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In re: **FM Translator W272AT, Columbus, Ohio**  
Wilks License Company – Columbus LLC  
File Nos. BPFT-20100318AAF, BLFT-  
20111118CSA, BRFT-20120524AIB  
Facility ID No. 72310

**Petition for Reconsideration, Informal  
Objection, and Petition to Deny**

Dear Counsel:

The Media Bureau (“Bureau”) has before it: 1) a Petition for Reconsideration (“Petition for Reconsideration”) filed by Franklin Communications, Inc. (“Franklin”), seeking reconsideration of a staff decision<sup>1</sup> granting the above captioned construction permit application (“Displacement Application”) of Wilks License Company – Columbus LLC (“Wilks”) to modify the facilities of FM Translator W272AT, Columbus, Ohio (“Station”);<sup>2</sup> 2) a “Suggestion of Expiration of W272AT License” filed by Franklin;<sup>3</sup> 3) Wilks’ covering license application (“License Application”); 4) Franklin’s Informal Objection to the License Application;<sup>4</sup> 5) Wilks’ application to renew the Station’s license (“Renewal Application”); and 6) Franklin’s Petition to Deny the Renewal Application.<sup>5</sup> For the reasons stated below, we find that the

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<sup>1</sup> *Letter to Wilks License Company-Columbus LLC from James Bradshaw*, Ref. 1800B3 (MB Oct. 27, 2010) (“*Staff Letter*”). Public notice of the grant of the Displacement Application was given on November 1, 2010. *See Broadcast Actions*, Public Notice, Report No. 47353 (MB Nov. 1, 2010).

<sup>2</sup> The Petition for Reconsideration was filed on November 22, 2010. Wilks filed an Opposition on December 7, 2010. Franklin filed a Reply on December 16, 2010.

<sup>3</sup> The “Suggestion of Expiration of W272AT License” was filed on November 16, 2011 (“Suggestion of Expiration”). Wilks filed a “Response in Opposition to ‘Suggestion of Expiration of W272AT License’” on November 21, 2011 (“Response”).

<sup>4</sup> The Informal Objection was filed on November 23, 2011. Wilks filed a Response on December 7, 2011. Franklin filed a “Supplement to Informal Objection and Comments on Response” on December 14, 2011. Wilks filed a “Reply to ‘Supplement to Informal Objection and Comments on Response’” on December 30, 2011.

<sup>5</sup> The Petition to Deny was filed on September 4, 2012. Wilks filed an Opposition on September 28, 2012. Franklin filed a Reply on October 18, 2012. Wilks filed a “Petition for Leave to Respond to Franklin’s Reply” and a “Response to ‘Reply to Opposition to Petition to Deny’” on October 26, 2012. Franklin filed an “Opposition to Petition for Leave to Respond to Franklin’s Reply” and a “Precautionary Comments on Response to Reply to

Station's license has expired as a matter of law and dismiss the Petition for Reconsideration, the Informal Objection, the Petition to Deny, the License Application, and the Renewal Application.

**Background.** The Station went silent on March 12, 2010, due to a complaint that it was causing interference to Station WWCD (formerly WCVZ(FM)), Baltimore, Ohio, a full-service station operating on first-adjacent Channel 273.<sup>6</sup> The Bureau granted the request on June 3, 2010, and advised Wilks that **“the broadcast license for W272AT will automatically expire as a matter of law if broadcast operations do not commence by 12:01 a.m. March 13, 2011.”**<sup>7</sup>

Wilks filed the Displacement Application on March 18, 2010, requesting a waiver of Section 74.1233(a)(2) of the Commission’s Rules (“Rules”)<sup>8</sup> so that it could change its frequency from Channel 272 to non-adjacent Channel 231.<sup>9</sup> On March 29, 2010, Franklin filed an Informal Objection to the Displacement Application. Franklin argued that if the Station operated on Channel 231 it could cause interference to Franklin-owned Station WSNY(FM), Columbus, Ohio, which operates on Channel 234B. It suggested alternate Channel 271 to eliminate this potential problem. The staff denied the Informal Objection and granted the Displacement Application on October 27, 2010.<sup>10</sup>

On November 22, 2010, Franklin filed the Petition for Reconsideration, again arguing that the Station should not be permitted to change its frequency to Channel 231 because of the potential for interference to Station WSNY(FM). During the pendency of the Petition for Reconsideration, on November 10, 2011, Wilks resumed operation of the Station on Channel 231. Franklin filed its “Suggestion of Expiration” on November 16, 2011, arguing that the Station’s license had expired as a matter of law pursuant to Section 312(g) of the Communications Act of 1934, as amended, (“Act”) because it had been silent for a consecutive 12-month period.<sup>11</sup>

Wilks argues in its Response that its extended silence was through no fault of its own – the Station initially suspended operations to avoid causing interference to Station WWCD(FM), and the grant of the Displacement Application was delayed by Franklin’s Informal Objection.<sup>12</sup> Wilks also argues in its Response that the granted Displacement Application:

gave it 36 months to construct Channel 231 facilities and to place them on the air. Had Franklin not sought reconsideration of that action, there would have been no regulatory uncertainty and Wilks would have had a clear path to resume operation. . . . Franklin has not, and cannot, show that the provisions of Section 312(g) [of the Act] were intended to supersede valid authorizations issued by the Commission.<sup>13</sup>

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Opposition to Petition to Deny” on November 8, 2012. All the pleadings filed after the Reply are unauthorized pleadings and will be dismissed. See 47 C.F.R. § 1.45. See, e.g., *Fourteen Hundred, Inc.*, Letter, 15 FCC Rcd 4486, 4488 (MB 2010) (declining to consider unauthorized pleadings).

<sup>6</sup> See File No. BLSTA-20100409AAV.

<sup>7</sup> *Letter to Jeffrey Wilks from H. Taft Snowden*, Ref. 1800B3-KAW (MB Jun. 3, 2010) (emphasis in original).

<sup>8</sup> 47 C.F.R. § 74.1233(D)(2).

<sup>9</sup> Displacement Application at Exhibit 1.

<sup>10</sup> See *Staff Letter*.

<sup>11</sup> Suggestion of Expiration at 2, citing 47 U.S.C. § 312(g).

<sup>12</sup> Response at 5.

<sup>13</sup> *Id.*

Wilks notes that Section 312(g) allows the Commission to reinstate or extend a license term where the licensee prevails in an administrative appeal or for “any other reason to promote equity and fairness.”<sup>14</sup> It argues that in this situation, where it was allegedly unable to resume operations because of Franklin’s administrative appeals, the Commission should invoke the “equity and fairness” provision and determine that the Station’s license did not expire.<sup>15</sup>

On November 18, 2011, Wilks filed the License Application, and on May 24, 2012, it filed the Renewal Application. In its Informal Objection to the License Application and Petition to Deny the Renewal Application, Franklin argues that those applications should be dismissed because the Station’s license has expired. In its Response to the Informal Objection and Opposition to the Petition to Deny, Wilks again argues that the Commission should exercise discretion under the Section 312(g) “equity and fairness” provision to reinstate the Station license has not expired.

**Discussion.** There is no dispute that the Station was silent from March 12, 2010, until November 10, 2011. Although Section 312(g) provides for the forfeiture of a broadcast license under such circumstances, it also allows the Commission the discretion, where appropriate, to extend or reinstate a forfeited license, notwithstanding more than 12 months of station silence. Specifically, in pertinent part, Section 312(g) provides, “. . . the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal . . . or for any reason to promote equity and fairness.”<sup>16</sup>

We reject Wilks’ overly broad reading of Section 312(g), which would permit extended periods of silence due to “regulatory uncertainty” whenever a petition is filed against the grant of any facility application. The “prevails in an administrative or judicial appeal” rationale is listed as an illustrative example of a “reason to promote equity and fairness.” In this case Franklin’s Petition for Reconsideration did not in any way impede Wilks from resuming operations with the newly authorized Channel 231 facilities. Rather, Wilks made a business decision to remain silent until November 11, 2011, which was well after the automatic expiration date specified in the Bureau’s letter to Wilks.<sup>17</sup> Accordingly, we find that Franklin’s Petition for Reconsideration does not fall within the scope of Section 312(g) and decline to reinstate the license on the basis of this language.

Next we consider whether to reinstate or extend Wilks’ license “to promote equity and fairness.” It is our practice to resolve such questions by conducting a case-by-case analysis of the circumstances that led to the particular station’s extended silence.<sup>18</sup> The Commission has exercised its authority to reinstate in only a few cases, each of which involved silence for compelling reasons beyond the licensee’s control.<sup>19</sup> However, the Commission has declined to reinstate licenses where failure to return a station to

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<sup>14</sup> *Id* at 6, citing 47 U.S.C. § 312(g).

<sup>15</sup> *Id.*

<sup>16</sup> 47 U.S.C. § 312(g).

<sup>17</sup> *See* n.7 *supra*.

<sup>18</sup> *See Eagle Broadcasting Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 600-01 (2008), *aff’d sub nom. Eagle Broadcasting Group, Ltd. v. FCC*, 563 F.3d 543 (D.C. Cir. 2009) (“The Commission and its staff will determine on a case-by-case basis whether any purported equities associated with individual circumstances warrant reinstatement of a license forfeited pursuant to Section 312(g)”).

<sup>19</sup> *See, e.g., V.I. Stereo Communications Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006) (“*V.I. Stereo*”) (reinstatement warranted where station’s silence attributable to destruction of towers in hurricane and substantial damage to subsequently rebuilt towers in additional hurricanes); *Community Bible Church*, Letter, 23 FCC Rcd 15012, 15014 (MB 2008) (reinstatement warranted where licensee took all steps needed to return to air

the air was due to the licensee's own actions, finances, and/or business judgments.<sup>20</sup> The grant of the Displacement Application became effective on November 1, 2010. Wilks has made no showing as to why the pendency of the Petition for Reconsideration or any other circumstance prevented it from resuming operation of the Station between this date and March 13, 2011. In these circumstances the reinstatement of the Station license "to promote equity and fairness" is not warranted.

We also find baseless Wilks' argument that its construction permit supersedes Section 312(g), and Wilks has provided no authority for this novel suggestion. Rather, the construction permit itself became invalid upon the expiration of the Station's license on March 13, 2011.<sup>21</sup>

Because we have determined that the Station's license has expired as a matter of law, the Petition for Reconsideration is moot. We will also dismiss the License Application and Renewal Application, and dismiss the related Informal Objection and Petition to Deny as moot as well.

**Conclusions/Actions.** Accordingly, the Commission's public and internal databases will be modified to indicate that the broadcast license for the referenced station<sup>22</sup> EXPIRED as a matter of law, at 12:01 a.m. on March 13, 2011, and we HEREBY DELETE the Station's call sign W272AT. IT IS ORDERED, that the November 22, 2010, Petition for Reconsideration, the November 23, 2011, Informal Objection, and the September 4, 2012 Petition to Deny filed by Franklin Communications, Inc. ARE DISMISSED AS MOOT. IT IS FURTHER ORDERED, that the Wilks License Company – Columbus LLC license to cover application (File No. BLFT-20111118CSA) and the license renewal application (File No. BRFT-20120524AIB) ARE DISMISSED.

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from replacement site prior to 12 months of silence but nevertheless remained off air to promote air safety after discovering and diligently reporting that FCC and FAA records contained incorrect tower information for which it was not responsible); *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>20</sup> See *Kanza Society*, Letter, 25 FCC Rcd 12812 (MB 2010) (reinstatement unwarranted and deactivation of FM translator station avoidable where station voluntarily went silent to prevent potential interference to unbuilt, new station, although the Rules do not require cessation of operations absent actual interference, and licensee did not seek permission to change to non-adjacent channel because it was not aware of Commission's waiver policy); *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617 (2008) (reinstatement unwarranted where site loss due to licensee's own rule violations and continued silence due to failure to complete construction at alternate site); *ETC Communications, Inc.*, Letter, 25 FCC Rcd 10686, 10689 (MB 2010) (reinstatement unwarranted where licensee chose not to operate financially struggling station while offering it for sale); *Family Life Ministries, Inc.*, Letter, 23 FCC Rcd 15395 (MB 2008) (reinstatement unwarranted where station deactivated for economic reasons within licensee's control); *Kirby Young*, Letter, 23 FCC Rcd 35 (MB 2008) (reinstatement unwarranted where licensee not financially able to restore operations after transmitter failed); *Zacarias Serrato*, Letter, 20 FCC Rcd 17232 (2005) (reinstatement unwarranted where licensee made business decision not to obtain an alternate site promptly).

<sup>21</sup> See *Implementation of Section 403(l) of the Telecommunications Act of 1996 (Silent Station Authorizations)*, 11 FCC Rcd 16599, 16601 (1996) ("The 1996 Act is clear that the relevant period of the silence is that of the station. The period is not based on any particular licensee or facility. Accordingly . . . the modification of the licensed facilities . . . will not toll or extend the 12-month period, notwithstanding any provision in any authorization to the contrary. . . . Therefore, parties seeking . . . to modify the facilities of a silent station should make sure that sufficient time exists, before the automatic expiration of the license, to return the station to the air. With the expiration of a station's license, all associated authorizations related to that station necessarily would become null and void because there can be no such continued authority absent a valid station license.") (emphasis in original).

<sup>22</sup> File No. BLFT-19960822TM, as most recently renewed by File No. BRFT-20050630AFY.

To the extent that any equipment might remain at the tower site, it would be imperative to the safety of air navigation that any prescribed painting and illumination of the station's tower be maintained. The owner of any tower where Wilks' transmitting antenna was located would be required, pursuant to Section 303(q) of the Communications Act of 1934, as amended,<sup>23</sup> to maintain the tower in the manner prescribed by our rules and the terms of the expired license until dismantled.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>23</sup> 47 U.S.C. § 303(q).