “a person aggrieved or whose interests are adversely affected” if the FCC grants the application and is, therefore, entitled to appeal therefrom. *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470, 476 (1940). That argument is, therefore, a waste of the FCC’s time. Similarly, it is ludicrous to contend that the public has no interest in advising the FCC that acceding to an STA request by a station that has forfeited its license pursuant to Section 312(g) of the Act – especially a request grounded in a misrepresentation of a material fact.– is not in the public interest.

Neither the assignment application nor the STA request should be granted because, in fact, by operation of law, the WTHE license no longer exists.

The Opposition does not contest material factual allegations made in the Petition to Deny, including (1) the WTHE tower was sold out from under Universal at a tax auction,, not “lost” due to reasons beyond control (as alleged in the original STA request) and (2) Universal abandoned the transmitter site by removing and/or selling all of its transmission equipment. The notion that WTHE would have returned to the air at the licensed location, with its authorized facilities, absent the government shutdown, is magical thinking, like wishing for a pony. In the end, all Universal could come up with (as described in its initial STA request, with was several feet of copper wire dangling from a residential building – no monitors, frequency or power measurement devices,

remote control equipment or program origination facilities, or anything else customarily associated with a radio station.

Universal's effort to communicate with the FCC staff via e-mail during the shutdown is irrelevant. After the FCC operated for a number of days without specific statutory spending authority, the agency publicly announced, in its January 2 public notice, it would no longer be able to receive (let alone grant) applications or filing fees. This encompassed requests for Special Temporary Authority. A specific exception was made, and instructions provided, for requests through the FCC's Operations Center for "emergency" STAs necessary to protect life and property, but Universal, apparently, did not attempt to invoke that provision (and inquiry by WIN Radio's counsel did not produce any record such a request was made). The point is, however, it was not the government shutdown that caused Universal to resort to its gimmicky "long wire" antenna to "restore" operation, it was Universal's negligence in allowing its transmission tower to be sold at auction, neglect in abandoning or selling its equipment and indifference to the public interest for nearly a year.

The Opposition does not rebut, or attempt to distinguish, FCC decisions cited in the Petition to Deny in which similar last minute attempts to avoid Section 312(g) for repulsed. Nor has Universal cited any decision in which the FCC resuscitated an expired license in similar circumstances. As the FCC stated in *WJBW, LLC*, FCC 17-23, released March 21, 2017, Para. 9,

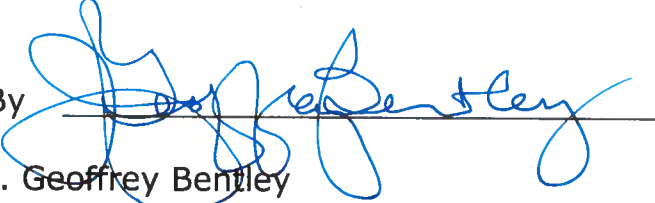
In adopting rule to implement Section 312(g), the Commission stressed that licensees at risk of automatic expiration should sufficient time for Commission review and post-authorization construction when filing an application for facilities intended to return a silent station to the air. Similarly, the Bureau warned that it is the responsibility of the licensee, not the agency to timely and properly resume operations.

For the reasons aforesaid, the FCC should declare the license for WTHE forfeited by reason of Section 312(g), deny the assignment application and deny the requested special temporary authority to remain silent.

Respectfully submitted,

WIN RADIO BROADCASTING CORPORATION

By



J. Geoffrey Bentley
2700 Copper Creek Road
Oak Hill, Virginia 20171
(703)793-5207
(703)793-3845 (facsimile)

April 10, 2019

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached Petition to Deny were served, by depositing with the U.S. Post Service, First Class postage prepaid, this 10th day of April 2019, to James A. Koerner, Koerner & Olender, P.C., 7020 Richard Drive, Bethesda, MD 20817, counsel to Universal Broadcasting of New York, inc., and Allan G. Moskowitz, Esq., 10845 Tuckahoe Way, North Potomac, MD 20878.



J. Geoffrey Bentley