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June 26, 2018

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**Federal Communications Commission
Office of the Secretary**

Honorable Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
Washington, DC 20554

Attention: Victoria McCauley, Esquire
Audio Division, Media Bureau
1800B3-VM

**RE: KKCS (FM), Calhan, Colorado
Facility ID #166010
Reply to May 23, 2018 FCC Letter**

Dear Madame Secretary:

On behalf of United States CP, LLC, licensee of FM Broadcast Station KKCS, Calhan, Colorado, this is to respond to the Commission's letter of May 23, 2018 relative to the operational status of station KKCS. In an exchange of e-mails between the undersigned and Victoria McCauley, Esquire of the Audio Division, Media Bureau, we were granted an extension of time of two business days, to today, June 26, 2018, to timely file this response.

Station KKCS returned to the air on September 13, 2017 at its licensed site, Antenna Structure Registration (ASR) 1026301 (see Exhibit A); the NAD 27 coordinates for this site are: 38° 59' 57" North Latitude by 104° 18' 47" West Longitude. The antenna was positioned at its licensed height of 60 meters above ground level.

Station KKCS then left the air on September 22, 2017. It is acknowledged that a new "silent STA" was not filed. We are filing such a silent STA electronically.

While the transmitter site use agreement for KKCS at the licensed transmitter site between Educational Media Foundation, the former licensee of KKCS, and the landlord, American Towers, LLC, had expired, we were attempting to negotiate a new agreement in the weeks prior to September 13, 2017. As our

Section 312(g) deadline to return KKCS to the air, our engineers, who had the access codes to enter the property where ASR 1026301 is located, entered the property, reinstalled the transmitter and related equipment, and commenced broadcasting. The programming consisted of "classic rock" music.

We do not have station logs for the days in question. We are submitting video proof that station KKCS returned to the air. Both videos were taken by Adam Michael, a broadcast engineer. Two ".mov" files will be separately e-mailed to Ms. McCauley. The internet links for these video files are:

KKCS Video One: <https://youtu.be/QCsDYNkKNe0>

KKCS Video Two: <https://youtu.be/6raeIeGs7tM>

United States CP, LLC did not enter into a transmitter site use agreement with American Towers, LLC.

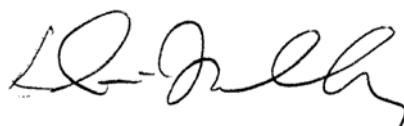
We would note that, in a similar case involving AM Broadcast Station WXYM, Saltville, Virginia, the Audio Division ruled that WXYM's license did not expire pursuant to 47 U.S.C. §312(g) when it was shown that, after a 363 day period of silence, WXYM returned to the air (see Exhibit B).

Declarations under penalty of perjury from Todd Robinson, Manager of United States CP, LLC, and Adam Michael, verifying the foregoing facts, are attached hereto as Exhibits C and D.

Therefore, it is respectfully requested that the Commission determine that the license for KKCS(FM), Calhan, Colorado did not expire pursuant to 47 U.S.C. §312(g), but rather is in full force and effect, subject to the station returning to the air prior to September 22, 2018.

Should additional information be desired in connection with the above matter, kindly communicate with this office.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. Kelly", written in a cursive style.

Dennis J. Kelly

EXHIBIT A

Registration 1026301 [Map Registration](#)**Registration Detail**

Reg Number	1026301	Status	Constructed
File Number	A0849814	Constructed	01/01/1964
EMI	No	Dismantled	
NEPA	No		

Antenna Structure

Structure Type LTOWER - Lattice Tower

Location (in NAD83 Coordinates)

Lat/Long	38-59-56.8 N 104-18-48.8 W	Address	11820 Hahn rd (088795 / CALHAN CO)
City, State	CALHAN , CO		
Zip	80808	County	EL PASO
Center of AM Array		Position of Tower in Array	

Heights (meters)

Elevation of Site Above Mean Sea Level	Overall Height Above Ground (AGL)
2131.8	71.9
Overall Height Above Mean Sea Level	Overall Height Above Ground w/o Appurtenances
2203.7	64.6

Painting and Lighting Specifications

FCC Paragraphs A1, H

FAA Notification

FAA Study	2013-ANM-1287-OE	FAA Issue Date	07/14/2013
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Owner & Contact Information

FRN	0011498342	Owner Entity Type	Limited Liability Company
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Owner

American Towers, LLC.
 Attention To: Regulatory Compliance FAA FCC
 10 Presidential Way
 Woburn , MA 01801

P: (678)564-3236
 F:
 E: faa-fcc@americantower.com

Contact

Attention To: FAA FCC
 10 Presidential Way
 Woburn , MA 01801

P: (678)564-3236
 F:
 E: faa-fcc@americantower.com

Last Action Status

Status	Constructed	Received	08/02/2013
Purpose	Notification	Entered	08/02/2013

Mode Interactive

Related Applications

08/02/2013 A0849814 - Notification (NT)
07/23/2013 A0844027 - Modification (MD)
06/21/2013 A0842175 - Notification (NT)

Related applications (23)

Comments

Comments

None

History

Date	Event
08/02/2013	Construction Notification Received
07/25/2013	Registration Printed
07/24/2013	Modification Received

All History (51)

Automated Letters

07/25/2013 Authorization, Reference
06/22/2013 Authorization, Reference
01/16/2013 Authorization, Reference

All letters (24)

CLOSE WINDOW

EXHIBIT B

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Continental Media Group, LLC)	Facility ID No. 68182
Station WXYM(AM), Saltville, VA)	
)	
Application for Renewal of License)	File No. BR-20110531ASH
)	
)	
Application for Consent to Transfer of Control)	File No. BTC-20110222ACA
from Jeffrey Raynor to Wendy Raynor)	
)	
)	
Application for Covering License)	File No. BL-20111101ALT

ORDER ON RECONSIDERATION

Adopted: December 15, 2017

Released: December 15, 2017

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the Petition for Reconsideration (Petition) filed on June 7, 2017, by Holston Valley Broadcasting Corporation (Holston) relating to the above-captioned renewal, transfer of control, and license applications (Renewal Application, Transfer Application, and License Application, respectively; Applications, collectively) filed by Continental Media Group, LLC (Continental), licensee of Station WXYM(AM), Saltville, Virginia (Station); and related responsive pleadings.¹ Holston seeks reconsideration of a Commission decision denying its November 26, 2016, Application for Review (AFR) of the Bureau's grant of the unopposed Renewal Application and Transfer Application, and the concurrent grant of the License Application, to which Holston had filed an Informal Objection.² For the reasons set forth below, we dismiss the Petition pursuant to Section 1.106(p) of the Commission's rules (Rules).³

II. BACKGROUND

2. On review, the Commission affirmed the Bureau's prior determination that Holston's failure to file a petition to deny or otherwise oppose the Transfer Application and Renewal Application

¹ Holston filed a "Motion for Leave to File a First Supplement to Petition for Reconsideration of Denial of Application for Review" and "First Supplement to Petition for Reconsideration of Denial of Application for Review" (*First Supplement*), on June 9, 2017. On June 21, 2017, Continental filed a Motion for Extension of Time (*First Motion*) requesting to extend the time to file an opposition to the Petition to July 10, 2017, stating that the additional time "is necessary for the parties to complete preparation of the Opposition." *First Motion* at 1. On July 11, Continental filed a second Motion for Extension of time requesting until July 11 to file its opposition pleading because on July 10, the Commission's CDBS Electronic Filing System was not operating, as well as its "Opposition to the Petition for Reconsideration" (Opposition). Holston, meanwhile, filed "Comments" on the *First Motion* on June 27, 2017, and it subsequently filed a Reply on July 20, 2017.

² *Continental Media Group, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 4187 (2017) (*Continental Order*).

³ 47 CFR § 1.106(p).

during their near five-year pendency precluded it from later seeking reconsideration of the staff's grant of those applications.⁴ The Commission also found that Holston failed to demonstrate "extraordinary circumstances" which would justify revocation of the contested License Application under Section 319(c) of the Communications Act of 1934, as amended (Act).⁵

3. In the subject Petition, Holston argues that "Continental Media Group, LLC" has not existed as a Virginia Limited Liability Company since at least December 31, 2013, and avers that all Continental's filings to the Commission since then "must be stricken as sham and false pursuant to Section 1.52 of the [] Rules."⁶ Holston also asserts that Continental's "apparent failure to notify the FCC of consummation" of the Transfer Application necessitates a hearing to determine whether the Renewal Application could be granted.⁷ Finally, Holston alleges that Continental's license may have expired pursuant to Section 312(g) of the Act because "it appears that [the Station] may not have been broadcasting any programming, as the [S]tation's transmitter has been turned on, but no programming is being broadcast."⁸

4. In its Opposition, Continental first argues that Holston did not contest the Transfer Application or Renewal Application prior to grant and is procedurally barred by both prior Bureau and Commission actions from challenging either of those applications in its Petition.⁹ It also claims that the Petition raises new matters, none of which pertain to any issues previously raised in this proceeding.¹⁰ Substantively, Continental argues that Holston has presented no facts demonstrating that it did not timely resume Station operations (including audio programming material) on March 19, 2017. Continental also rejects as irrelevant to Commission consideration of the Renewal Application both the allegation that it broadcast with "carrier only" at times between "May 18 and June 5, 2017," and the allegation that it failed to timely file a consummation notice and ownership report following the grant of the Transfer Application.¹¹ Continental also indicates that: (1) it has now filed both a consummation notice and an ownership report *vis-à-vis* the Transfer Application; (2) Continental's lapse of official status in Virginia was inadvertent, and it is again in good standing with the Commonwealth; and (3) regarding Holston's claim of "sham and false pleadings," Holston has presented no evidence that Continental ever presented information with an intent to deceive the Commission.¹²

⁴ See *Continental Order*, 32 FCC Rcd at 4188, para. 3.

⁵ *Id.* at para. 4, citing 47 U.S.C. § 319(c).

⁶ Petition at 6-9 (citing 47 CFR § 1.52).

⁷ *Id.* at 9, 11 (arguing that the underlying reason for granting the Renewal Application was the removal of former 50% owner and convicted felon Jeffrey Raynor via the Transfer Application, and that if the Transfer Application was never consummated, the Commission's grant of the Renewal Application was unlawful).

⁸ *Id.* at 2 (citing 47 U.S.C. § 312(g)); Exhibit A, Declarations of N. David Widener; Exhibit B, Declaration of Lynn Rutledge (stating that the declarants witnessed the Station's carrier on-air, but heard no audio being broadcast on dates between May 17, 2017 - June 5, 2017).

⁹ Opposition at 2-4 (citing *Letter to Dan J. Alpert, Esq. and Dennis J. Kelley, Esq.*, Letter Order (MB Feb. 12, 2016) and the *Continental Order*). Continental also claims that, as a mere informal objector to the License Application, Holston is statutorily barred from seeking reconsideration of rulings pertaining to any of Continental's three applications here. *Id.* at 4-5, citing 47 U.S.C. § 405.

¹⁰ Opposition at 5-6.

¹¹ *Id.* at 5-6.

¹² *Id.* at 6-7 and Attachments 1 (Ownership Report, File No. BOS-20170707ABH), 2 (Consummation Notice filed June 9, 2017, indicating that consummation occurred on February 12, 2017) (*Consummation Notice*), 3 (Certification that Continental is duly organized under the laws of Virginia as of June 29, 2017), and 4 (Raynor Declaration); see Assignment of License Application, BAL-20170707ABG.

5. In its “Comments” on the *First Motion*, Holston reiterates its charge that Continental was, at the time of filing, a non-existent business entity and had been so since December 31, 2002. Thus, argues Holston, (1) any filing made on behalf of that non-existent corporation must be considered a “sham” or “false” and constitutes a misdemeanor under Virginia law; (2) as a “purged” corporation, Continental under Virginia law will never be able to get its charter reinstated, and applications and pleadings cannot lawfully be filed with the Commission on behalf of a nonexistent LLC applicant.¹³ Holston reasserts these arguments again in its July 20, 2017, Reply to Continental’s Opposition.¹⁴

6. On November 29, 2017, the Bureau issued a Letter of Inquiry to Continental requesting that it clarify whether the Station broadcasted with programming between March 19, 2017, and March 21, 2017.¹⁵ Continental filed a response on December 12, 2017 (LOI Response). In the LOI Response, Wendy Raynor states that the Station “returned to the air on March 19, 2017, with classic country music programming.”¹⁶ The LOI Response is supported by program logs showing that the Station aired programming from March 19, 2017, to March 21, 2017.

III. DISCUSSION

7. We dismiss Holston’s petition for the reasons set forth below. Section 1.106(b)(2) of the Rules specifies limited circumstances under which a party may seek reconsideration of a Commission denial of an application for review. Such a petition for reconsideration will be entertained only if the petition: (i) “relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission”; and/or (ii) “relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity.”¹⁷ Section 1.106(p) provides that “[p]etitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s).”¹⁸ Petitions that plainly do not warrant Commission consideration include those that “fail to identify any material error, omission, or reason warranting reconsideration”¹⁹ as well as those which do not meet the requirements of Section 1.106(b)(2).²⁰

8. In this case, Continental’s corporate status at the time it filed the Applications is neither a new fact nor changed circumstance, and Holston provides no explanation for why it could not previously have raised this claim. Additionally, on June 6, 2017, Continental informed the Commission that it had consummated the transfer of control from Jeffrey Raynor to Wendy Raynor as 100 percent owner²¹ on February 12, 2016, obviating any need for an evidentiary hearing to determine whether the transfer had occurred and renewal could be granted. Thus, to the extent that the Petition relies on these two

¹³ Holston indicates that it is submitting these comments to preserve this argument for the Commission pursuant to 47 CFR § 1.52, which contains requirements regarding “Subscription and Verification” of filings with the Commission. Comments at 2-3.

¹⁴ See Reply at 2-8.

¹⁵ Letter of Inquiry from Peter H. Doyle, Chief, Audio Division, Media Bureau, FCC, to Dan J. Alpert, Esq. (Nov. 29, 2017).

¹⁶ LOI Response at Declaration of Wendy Raynor.

¹⁷ 47 CFR § 1.106(b)(2).

¹⁸ 47 CFR § 1.106(p). See, e.g., *NCE MX Group 430*, Memorandum Opinion and Order, 31 FCC Rcd 7261, 7262, para. 5 and n.12 (MB 2016).

¹⁹ 47 CFR § 1.106(p)(1).

²⁰ 47 CFR § 1.106(p)(2).

²¹ See *Consummation Notice*, *supra* note 12.

arguments, it “plainly [does] not warrant consideration by the Commission,” and we exercise our authority under Section 1.106(p)(1) to dismiss it.

9. Additionally, Section 1.106(p)(5) of the Rules provides that the Bureau may dismiss petitions for reconsideration that “[r]elate to matters outside the scope of the order for which reconsideration is sought.”²² Holston’s argument that Continental’s license for the Station expired pursuant to Section 312(g) of the Act in March of 2017 is well outside the scope of this proceeding, which centers on whether the Bureau properly granted the captioned Applications. We thus dismiss this argument as well.²³

IV. ORDERING CLAUSE

10. For the reasons set forth above, IT IS ORDERED that the Petition for Reconsideration filed by Holston Valley Broadcasting Corporation on June 7, 2017, IS DISMISSED pursuant to Section 1.106(p) of the Commission’s Rules.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Media Bureau

²² 47 CFR § 1.106(p)(5).

²³ *Emmis Radio License, LLC*, Memorandum Opinion and Order, 29 FCC Red 9129, 9131, para. 5 (MB 2014) (dismissing petition for reconsideration of Commission order denying application for review pursuant to Section 1.106(p)(5) where it raised matters unrelated to current proceeding). Moreover, the LOI Response demonstrates that Station did in fact return to the air with programming between March 19, 2017, and March 21, 2017. Thus, Holston’s Section 312(g) argument would be baseless even if we were to consider it.

EXHIBIT C

DECLARATION

Todd Robinson hereby declares and states under penalty of perjury that the following statements are true and correct, as follows:

1. I am Manager of United States CP, LLC, licensee of FM Broadcast Station KKCS, Calhan, Colorado, FCC Facility ID #166010.
2. The foregoing letter of counsel in reply to the May 23, 2018 letter I received from Albert Shuldiner, Chief, Audio Division, Media Bureau, Federal Communications Commission was prepared at my request and has been reviewed by me.
3. All factual statements related to KKCS contained in the foregoing letter are true and correct to the best of my knowledge.

Executed on June 26, 2018.



Todd Robinson

EXHIBIT D

DECLARATION

Adam Michael hereby declares and states under penalty of perjury that the following statements are true and correct, as follows:

1. I reside at 5551 Division Avenue, Cheyenne, Wyoming 82007. I am a broadcast engineer. I assisted in FM Broadcast Station KKCS, Calhan, Colorado, FCC Facility ID #166010 returning to the air on September 13, 2018.
2. I took the two videos which were provided to Dennis Kelly, communications counsel for the licensee of KKCS, which I understand are being provided to the Federal Communications Commission..
3. All statements contained in this Declaration are true and correct to the best of my knowledge.

Executed on June 26, 2018.

Adam Michael

A handwritten signature in black ink, appearing to be 'Adam Michael', with a stylized, cursive script.