



Federal Communications Commission
Washington, D.C. 20554

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DA 12-464

In Reply Refer to:

1800B3-MFW

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In re: **DWLMA(AM), Greenwood, SC**
Morradio, Inc.
Facility ID No. 72128
File Nos. BR-20040322AET
BR-20110727ACK
Applications for Renewal of License

File No. 20041025AFA
Application for Extension of STA

File No. BP-20080328ACZ
Application for Modification of Facilities

File No. BAL-20080401AFG
Application for Assignment of License

Dear Mr. Trent:

The Media Bureau (“Bureau”) has before it the referenced license renewal applications (the “Renewal Applications”) of Morradio, Inc. (“Morradio”) for renewal of license for Station DWLMA(AM), Greenwood, South Carolina (the “Station”).¹ On October 15, 2003, Mr. Robert R. Skutt (“Skutt”) filed an objection to the Station’s 2004 License Renewal Application.² Additionally, we have before us Morradio’s applications to modify the Station’s facilities (the “2008 Modification Application”)³ and to assign the Station’s license and sell its assets to Jill Anne B. Eller for a total purchase price of \$75,000.⁴

In this letter issued by authority delegated under Section 0.283 of the Commission’s Rules (the “Rules”),⁵ based upon our review of the facts and circumstances before us, we conclude that the Station’s license has expired pursuant to Section 312(g) of the Communications Act of 1934, as amended (the

¹ Although the Station’s 2004 license renewal application (BR-20040322AET) (“2004 License Renewal Application”) is still pending, Morradio timely filed a supplemental renewal application on July 27, 2011 (“2011 License Renewal Application”).

² Skutt indicates that he was filing his objection because the Station’s license was up for renewal in December of 2003. As discussed below, the 2004 License Renewal Application was due in August of 2003.

³ File No. BP-20080328ACZ.

⁴ File No. BAL-20080401AFG (the “Assignment Application”).

⁵ See 47 C.F.R. § 0.283.

“Act”).⁶ Accordingly, we dismiss all of the Station’s pending applications and dismiss the Skutt objection as moot.

Background. The license renewal application for the Station’s previous license term was due on August 1, 1995, four months prior to the December 1, 1995 license expiration date. Morradio did not file a license renewal application, and the Bureau issued a letter on April 28, 1997, stating that the operating authority for the Station had terminated and the call sign had been deleted.⁷ Morradio subsequently filed a license renewal application for the Station⁸ as well as a petition for reconsideration of the *1997 License Expiration Letter*. The Bureau granted reconsideration, reinstated the Station’s license and call sign on October 21, 1998, and ultimately granted the 1997 License Renewal Application on April 28, 1999.⁹

Unauthorized Operation. Prior to the grant of the 1997 License Renewal Application, however, when the Station was operating without color of authority, on December 3, 1996, the Enforcement Bureau’s Atlanta District Office (“District Office”) inspected the Station and found numerous violations, including an unauthorized change in transmitter location in Waterloo, South Carolina; the District Office determined that Morradio had moved the Station’s transmitting antenna to a site approximately 10 miles from the licensed site.¹⁰ The District Office issued a Notice of Violation to Morradio on December 23, 1996 citing the Station for the unauthorized change in antenna location and requesting a written response demonstrating corrective actions taken to resolve all violations. Although Morradio responded on January 13, 1997, that it had contacted an engineering firm to correct the tower site violation and would file a corrective construction permit application by February 28, 1997, it did not do so. Therefore, on January 28, 1997, the District Office issued a Continuation of Official Notice of Violation (“Continuation Notice”) stating that Morradio must provide “information that demonstrates that, if the station is still in operation, then it is operating pursuant to an FCC-granted STA [special temporary authority (“STA”)] or that it is operating pursuant to the original terms of its license . . . [a]ny other form of station operation is considered to be unauthorized and will subject the licensee to further FCC action.”

On March 31, 1997, in response to the Continuation Notice, the District Office received a facsimile copy of an STA request that Morradio ultimately filed with the Commission in Washington on April 4, 1997. The Bureau dismissed that STA request on June 10, 1997, noting that the Station’s license had expired on December 1, 1995, and Morradio no longer had any authority to operate the Station.¹¹ On July 17, 1998, Morradio filed a Petition for Reconsideration requesting reconsideration of both the *STA Dismissal Letter* AND the *1997 License Expiration Letter*. Approximately one month later, on August 19, 1997, Morradio filed a license renewal application for the Station.

⁶ 47 U.S.C. § 312(g).

⁷ *Letter to Morradio, Inc.*, Reference 1800B3 (MMB Apr. 28, 1997) (“*1997 License Expiration Letter*”).

⁸ BR-19970819K2 (the “1997 License Renewal Application”).

⁹ *See Broadcast Actions*, Public Notice, Report No. 44478 (May 3, 1998).

¹⁰ The Station’s license authorization specified coordinates of 34° 13’ 06” NL and 82° 08’ 00” WL. Using a global positioning system (“GPS”), the District Office determined the coordinates of the new, unauthorized site are 34° 21’ 26” NL and 82° 05’ 52” WL.

¹¹ *Letter to Morradio, Inc.*, Reference 1800B3 (MMB June 10, 1997) (“*STA Dismissal Letter*”). The *STA Dismissal Letter* also noted the following deficiencies in the STA request: (1) it would provide inadequate coverage of the Station’s community of license, Greenwood, South Carolina; (2) the proposed STA facilities would extend northward more than 14 kilometers beyond the Station’s protected service contour; and (3) the proposed STA facilities would result in impermissible contour overlap with first-adjacent channel Station WELP(AM), Easley, South Carolina, during daylight hours in violation of 47 C.F.R. § 73.37(a) and would cause objectionable nighttime skywave interference to co-channel Stations WGAD(AM), Gadsden, Alabama, and WTOU(AM), Akron, Ohio, in contravention of 47 C.F.R. § 73.182.

On September 15, 1998, the District Office verified that the Station was still transmitting from the unauthorized location, despite the fact that it at that point had no authority to be on the air at all, let alone from an unauthorized location about which it had already received two Notices of Violation. Accordingly, on October 21, 1998, the District Office issued a Notice of Apparent Liability to Morrudio in the amount of \$4,000 for willful violations of Sections 73.1350(a) and 73.1690 of the Rules.¹² On that same date, the Bureau issued a letter reinstating the Station's operating authority and call sign.¹³ The *1998 Reinstatement Letter* accepted for filing Morrudio's 1997 License Renewal Application and granted Morrudio an STA to operate the Station from its licensed site, denying a request to operate from the unauthorized site.

Morrudio responded to the *1998 NAL*, stating that it had discontinued Station operations upon receipt of the *1998 Reinstatement Letter*. Morrudio argued that its principal, Ron Moore, lacked any income from Station operations and had to seek employment elsewhere; thus, Morrudio was not able to pay the forfeiture amount. Morrudio also stated that it was negotiating with the owner of the authorized transmitter site and hoped to resume operation from the authorized site shortly. Morrudio's counsel indicated that imposition of the forfeiture would "threaten Station WLMA's 'very existence'" and make it more difficult to resume operations from the authorized site. The Commission's Enforcement Bureau was unpersuaded by Morrudio's response, and on April 2, 1999, it issued a *Forfeiture Order* in the amount of \$4,000 to Morrudio.¹⁴

On January 21, 2000, agents from the District Office again inspected the Station and found several violations, including the failure to license changes in the antenna location¹⁵ and for failure to install and maintain Emergency Alert System equipment. On February 2, 2000, the Atlanta District Director issued a Notice of Violation to Morrudio for these violations. Shortly thereafter, on March 30, 2000, noting that "Morrudio's violations were repeated and willful and the licensee has a prior history of similar violations," the District Office issued Morrudio a *Notice of Apparent Liability* in the amount of \$12,000.¹⁶ Morrudio filed no response to the *2000 NAL*, and the Enforcement Bureau issued a *Forfeiture Order* in July of 2000 affirming the \$12,000 NAL amount.¹⁷ Notwithstanding the issuance of the second forfeiture for unauthorized operation, the District Office has recently confirmed that Morrudio continues to operate the Station from that unauthorized location to this day.

Renewal/Modification Applications. The Station's license renewal application for the subsequent license term should have been filed by August 1, 2003, four months prior to the Station's license expiration date of December 1, 2003. Apparently not having remembered the past, Morrudio again failed

¹² *Morrudio, Inc.*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 915AT0001 (CIB Oct. 21, 1998) ("*1998 NAL*"). 47 C.F.R. § 73.1350(a) indicates that broadcast licensees are responsible for maintaining and operating their station "in accordance with the terms of the station authorization." 47 C.F.R. § 73.1690 requires prior Commission approval of a construction permit application before a broadcast station can change geographic coordinates by more than three seconds of latitude or longitude.

¹³ *Letter to Lauren A. Colby, Esquire*, reference 1800B3-JWR (MMB Oct. 21, 1998) ("*1998 Reinstatement Letter*").

¹⁴ *Morrudio, Inc.*, Forfeiture Order, 14 FCC Rcd 5201 (CIB 1999).

¹⁵ The District Office found that Morrudio had relocated the Station's transmission system to a new site located 0.6 miles from the licensed site. The new site, determined by GPS readings, was at coordinates 34° 13' 25" NL and 83° 07' 30" WL. Although less egregious than the previous 10-mile deviation from licensed operation, the Station's use of this site still constituted operation from an unauthorized site.

¹⁶ *Morrudio, Inc.*, Notice of Apparent Liability, File No. EB-00-AT-061, NAL/Acct. No. X3248002 (EB Mar. 30, 2000) (the "*2000 NAL*").

¹⁷ *Morrudio, Inc.*, Forfeiture Order, 15 FCC Rcd 23271 (EB 2000).

to file a renewal application for the Station. On March 2, 2004, the Bureau wrote to Morradio, indicating that the Station's license had expired and that all authority to operate the Station was terminated and the call sign was deleted. The Bureau advised Morradio that any Station operation was thereafter unauthorized and must cease immediately.¹⁸ Upon receipt of the *2004 License Expiration Letter*, Morradio filed the 2004 License Renewal Application and a request for STA to resume Station operation pending consideration of that application. The Bureau granted the STA on April 20, 2004, authorizing Morradio to resume operation of the Station "with the facilities for which the license expired on December 1, 2003."¹⁹ Nevertheless, it appears that Morradio resumed, and continued, Station operations from the unauthorized site described above in Note 15.

In his objection to the 2004 License Renewal Application, Skutt claims that, because of "poor engineering practices," it would not be in the public interest to renew the Station's license. Specifically, he claims that on Wednesday, October 8, 2003, at sundown, the Station continued broadcasting without reducing power.²⁰

Subsequently, Morradio filed the 2008 Modification Application to modify the Station's facilities, proposing, among other changes, to operate from the site from which the Station continues to operate without authorization.²¹ Additionally, Morradio filed the Assignment Application for consent to assign the Station's license to Jill Anne B. Eller on April 1, 2008, and the supplemental 2011 License Renewal Application for the Station on July 27, 2011.²²

Discussion. Section 301 of the Act bans any person from transmitting signals by radio "except under and in accordance with this chapter and with a license . . . granted under the provisions of this chapter."²³ Additionally, Section 312(g) of the Act indicates that "if a broadcasting station fails to transmit broadcast signals for any consecutive twelve-month period," the station's license expires as a matter of law "notwithstanding any provision, term, or condition of the license to the contrary," and the license is automatically forfeited.²⁴ Reading those two provisions in context together, the Court of

¹⁸ *Letter to Morradio, Inc.*, Reference 1800B3-DW (MB Mar. 2, 2004) ("2004 License Expiration Letter").

¹⁹ *Letter to Ron Moore, General Manager, Morradio, Inc.*, Reference 1800B3 (MB Apr. 20, 2004). This STA expired on October 20, 2004. Morradio filed an untimely request for extension of the STA four days later, which the Bureau did not grant (File No. 20041025AFA). Nevertheless, the Station apparently has remained operational.

²⁰ The Station's expired license specified operation at power levels of 1.0 kW daytime and 0.085 kW nighttime. Skutt also indicates that (1) on Wednesday, October 8, 2003, at 6:10 p.m., the Station was transmitting two feeds simultaneously; and (2) on Thursday, October 9, 2003, from 1:00-1:05 p.m., the Station transmitted a series of promotional announcements apparently intended for local program directors which contained a series of facsimile numbers. He indicates that the announcer stated: "These FAX numbers are not to be given to the public." These latter incidents, even if true, do not involve a violation of the Act or any Commission Rule or policy. The issue of the operating power violation is rendered moot by the actions taken herein.

²¹ 34° 13' 23" NL and 83° 07' 33" WL.

²² A licensee whose renewal application is in deferred status must file a supplemental renewal application on the date a regular renewal application would otherwise be due. See *Faith Center, Inc.*, Memorandum Opinion and Order, 99 FCC 2d 1164 (1984), citing *Carlisle Broadcasting Associates*, Memorandum Opinion and Order, 59 FCC 2d 885 (1976).

²³ 47 U.S.C. § 301.

²⁴ 47 U.S.C. § 312(g) (1996). See *Aerco Broadcasting Corp. v. FCC*, 51 Fed. Appx. 23 (D.C. Cir. 2002) (*per curiam*) (the effect of Section 312(g) is license forfeiture). See also 47 C.F.R. § 73.1740(c). Subsequently, Congress amended Section 312(g) by adding language giving the Commission the discretion to extend or reinstate a license in order to, *inter alia*, "promote equity and fairness." 47 U.S.C. § 312(g) (2004) (amended by Consolidated Appropriations Act, 2005, Pub.L. No. 108-447, 118 Stat. 2809 (2004)).

Appeals for the District of Columbia Circuit has held that “unauthorized and unlicensed transmissions are no better than silence” and that, in assessing a licensee’s rights under Section 312(g), “an unauthorized transmission counts for nothing.”²⁵ Thus, a station that fails “to transmit authorized broadcasts over a stretch of 12 months” is in the same position as a station that ceased transmission altogether for 12 consecutive months.²⁶

In this case, Morradio engaged in unauthorized operation of the Station, not for 12 consecutive months, but for nearly 12 consecutive *years* after it had received a second forfeiture for that very violation; overall, the Station has been operating with unauthorized facilities for more than 15 years. Therefore, notwithstanding the 2004 STA to resume Station operations with the licensed facilities (and the never-granted request for extension of that authority), we find that the Station’s license expired no later than December 3, 1997, 12 months after the District Office inspected the Station and found that it was operating from an unauthorized transmitter site.

Additionally, notwithstanding the fact that the Station was operating with unauthorized facilities for more than 12 consecutive months, the Commission retains discretion under Section 312(g) of the Act to extend or reinstate such license “to promote equity and fairness.”²⁷ However, the exercise of that discretion is not warranted here. While we recognize that Morradio evidenced an intention to begin complying with the Act and the Rules by filing the 2008 Modification Application, we cannot place any weight on that minimal and belated effort toward remedial action.²⁸ Reinstatement of the Station’s license would not promote equity or fairness given Morradio’s long history of noncompliance with the Rules, most notably its operation of the Station with unauthorized facilities for more than 15 years.²⁹ In light of these conclusions, we will dismiss the 2004 License Renewal Application, the 2011 License Renewal Application, the 2004 STA extension request, the 2008 Modification Application, and the Assignment Application, and we will dismiss the Skutt Objection as moot.

Conclusion/Actions. Accordingly, for the reasons set forth above, we find that the license³⁰ of Station DWLMA(AM), Greenwood, South Carolina, HAS EXPIRED as of 12:01 a.m. on December 3, 1997. Accordingly, the Commission's public and internal databases will be modified to reflect that expiration. All authority to operate this facility IS TERMINATED and any operation of the facility must cease immediately.

Additionally, IT IS ORDERED that the applications of Morradio, Inc. for renewal of license (File Nos. BR-20040322AET; BR-20110727ACK); extension of special temporary authority (File No. 20041025AFA); modification of facilities (File No. BP-20080328ACZ); and assignment of license (File No. BAL-20080401AFG) for Station DWLMA(AM), Greenwood, South Carolina, ARE DISMISSED.

²⁵ *Eagle Broadcasting Group, Ltd. v. FCC*, 563 F.3d 543, 553 (D.C. Cir. 2009).

²⁶ *Id.* at 554.

²⁷ 47 U.S.C. § 312(g).

²⁸ *See AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21870-71 (2002) (finding that remedial action to correct the violation at issue was not a mitigating factor and noting that all licensees are expected to promptly take corrective action when violations are brought to their attention). *See also Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099 (1994) (corrective action taken to comply with the Rules is expected and does not mitigate any prior violations or forfeitures).

²⁹ *See Letter to Erwin G. Krasnow, Esq. (KRAM(AM), West Klamath, Oregon)*, 25 FCC Rcd 1842, 1844 (MB 2010) (exercise of discretion under Section 312(g) not warranted “where for nearly four years the Station was either silent or engaging in unauthorized operation”).

³⁰ BL-4993, as most recently renewed by BR-19970819K2.

IT IS FURTHER ORDERED that the October 15, 2003, Informal Objection filed by Robert R. Skutt IS DISMISSED AS MOOT.

Finally, it is imperative to the safety of air navigation that any prescribed painting and illumination of the Station's tower be maintained until the tower is dismantled. Accordingly, the owner of the tower where the Station's transmitting antenna is located is required, pursuant to Section 303(q) of the Act,³¹ to maintain the tower in the manner prescribed by our Rules and the terms of the cancelled license.³²

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Morradio, Inc.
Ms. Jill Anne B. Eller
Mr. Taylor Stone
Mr. Robert R. Skutt

³¹ 47 U.S.C. § 303(q).

³² See 47 C.F.R. §§ 17.1 *et seq.* and 73.1213. See also *Streamlining the Commission's Antenna Structure Clearance Procedure*, WT Docket No. 95-5, 11 FCC Rcd 4272 (1995).