



Federal Communications Commission
Washington, D.C. 20554

March 9, 2020

G.I.G. of North Dakota, LLC
P.O. Box 88336
Sioux Falls, SD 57109

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Re: KCPM(TV), Grand Forks, North Dakota
Fac. ID No. 86208
File Nos. BRCDT-20140401AOQ
BALCDT-20180209ABJ

Dear Licensee:

This is with respect to the above-captioned station. Section 312(g) of the Communications Act of 1934, as amended (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

Upon a review of the record before us, the license has expired as a matter of law under section 312(g) the Act.¹ For this reason, the above-captioned applications, which remain pending, will be dismissed.²

Background. On December 15, 2014, G.I.G. lost access to its licensed site.³ On August 29, 2016, G.I.G. filed an STA request “to allow authorization for operation subsequent to expiration of station renewal” because the “failure to timely file [its Renewal Application] was inadvertent.”⁴ On February 7, 2017, G.I.G. requested silent special temporary authority (STA) beginning January 31, 2017, due to a

¹ 47 U.S.C. § 312(g).

² The following pleadings remain outstanding: Parker Broadcasting of Dakota License, LLC d/b/a Major Market Broadcasting’s (MMB) Petition for Reconsideration of the STA granted to G.I.G. on April 4, 2018; MMB’s Petition to Deny the above-captioned assignment application. We grant the pleadings to the extent necessary to effectuate the decision herein. We need not reach the other allegations in light of our decision to expire the license. Copies of this letter have also been sent to Gray Television, LLC, and Parker Broadcasting of Dakota License, LLC.

³ See Response to Letter of Inquiry, from G.I.G., to David Brown, Deputy Chief, Video Division, FCC Media Bureau, at 111, Response to Question 5(b) (July 9, 2019) (on file in BRCDT-20140401AOQ) (LOI Response). G.I.G. did not file an engineering STA requesting the use of a temporary site.

⁴ See DTV Legal STA Application, File No. 0000013875 (filed Aug. 29, 2016) (August 29, 2016, STA).

“problem relative to program delivery.”⁵

After being silent for nearly a year, G.I.G. filed a resumption of operations notice on January 27, 2018.⁶ On February 13, 2018, G.I.G. filed another silent STA beginning February 3, 2018, “due to technical difficulties.”⁷ On March 27, 2018, G.I.G. filed an engineering STA⁸ to operate the Station at a temporary site.⁹ G.I.G. filed a resumption of operations notice on September 15, 2018.¹⁰

On April 30, 2019, the Division sent a letter of inquiry (LOI) to G.I.G. to further develop the record regarding the Division’s off-the-air concerns.¹¹ In the LOI Response, G.I.G. stated that when the Station briefly resumed operations from January 27, 2018, to February 3, 2018, it still did not have access to its licensed site and used a “temporary transmitter utilizing a video server.”¹² During this period of operation, G.I.G. did not have an engineering STA authorizing the use of a temporary transmitter.

Discussion. Section 73.1740(c) of the Rules, which implements section 312(g) of the Act,¹³ provides that the license of any broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary. Moreover, well-established Commission precedent dictates that licensees cannot avoid the “automatic forfeiture” provision of section 312(g) by using unauthorized facilities.¹⁴ Thus, a station is subject to section 312(g)’s license forfeiture provision if,

⁵ See Suspension of Operations and Silent Authority of a DTV Station Application, File No. 0000021885 (filed Feb. 7, 2017) (February 7, 2017, STA Application). On May 31, 2017, the Division sent a letter to G.I.G. indicating that its Renewal Application was unable to be processed because of the Commission’s “red light rules” and instructed G.I.G. to pay the outstanding fees within 30 days. See Letter from David A. Brown, Deputy Chief, Video Division, FCC Media Bureau, to G.I.G. of North Dakota, LLC at 1 (May 31, 2017) (on file in BRCDT-20140401AOQ) (May 31, 2017, Letter). G.I.G. did not respond within the requested 30 days but asked the Division for an extension after the deadline passed, which the Division granted. As of March 15, 2018, G.I.G. had paid the entirety of its outstanding regulatory fees.

⁶ See Resumption of Operations of a DTV Application, File No. 0000040964 (Jan. 30, 2018).

⁷ See Suspension of Operations and Silent Authority of a DTV Station Application, File No. 0000042037 (filed Feb. 13, 2018) (February 13, 2018, STA Application). The STA Application was later dismissed on March 8, 2018, because KCPM did not pay the filing fee, however, as noted above, KCPM did not again report resuming operations until September 15, 2018.

⁸ DTV Engineering STA Application, File No. 0000049083 (Mar. 27, 2018). The Division granted the March 27, 2018, STA on April 4, 2018. MMB filed a Petition for Reconsideration of the Division’s grant of G.I.G.’s March 27, 2018, STA, arguing that KCPM “most likely operated from unauthorized facilities in its January 2018 resumption of operation in an attempt to avoid Section 312(g).” G.I.G. filed a response to MMB’s Petition for Reconsideration on May 21, 2018, contending that the record submissions make clear that KCPM did, in fact, return to air on January 27, 2018. See Petition of Parker Broadcasting for Reconsideration of the Division’s Grant of G.I.G.’s March 27, 2018, STA, File No. BALCDT-20180209ABJ (filed May 4, 2018).

⁹ KCPM later clarified that it lost access to its licensed site as of December 15, 2014, because it failed to pay rent and because of a “retransmission consent-related dispute” with the site owner. See LOI Response, at 111, Response to Question 5(b).

¹⁰ See Resumption of Operations of a DTV Application, File No. 0000059662 (Sept. 18, 2018).

¹¹ See Letter of Inquiry from David A. Brown, Deputy Chief, Video Division, FCC Media Bureau, to G.I.G. at 1 (Apr. 30, 2019) (on file in BRCDT-20140401AOQ) (LOI).

¹² LOI Response, at 75, Response to Question 3(c).

¹³ 47 U.S.C. § 312(g).

¹⁴ See *Great Lakes Community Broadcasting, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 8239, 8244-47 (MB 2009) (“*Great Lakes*”) (finding that “construction with unauthorized facilities does not override the ‘automatic forfeiture’ provision in our Rules”) (citing *Eagle Broadcasting Group, Ltd. v. FCC*, 563 F.3d 543, 545 (D.C. Cir. 2009) (“*Eagle*”) (affirming the Commission’s determination that station’s broadcast license had expired pursuant to

for twelve or more consecutive months, the station: (a) fails to operate; (b) operates with unauthorized facilities; or (c) operates with a combination of the two.¹⁵

In this case, we find the Station was either silent or engaging in unauthorized operation since at least December 15, 2014,¹⁶ until March 27, 2018. Despite lacking access to its licensed site since 2014, G.I.G. did not file an engineering STA to operate KCPM at a temporary site until March 27, 2018.¹⁷ Thus, because KCPM either operated from unauthorized facilities or was silent between December 15, 2014, and the time it filed its March 27, 2018, engineering STA, we find that KCPM's license expired as a matter of law pursuant to section 312(g) as of December 16, 2015.¹⁸

Furthermore, to the extent G.I.G. claims the Station did not go silent until January 31, 2017, we find that G.I.G. has insufficiently described the actions it took to resume operations on January 27, 2018. Notably, G.I.G. claims that when the Station went back on the air, it "was using a temporary transmitter utilizing a video server,"¹⁹ and did so by accessing the licensed site without permission from the owner of the licensed site.²⁰ On its face, we find that G.I.G.'s explanation is insufficient to show that it did, in fact, resume operations on January 27, 2018.²¹ Furthermore, G.I.G. was not authorized to operate using a temporary transmitter and therefore, even if it did resume operations, "an unauthorized transmission counts for nothing."²²

Lastly, despite the Division affording it multiple opportunities to supplement the record,²³ G.I.G. has failed to provide sufficient evidence showing that it has been on the air. For example, when asked to

Section 312(g) of the Act, due to its failure to broadcast at its authorized facilities for one year) and *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 603 (2008) ("*A-O Broadcasting*") (affirming staff decision that station's license had expired as a matter of law due to the station's failure to broadcast at its authorized facilities for one year)).

¹⁵ *Great Lakes*, 24 FCC Rcd at 8244-47.

¹⁶ See LOI Response, at 108, Response to Question 5(a) (stating that G.I.G. lost access to its licensed site on December 15, 2014). *In the Matter of Implementation of Section 403(l) of the Telecommunications Act of 1996 (Silent Station Authorizations)*, 11 FCC Rcd. 16599 (1996) ("The license of a broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license or construction permit to the contrary.").

¹⁷ See 47 CFR 73.1635(a)(1) ("A request for STA should be filed with FCC in Washington, DC at least 10 days prior to the date of the proposed operation.").

¹⁸ KCPM also states that its "equipment was allowed to remain on the tower and in the transmitter building in anticipation of an eventual resolution of the retransmission issue." See LOI Response, at 129, Response to Question 7. If, in fact, KCPM's broadcasting equipment remained at the licensed site, then this supports a finding that KCPM had not been on the air since it lost its licensed site on December 15, 2014.

¹⁹ LOI Response, at 75, Response to Question 3(c).

²⁰ See LOI Response, at 123, Response to Question 6(b). KCPM also stated that although it was operating without the consent of the tower owner, its equipment had been allowed to remain on the tower and in the transmitter building in anticipation of an eventual resolution of the retransmission issue. See LOI Response, at 129, Response to Question 7.

²¹ This finding is further supported by the fact that the Station reportedly again went silent six days later, on February 3, 2018, and did not allegedly resume operations until September 2018. See February 13, 2018, STA Application.

²² *James McCluskey, Ph.D.*, Letter Decision, 27 FCC Rcd 6252, 6254-55 (MB 2012) (holding that "unauthorized and unlicensed transmissions are no better than silence" and, in assessing a licensee's rights under section 312(g), "an unauthorized transmission counts for nothing") (internal citations omitted).

²³ See LOI, Question 1(c), 3(d), 4(i), 5(d), 8(a), 8(b), 8(c), 8(d), and 9 ("Provide copies of all documents that serve as the basis for the responses to all of the inquiries [], to the extent not already provided.").

provide utility bills or proof of payment associated with operating KCPM since January 1, 2013, G.I.G. contends that “[d]ue to financial constraints, KCPM was operating through the use of a gasoline fueled generator,” where the “gasoline was purchased from various stations” and thus “[n]o invoices were retained.”²⁴ Similarly, despite stating it had a new antenna and feed line installed by Midwest Steeplejacks, G.I.G. likewise did not provide any invoices evidencing any such installation or purchase of equipment.²⁵ Lastly, in response to the Division’s request that it provide all station logs starting from January 1, 2013, G.I.G. only provided KCPM’s station logs for January 2013, August 2013, and April 2014.²⁶

Based on the above, nothing in the record definitively shows that KCPM has not been silent or operated using authorized facilities for at least twelve consecutive months since December 15, 2014. Accordingly, we find that the license has expired by operation of section 312(g) of the Act.

In view of the foregoing, the license for station KCPM(TV), Grand Forks, North Dakota **IS HEREBY CANCELLED**, the call sign **IS DELETED**, and the above-referenced applications **ARE DISMISSED**.

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

²⁴ LOI Response, at 135, Response to Question 8(b).

²⁵ See *id.* at 51, Response to Question 2(h). When asked the date KCPM resumed operations with this new antenna and feed line, KCPM stated that resumed operations date was “[t]o be supplied,” however, no supplement was ever filed. See LOI Response, at 66, Response to Question 2(m). Further, when asked what dates the antenna and feed line were installed, G.I.G. likewise responded that the information would “be provided in a supplemental submission,” but no such supplement was ever provided. *Id.* at 63, Response to Question 2(l).

²⁶ See LOI Response, Attach. C. While G.I.G. also included documents dated from January 28, 2018, through February 4, 2018, and part of May 2018, unlike the station logs provided from January 2013, August 2013, and April 2014, the purported station logs did not indicate they belonged to KCPM.