



Federal Communications Commission
Washington, D.C. 20554

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DA 14-1405

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Kingdom of God, Inc.
Sister Sue Jenkins, S.F.C.C.
P. O. Box 44007
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Re: DWK GK-LP, Kokomo, IN, Facility ID 34895 &
DWK GK-LD, Kokomo, IN, Facility ID 191112
File Nos. BLESTA-20091217AAS; BLSTA-
20100608ACS; BLSTA-20110425AAC;
BLSTA-201120312ACB; BDCCDVL-
20121206AAS

Dear Former Licensee:

The Media Bureau (“Bureau”) has before it a petition for reconsideration (“Petition”), filed by Kingdom of God, Inc. (“KOG” or “Petitioner”), the former licensee of Class A television station WK GK-LP, Kokomo, Indiana (“Station” or “WK GK-LP”) and permittee of unbuilt digital companion channel facility, WK GK-LD, Kokomo, Indiana. KOG seeks reconsideration of the Video Division’s April 17, 2013, decision not to reinstate the license, call-sign and associated construction permit, pursuant to Section 312(g) of the Communications Act, as amended (the “Act”).¹ For the reasons stated below, the Bureau denies the Petition.

Background. Section 312(g) of the Act provides, in part, 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....

Section 312(g) permits reinstatement of a license only if “the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness.” The Commission’s discretion under this statutory provision is limited.²

Between December 2004 and April 2013, WK GK-LP was off the air for more than 96 months and on the air for less than three months.³ KOG’s stated justification for its repeated periods of silence over the years was its need to locate a permanent transmitter site. Thus, the station’s silence was due to KOG’s business decision not to promptly find a suitable permanent transmitter site, and not a result of circumstances outside its control. Commission records indicate that WK GK-LP once again went silent on

¹ 47 U.S.C. § 312(g).

² See *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617 (2008) (“*A-O Broadcasting*”) (“This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited.”).

³ These broadcast records are derived from numerous requests for special temporary authority to remain silent and resumption of operations forms filed by the Licensee. These records demonstrate that since December 2004 the Licensee has not operated the station for any significant period of time. All records can be located by reviewing files for Station WK GK-LP (Facility ID 191112) in the Commission’s Consolidated Database System (CDBS).

March 14, 2012.⁴ On April 4, 2013, after the station had been silent for more than 12 consecutive months, KOG filed an electronic notification of Resumption of Operations, stating that the station had not resumed operations within the 12-month period and indicated that the station would resume operations on April 11, 2013. The notification asked that the Commission grant KOG's request for resumption of operations because the day the station was set to go back on-air a medical emergency prevented KOG from resuming operation prior to the 12 month deadline, as KOG indicates it has "always done."⁵

On April 17, 2013 the Video Division sent KOG a letter notifying it that the license for WKGK-LP and the associated construction permit for digital companion channel facility WKGK-LD had been canceled because it expired pursuant to Section 312(g) of the Act.⁶ The Video Division concluded that KOG had failed to demonstrate circumstances that warrant exercise of the Commission's limited discretion under Section 312(g) to reinstate an expired license "to promote equity and fairness."⁷ After carefully considering KOG's request, staff determined that the ultimate reason for the station's silence was due to KOG's business decision not to promptly find a suitable and permanent transmitter site—an ongoing problem since KOG reported that it lost the right to use its original site in December 2004.⁸ Staff concluded that the Station's extended silence was not a result of circumstances beyond KOG's control and that under similar circumstances the Commission has declined to exercise its limited discretion under Section 312(g).⁹ The Video Division's decision also noted that "the timing of KOG's apparent decision to temporarily resume operations to evade automatic expiration of WKGK-LP pursuant to Section 312(g) further supports a decision declining to exercise [the Commission's] discretion."¹⁰

KOG's Petition states that it was not able to place the Station back on the air because the tower it was using had been disassembled and the Station's antenna removed.¹¹ KOG provides a letter from the tower owner, Ortman Drilling & Water Services, noting that KOG had been permitted "for the last five years or so" to use its communications tower and that the tower and antenna had been removed "sometime late [in 2012]" and that KOG was notified of the removal of the tower and KOG's antenna "sometime in late February or early March 2013."¹² KOG, whose principal states that she is a Catholic nun, also asserts that its ministry is an "extremely valuable and vital asset to [its] communities" and that a businessman had purchased time to air the "Catholic television series" 'Born Anew' on a weekly basis for 12 months on a television broadcast station in the Philippines.¹³ KOG's Petition concludes by also

⁴ See FCC File No. BLSTA-20120321ACB.

⁵ Resumption of Operations Notice (filed Apr. 4, 2013).

⁶ Letter from Hossein Hashemzadeh, Deputy Chief, Video Division to Kingdom of God, Inc. (Apr. 17, 2013) ("Video Division Letter") at 1.

⁷ *Id.*

⁸ Video Division Letter at 2-3; FCC File No. BLESTA-20051130AVJ.

⁹ Video Division Letter at 3.

¹⁰ *Id.*

¹¹ Kingdom of God, Inc., Petition for Reconsideration (filed May 16, 2013) at 1. KOG also reasserts that because of an illness involving a member of the Licensee's community, the principal of KOG had to suspend the search for a new tower site and failed to notify staff that the station had been off the air for more than 12 months. *Id.* at 1-2.

¹² *Id.* at 4. The statement by Ortman Drilling & Water Services that KOG had permission to operate from a single tower "for the past five years or so" calls into question KOG's stated justifications for numerous silent STA requests it has submitted and been granted.

¹³ KOG contends that airing the show 'Born Anew' in the Philippines will result in an opportunity to "raise needed funds for our LPTV stations in Indiana." *Id.* at 2.

requesting an additional 12 month STA so it can move to a new tower site that it has located in Kokomo and subsequently resume operations.

Discussion. The automatic expiration provision of Section 312(g) of the Act is clear, and KOG does not dispute that WKGK-LP failed to transmit a broadcast signal for more than a 12 consecutive month period. While the Commission has exercised its discretion under Section 312(g) to reinstate a license out of equity and fairness in only a few cases – each of which involved silence for compelling reasons beyond the licensee's control¹⁴ – the Commission has declined to reinstate licenses where failure to transmit a broadcast signal was due to the licensee's own actions, finances, and/or business judgments.¹⁵ The Bureau agrees with the staff decision below that there is no basis to exercise our discretion and reinstate the Station's license.

KOG has failed to demonstrate how its involvement in a community-based ministry, the unfortunate illness of the one the Licensee's community members, or its decision to air a single weekly program on a station in the Philippines warrants exercise of the Commission's limited discretion under Section 312(g). The Bureau also finds, in light of all the facts and circumstances, that the removal of the Station's tower and antenna are not persuasive arguments in support of reinstatement. KOG has failed to present any evidence demonstrating why it was unable, due to circumstances beyond its control, to transmit a broadcast a signal at some point between the time it went silent in March 2012 and expiration of its license in March 2013. It is particularly telling that between December 2004 and April 2013 that WKGK-LP was off the air for more than 96 months and on the air for less than three months. While during that period KOG has purported to have been searching for a new/permanent tower site for nearly a decade, according to the letter from Ortman Drilling & Water Services, KOG has had access to a tower for approximately the last five years. Accordingly, it is clear that the Station's numerous periods of extended silence, including the most recent one that resulted in expiration of the Station's license, are a direct result of KOG's own business decisions and reinstatement is not warranted.

For the reasons discussed above, IT IS ORDERED, that the Petition for Reconsideration filed by Kingdom of God, Inc. IS DENIED.

Sincerely,

William T. Lake
Chief, Media Bureau

¹⁴ See, e.g., *V.I. Stereo Communications Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006) (concluding that reinstatement was warranted where station's tower had been destroyed by a hurricane and, after it was rebuilt, again sustained substantial damage from three more hurricanes); *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) (reinstating an expired permit when the station's extended silence was the result of the licensee's compliance with an order issued by a state court).

¹⁵ See, e.g., *A-O Broadcasting*, 23 FCC Rcd at 617 (2008) (reinstatement not warranted when site loss was a result of 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, 10689 (MB 2010) (reinstatement not warranted where licensee chose not to operate financially struggling station while offering it for sale); *Kirby Young*, Letter, 23 FCC Rcd 35 (MB 2008) (reinstatement not granted where licensee was not financially able to restore operations after its transmitter failed).