



Federal Communications Commission  
Washington, D.C. 20554

September 19, 2019

*In Reply Refer to: 1800B3-VM*

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

David A. O'Connor, Esq.  
Wilkinson Barker Knauer, LLP  
1800 M Street, N.W., Suite 800N  
Washington, DC 20036

In re: **KKON(AM), Kealahakua, HI**  
Facility ID No. 70382  
Notice of License Expiration

Dear Mr. O'Connor:

On June 13, 2019, you filed a 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 (Request) on behalf of First Assembly King's Cathedral and Chapel (FAKCC), licensee of Station KKON(AM), Kealahakua, Hawaii (Station). Upon review of the Request and the record before us, we deny the Request and find that the Station's license expired as a matter of law under Section 312(g) of the Communications Act of 1934, as amended (Act).<sup>1</sup> Accordingly, we cancel the Station's license and delete the Station's call sign.

**Background.** Our records show that the Station has been silent for all but two days from June 30, 2017, to the present time.<sup>2</sup> On November 17, 2017, FAKCC became licensee pursuant to an assignment of license from Pacific Radio Group, Inc. as a donation.<sup>3</sup>

In the Request, FAKCC states that the transmitter was in poor condition when it acquired the Station. It decided to wait to invest in a new transmitter until it negotiated lease terms with the tower owner. On March 22, 2018, FAKCC initiated a request for a tower lease from the owner, and nearly nine months later, on November 12, 2018, the owner sent FAKCC a proposed tower lease. FAKCC continued

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<sup>1</sup> 47 U.S.C. § 312(g) (Section 312(g)); *Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543 (D.C. Cir. 2009); *A-O Broad. Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603 (2008).

<sup>2</sup> See *Station KKON Request for Special Temporary Authority to Remain Silent (STA)*, BLSTA-20170705ABF, Exh. 1, granted on Aug 2, 2017, expired on Jan. 29, 2018 (silent STA - reason for silence - loss of programming source); File No. BLESTA-20180314AAZ, Exh. 2, granted on Apr. 5, 2018 (late-filed silent STA - reason for silence - continuing loss of programming source); Notice of Resumption, Exh. 3, filed on June 12, 2018 (stating that Station resumed on June 11, 2018 using licensed facilities); File No. BLSTA- 20180622AAN, Exh.1, granted on Jul. 6, 2018, expired Jan. 2, 2019 (silent STA - reason for silence - transmitter failure); File No. BLESTA- 20181228AAA, Exh. 2, granted on Feb. 14, 2019, expired on June 14, 2019 (silent STA - reason for silence - continued transmitter failure).

<sup>3</sup> See File No. BAL-20170815AAY, granted on Oct. 26, 2017, consummated on Nov. 17, 2017. The assignment grant included a warning that the license would expire at 12:01 a.m. on July 1, 2018, if the Station did not resume operation by that time.

to attempt to negotiate lease terms with the owner until March 2019 when the owner informed FAKCC that the tower had been deemed unsafe, requiring demolition and rebuilding, which has not begun. After learning that the tower would be unavailable in March 2019, FAKCC began to search for alternative sites, but has been unsuccessful.

FAKCC argues that these circumstances are outside of its control and should be a basis for the Commission to exercise its discretion under Section 312(g) of the Act by allowing it to remain silent for more than a year while it waits for the tower to be rebuilt. FAKCC claims that the terrain of Hawaii is unique and that it is more difficult to get the parts and permissions to build stations there and therefore discretion should be exercised in this instance.<sup>4</sup> Finally, FAKCC argues that a more relaxed policy should be adopted to allow existing AM stations to continue to provide service in places like Hawaii, and that the Station would provide a particular service to Hawaii to alert citizens of dangers presented by volcanic activity.<sup>5</sup>

**Discussion.** Section 312(g) of the Act provides that “if a broadcasting station fails to transmit broadcast signals 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, notwithstanding any provision, term, or condition of the license to the contrary...”<sup>6</sup>

Although the Commission retains discretion under Section 312(g) to extend or reinstate such license “to promote equity and fairness,”<sup>7</sup> our discretion under that provision of Section 312(g) is severely limited.<sup>8</sup> The Commission has exercised its authority to reinstate an expired license to “promote equity and fairness” only where the station failed to provide service for 12 consecutive months due to compelling reasons beyond the licensee's control.<sup>9</sup> Conversely, the Commission has declined to reinstate licenses where, as here, the failure to transmit a broadcast signal was due to the licensee's own actions, finances, and/or business judgments.<sup>10</sup> In this case, FAKCC received the Station as a donation and it was

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<sup>4</sup> Request at 3.

<sup>5</sup> *Id.*

<sup>6</sup> See Implementation of Section 403(l) of the Telecommunications Act of 1996, 11 FCC Rcd 16499 (1996); see also 47 CFR § 73.1740(c).

<sup>7</sup> 47 U.S.C. § 312(g).

<sup>8</sup> See *A-O Broad.*, 23 FCC Rcd at 617, para. 27 (“This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited”).

<sup>9</sup> See, e.g., *V.I. Stereo Commc'ns Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006) (reinstatement warranted where station's silence resulted from hurricane destruction); *Community Bible Church*, Letter, 23 FCC Rcd 15012, 15014 (MB 2008) (reinstatement warranted where licensee took all steps needed to return to air, but remained off air to promote air safety after discovering and reporting that FCC and FAA records contained incorrect tower information); *Mark Chapman, Court-Appointed Agent*, Letter, 22 FCC Rcd 6578 (MB 2007) (reinstatement warranted where extended silence resulted from licensee's compliance with a court order).

<sup>10</sup> See, e.g., *A-O Broad.*, 23 FCC Rcd at 617, para. 27 (reinstatement not warranted when site loss was a result of the licensee's rule violations and continued silence was a result of licensee's failure to complete construction at an alternate site); *ETC Communications, Inc.*, Letter, 25 FCC Rcd 10686 (MB 2010) (reinstatement not warranted where the licensee chose not to operate financially struggling station while offering it for sale); *Kirby Young*, Letter, 23 FCC Rcd 35 (MB 2008) (reinstatement not warranted where the licensee was not financially able to restore operations after transmitter failed). See also *Kingdom of God*, Letter, 29 FCC Rcd 11589 (MB 2014) (Bureau

already silent. Because of various operational difficulties, the Station has operated for only two days since FAKCC acquired it in 2017. Although FAKCC claims it had difficulties contacting the owner and negotiating lease terms, it waited until the owner declared the tower unusable before it attempted to locate an alternative site. The choice of site here was a business decision within the control of the licensee, and we are not persuaded that the circumstances warrant exercise of our discretion in “fairness and equity” pursuant to Section 312(g).

Based on our records, and FAKCC’s admissions, we find that the Station was silent from June 13, 2018 through today’s date. Therefore, the Station’s license expired as a matter of law on or about June 14, 2019, pursuant to Section 312(g) of the Act.

**Conclusion/Actions.** For the reasons set forth above, we find that the license of KKON(AM), Kealakekua, Hawaii (Facility ID No. 70382), EXPIRED by operation of 47 U.S.C. § 312(g) on or about June 14, 2019. Accordingly, the Commission’s public and internal databases will be modified to reflect that expiration, and we HEREBY DELETE the Station’s call sign, KKON(AM). All authority to operate this facility IS TERMINATED.

Sincerely,



Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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rejects KOG’s request for reinstatement of its permit for LPTV Station WKGK-LP, Kokomo, Indiana, expired pursuant to Section 312(g), under the “equity and fairness” language, finding that “the ultimate reason for the station’s silence was due to KOG’s business decision not to promptly find a permanent and suitable transmitter site,” and concluding that KOG’s silence was not the result of compelling reasons beyond the licensee’s control, but, rather, “due to the licensee’s own actions, finances and/or business judgments”).