

WILKINSON) BARKER) KNAUER) LLP

1800 M STREET, NW
SUITE 800N
WASHINGTON, DC 20036
TEL 202.783.4141
FAX 202.783.5851
www.wbklaw.com

June 13, 2019

VIA HAND DELIVERY

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554
Attn: Media Bureau

Re: Request for Special Temporary Authority, for Waiver of Section 73.1740(a)(4), and for Commission Exercise of Its Discretion Under Section 312(g) of the Communications Act of 1934, as Amended
First Assembly King's Cathedral and Chapels
Station KKON(AM), Kealahakua, Hawaii
Facility Identifier Number 70382

Dear Ms. Dortch:

First Assembly King's Cathedral and Chapels ("Licensee"), licensee of station KKON(AM), Kealahakua, Hawaii, Facility ID 70382 (the "Station"), by its counsel hereby requests a waiver of Section 73.1740(a)(4) of the Commission's rules to permit the filing of this request for Special Temporary Authority ("STA") to remain silent. As detailed below, a grant of this request is warranted and in the public interest.

The Station has been silent since June 13, 2018. Licensee obtained STA to remain silent on July 6, 2018. File No. BLSTA-20180622AAN. The Licensee received an extension of the STA on February 14, 2019, permitting the Station to remain silent until June 13, 2019. File No. BLESTA-20181228AAA.

Section 312(g) of the Communications Act of 1934, as amended, specifies that the license of a broadcast station that fails to transmit broadcast signals for any consecutive 12-month period automatically expires, provided, however, that the Commission may extend or reinstate a license where the licensee "prevails in an administrative or judicial appeal, the applicable law changes, *or for any other reason to promote equity and fairness*" (emphasis added). The Commission previously has applied the discretion afforded by Congress in this clause narrowly, limiting it to

situations in which the failure to transmit broadcast signals for twelve consecutive months is due to circumstances beyond the licensee's control. *See, e.g., V.I. Stereo Comm'n Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006).

As demonstrated below, Licensee submits that the Station's failure to resume operations in this case is due to reasons beyond the Licensee's control, and that basic equity and fairness justify the requested relief in this instance.

The Station's inability to resume operations prior to the one-year deadline is due to two key factors:

- 1) The Station's tower owner recently deemed the current KKON tower unclimbable, and therefore unusable. The Station is not able to install any further equipment at the site. The tower owner does not have a timeline yet for removal of the current tower and installation of the replacement tower.
- 2) There is no other AM tower within KKON's community of license, and there is now insufficient time to perform the detailed steps necessary to propose and construct a new tower, including conducting necessary engineering work, and obtaining FAA and FCC tower approvals.

The following is a timeline with additional information related to the above factors:

- 1) Licensee received the station as a gift from Pacific Radio Group, Inc. in November 2017.
- 2) Upon consummation of the assignment, Licensee began the significant process of returning the station to broadcast status.
- 3) On November 20, 2017 KKON received an email from the tower owner stating the owner's intention to do a "Drop and Swap" of both the tower and transmitter building.
- 4) Upon inspecting the transmitter, KKON found it to be in very poor condition, with all four of the power supply boards dead. Seven of the eight RF amplifier modules were also nonfunctional.
- 5) KKON contacted the tower owner requesting a new lease on March 22, 2018. At the time, the tower and related facilities were being leased by the Station on a month-to-month basis. Prior to making the \$26,664 investment in a new transmitter (Nautel bid received on May 3, 2018), it was deemed critical to the Station and Licensee that we enter into a lease arrangement with the tower owner.
- 6) KKON borrowed and repaired transmitter modules and power supply boards to enable the KKON transmitter to broadcast; however, after three days of successful operation, the transmitter failed again on June 13, 2018. Licensee obtained STA to remain silent while it undertook the process of acquiring a new transmitter.
- 7) Nine months after Licensee's initial request, on November 12, 2018, the tower owner provided a proposed lease to Licensee.
- 8) Licensee investigated the option of moving the transmitter for sister station KHLO (Hilo at 850 kHz) to KKON (790 kHz), then purchasing a new transmitter for KHLO. This approach was determined to be untenable (as the transmitters at issue can only shift 20 kHz without major changes).
- 9) Licensee continued to negotiate lease terms with the tower owner.

- 10) The FCC granted an STA-silent extension for the Station on February 14, 2019.
- 11) In March 2019, the tower owner gave notice to KKON that it had determined the tower is unclimbable and must be torn down. The tower owner indicated its intent to rebuild the tower, but no timeline has been provided, as the owner needs to obtain permits to dismantle the tower and then build a new one in its place.
- 12) Following this news, Licensee began searching for an alternate tower in or near the Station's community of license. The search has proven unsuccessful to date, however.

Thus, due to reasons beyond its control, Licensee is unable to resume operations at its presently licensed site prior to the one-year deadline, and has run out of time to find a suitable alternative site.

As the Commission must be aware, AM stations are increasingly difficult to maintain and operate, particularly in remote, inaccessible areas such as Kealahou, Hawaii, where spare parts are difficult to obtain, and strict building regulations limit the options for AM tower sites. A more relaxed policy for AM stations may be necessary in connection with Section 312(g). It would be a fundamental disservice to the Hawaiian community, and to those interested in revitalizing the AM service, to simply let another AM station license be canceled despite the Licensee's willingness to resume operations if more time is given. No one would be served by a strict application of the one-year guideline in this instance. Indeed, if the KKON license is canceled, it is highly unlikely that the 790 kHz frequency would be auctioned or built any time soon, if ever, so there is no policy justification for strictly applying Section 312(g) criteria by canceling the license. The Kealahou community would simply have one less voice if the KKON license is canceled. Voices like KKON are ever more important to the citizens of Hawaii, particularly with the ongoing physical dangers presented by recent volcanic activity. The likelihood is that the 790 kHz frequency will be returned to broadcast operations far more promptly if the Commission agrees to give the Licensee the flexibility it is requesting herein.

KKON is excited to contribute to its community if given the chance. If the Commission grants this request, Licensee commits to undertake all possible efforts to return the Station to operation as quickly as possible, either at the replacement tower at its licensed coordinates, or at a new suitable site.

Please contact the undersigned if you have any questions about this submission

Respectfully submitted,

/s/ David A. O'Connor
Counsel for First Assembly King's Cathedral and
Chapels

cc: Lisa Scanlan, FCC
Denise Williams, FCC

