

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

In the Matter of)	
)	EB Docket No. 02-367
RADIO MOULTRIE, INC.)	EB-01-IH-0259
)	Facility #54680
Licensee, Station WMGA(AM),)	FRN #0007570443
Moultrie, Georgia)	

ORDER OF REVOCATION

Adopted: November 3, 2003

Released: November 4, 2003

By the Chief, Enforcement Bureau:

I. Introduction

1. By this *Order*, acting pursuant to authority delegated to the Enforcement Bureau under Section 0.111(a)(16) of the Commission’s rules,¹ we revoke the above-captioned broadcast license held by Radio Moultrie, Inc. (“RMI”) for RMI’s having violated Section 310(d) of the Communications Act of 1934, as amended (“the Act”),² and Section 73.3540 of the Commission’s rules,³ and for its having failed to follow the Commission’s directives. We conclude, based upon the evidence of its conduct, that RMI lacks the basic requisite character qualifications to be and remain a Commission licensee.

II. Background

2. The Commission designated this case for hearing.⁴ The *OSC* specified the following issues:

- (a) to determine the facts and circumstances surrounding RMI’s operation of WMGA(AM), Moultrie, Georgia, in connection with possible violation of Section 310(d) of the Act, and/or Sections 73.3540, 73.3615(a), 73.1745, 17.50, 17.51, 17.48, 17.4, 11.35, 11.15, 73.1820, 73.1125, and 73.1870 of the Commission's rules, as well as

¹ 47 C.F.R. § 0.111(a)(16).

² 47 U.S.C. § 310(d).

³ 47 C.F.R. § 73.3540.

⁴ *Order to Show Cause and Notice of Opportunity for Hearing*, 17 FCC Rcd 24304 (2002) (the “*OSC*”), released November 26, 2002.

orders from the Enforcement Bureau to provide responses to letters of inquiry; and

- (b) to determine, in light of the evidence adduced pursuant to issue (a), whether RMI has the requisite qualifications to be or remain a Commission licensee and thus whether its captioned broadcast license should be revoked.⁵

3. The *OSC* also ordered the Presiding Judge, notwithstanding the resolution of the designated issues, to determine whether the Commission should impose a monetary forfeiture against RMI for having willfully and repeatedly violated numerous statutory and regulatory provisions administered by the Commission.⁶ In accordance with Section 1.80 of the Commission's rules,⁷ the *OSC* set the maximum forfeiture amount at \$300,000.⁸

4. The *OSC* ordered RMI, pursuant to Section 1.91(c) of the Commission's rules,⁹ within thirty days of its receipt of the *OSC* (*i.e.*, by December 26, 2002), to file a written notice of appearance in order to avail itself of the opportunity to be heard.¹⁰ The *OSC* admonished RMI that, if it failed to so file a written notice of appearance, its right to a hearing on the matter of its captioned broadcast license would be deemed waived, and the proceeding thereafter would be resolved in accordance with Section 1.92 (c) of the Commission's rules.¹¹

5. The Presiding Judge determined that RMI had received a copy of the *OSC* but had failed to file a written (or any other) notice of appearance seeking to avail itself of the opportunity to be heard.¹² Accordingly, the Presiding Judge concluded that RMI had waived its right to a hearing, and he terminated the proceeding and certified the case to the Commission for disposition¹³ in accordance with Section 1.92(c) of the Commission's rules.¹⁴ The Commission has delegated

⁵ *OSC* at ¶ 15.

⁶ *OSC* at ¶ 16.

⁷ 47 C.F.R. § 1.80.

⁸ *Id.*

⁹ 47 C.F.R. § 1.91(c).

¹⁰ *OSC* at ¶ 17.

¹¹ 47 C.F.R. § 1.92(c). Section 1.92(c) provides that, whenever a hearing is waived, the presiding administrative law judge shall, at the earliest practicable date, issue an order reciting the events or circumstances constituting a waiver of hearing, terminating the hearing proceeding, and certifying the case to the Commission.

¹² *Memorandum Opinion and Order*, FCC 03M-06, released January 27, 2003 (“*MO&O*”).

¹³ In his additional *Memorandum Opinion and Order*, FCC 03M-05, released January 27, 2003, the Presiding Judge granted Douglas M. Sutton, Jr.'s Petition to Intervene in this proceeding for the limited purpose of correcting Commission records to reflect that Sutton's connection with RMI ceased in September 1992.

¹⁴ 47 C.F.R. § 1.92(c).

authority to the Enforcement Bureau for such revocation proceedings, terminated on the basis of waiver, pursuant to Section 0.111(a)(16) of the Commission's rules.¹⁵

III. Facts

6. RMI is the licensee of Station WMGA(AM)¹⁶ and has been controlled by the Elder family since approximately September 6, 1991.¹⁷ On March 21, 2001, a Commission field agent performed an on-site inspection of the station.¹⁸ The agent found no presence of the station's licensee, RMI, and evidence that strongly suggested that, after the station's last license renewal in 1996, RMI had abdicated control of the station, first to Dixie Broadcasting, Inc. ("DBI"), and then to Aubrey Smith ("Smith") and Sam and Gracie Zamarron (the "Zamarrons").¹⁹ The Commission's records, however, do not reflect that RMI filed any agreement to sell the station to any of those entities or individuals or any application for Commission approval of such an assignment or transfer of control.²⁰

7. On April 13, 2001²¹ and April 23, 2002,²² the Commission's staff sent separate sets of inquiry letters to RMI and DBI to investigate whether RMI had violated Section 310(d) of the Act and Section 73.3540 of the Commission's rules by transferring control of Station WMGA(AM) to others, including DBI, without prior authorization of the Commission, as well as

¹⁵ 47 C.F.R. § 0.111(a)(16).

¹⁶ In addition to not filing a notice of appearance, RMI failed to appear at the hearing or file any statement in response to the OSC. See *MO&O*. Thus, the facts recited in the OSC are uncontested. Based upon that information and that contained in other pertinent Commission records, we make the following specific factual findings.

¹⁷ See OSC at ¶ 4. This is the date on which the Commission approved the transfer of control of RMI, the station's licensee, to Dr. James Charles Elder, Sr., G. Chris Elder and Douglas M. Sutton, Jr. from James D. Hardy and Douglas M. Sutton, Jr. See File No. BTC- 910403EB. The parties filed that application to seek approval of a prior transaction that the Mass Media Bureau had found to have constituted an unauthorized transfer of control. See *In re Liability of Radio Moultrie, Inc.* (MMB 1992), *reduced on reconsideration, Memorandum Opinion and Order*, 8 FCC Rcd 4266 (MMB 1993) (original forfeiture amount of \$10,000 reduced to \$1,000 based upon finding of financial hardship). The Mass Media Bureau approved a subsequent transfer of control of RMI on September 29, 1992, whereby Sutton relinquished his interest in the licensee to Dr. James Charles Elder, Sr., and G. Chris Elder. See File No. BTC- 920730EA.

¹⁸ OSC at ¶ 6.

¹⁹ *Id.*

²⁰ OSC at ¶ 4.

²¹ *Letter from the Chief, Investigations and Hearings Division, Enforcement Bureau, to RMI*, dated April 13, 2001; *Letter from the Chief, Investigations and Hearings Division, Enforcement Bureau, to DBI*, dated April 13, 2001 (collectively, the "2001 LOIs").

²² *Letter from the Chief, Investigations and Hearings Division, Enforcement Bureau, to RMI*, dated April 23, 2002; *Letter from the Chief, Investigations and Hearings Division, Enforcement Bureau, to DBI*, dated April 23, 2002 (collectively, the "2002 LOIs").

whether it had violated other rules.²³ Both letters explicitly “directed” RMI and DBI to respond.²⁴ On August 28, 2001, DBI filed its response to the staff’s initial inquiry letter.²⁵ RMI did not respond to either of the staff’s *2001 LOI* or *2002 LOI*.²⁶

8. As a result of the March 21, 2001, on-site inspection, an FCC field agent discovered that RMI had: (1) failed to change the station to its critical hours directional array as required by its license; (2) failed to repaint its tower structures after seventy-five percent of their orange and white paint had flaked off; (3) left its towers completely unlit during nighttime hours; (4) failed to report the station’s tower light extinguishment to the Federal Aviation Administration (“FAA”) Flight Service Station nearest Moultrie, Georgia; (5) failed to register its station towers with this agency; (6) failed to maintain EAS equipment readiness; (7) failed to maintain a copy of the EAS Operating Handbook at normal duty stations; (8) failed to keep a station log; (9) left the station’s main studio unattended; and (10) failed to designate a chief operator at the station.

IV. Violations

A. RMI Has Unlawfully Relinquished Control of Station WMGA(AM)

9. Section 310(d) of the Act provides, in pertinent part:

No construction permit or station license, or any rights thereunder, shall be transferred, assigned or disposed of in any manner, voluntarily, directly or indirectly, or by transfer of control of any corporation except upon application to the Commission and upon finding by the Commission that the public interest, convenience and necessity will be served thereby

. . . .

Thus, Section 310(d) prohibits the transfer of control of a station licensee without prior Commission consent. In ascertaining whether a licensee has transferred control, the Commission looks beyond

²³ *OSC* at ¶ 5.

²⁴ *Id.*

²⁵ *See id.*; *Letter from DBI to the Chief, Investigations and Hearings Division, Enforcement Bureau*, dated August 28, 2001. Therein, DBI represented that it had planned to acquire Station WMGA(AM) from RMI, and that the parties had entered into an oral time brokerage agreement (“TBA”) in November 1998, so that DBI could operate the station until the parties could agree on a price. However, the parties never reached agreement. DBI indicated that RMI’s mortgagor and former controlling principal and shareholder, James Hardy, thereafter offered to sell to DBI the licensee’s then-delinquent note. DBI represented that it completed purchase of the note via lien-satisfaction proceedings in April 2000. DBI stated that, at this point, RMI ceased to communicate with it, and refused to cooperate in filing consensual license assignment applications with the Commission. DBI maintained that it continues to pay RMI its contract amount under the TBA, that it now owns the station’s real estate and equipment, but “not the licenses.” Finding it difficult to work with RMI’s principal, G. Chris Elder, and unable to devote sufficient time to broadcasting, DBI indicated that it thereafter entered into a further TBA and “sub-lease” with Smith and the Zamarrons in December 2000, contingent upon a future asset sale arrangement. DBI represented that Smith and the Zamarrons have operated the station since that time.

²⁶ *OSC* at ¶ 5.

the legal title to whether a new entity or individual possesses the right to determine the basic operating policies of the station.²⁷ Specifically, the Commission looks to three essential areas of station operation: programming, personnel, and finances.²⁸

10. A licensee's participation in a TBA or local marketing agreement does not *per se* constitute an unauthorized transfer of control or a violation of the Act or any Commission rules or policies.²⁹ Whether or not a TBA exists, in evaluating an allegation of an unauthorized transfer of control, we look to whether the licensee continues to have ultimate control over its station, including its programming, personnel, and finances. A licensee is permitted under Section 310(d) to delegate day-to-day operations relating to those three areas, as long as it continues to establish the policies guiding those operations.³⁰ Thus, in making a determination, the Commission looks not only to who executes the programming, personnel, and finance responsibilities, but also to who establishes the policies governing those three areas.³¹

11. Section 73.3540 of the Commission's rules³² requires that a licensee must obtain prior consent of the Commission to a voluntary assignment of license or transfer of control of the licensee by filing either on FCC Form 314, if an assignment is contemplated, or on FCC Form 315, for a transfer of control. Here, no such application was filed.³³ Thus, any transfer of control of RMI has not been approved.

12. We find further that RMI abdicated *de facto* control of the station to DBI at some point subsequent to entering into the oral TBA with DBI in November 1998 and that RMI's relinquishment of control appears to have continued unabated since that time.³⁴ Moreover, we find that RMI's oral TBA with DBI, and RMI's subsequent conduct, was not consistent with the limited delegations of control allowed under Commission precedent concerning such arrangements discussed above, and instead constituted a wholesale abdication of station control. Thus, we conclude that RMI violated Section 310(d) of the Act and the pertinent Commission rules by transferring control of the station without prior FCC consent.

²⁷ See *WHDH, Inc.*, 17 FCC 2d 856 (1969), *aff'd sub nom. Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971).

²⁸ See, e.g., *Stereo Broadcasters, Inc.*, 87 FCC 2d 87 (1981), *recon. denied*, 50 R.R. 2d 1346 (1982).

²⁹ See, e.g., *WGPR, Inc.*, 10 FCC Rcd 8141 (1995); *Roy R. Russo, Esquire*, 5 FCC Rcd 7586 (MMB 1990); *Joseph A. Belisle, Esquire*, 5 FCC Rcd 7585 (MMB 1990).

³⁰ See *Southwest Texas Public Broadcasting Council*, 85 FCC 2d 713, 715 (1981); *The Alabama Educational Television Commission*, 33 FCC 2d 495, 508 (1972).

³¹ See *WGPR, Inc.*, 10 FCC Rcd at 8142.

³² 47 C.F.R. § 73.3540.

³³ As noted above, DBI claims to have acquired the station's physical assets through purchase of the Hardy note in April 2000, and contends that RMI would not cooperate in seeking consensual assignment of the license. *OSC* at ¶ 3.

³⁴ RMI relinquished whatever control of the station that it may have had in April 2000, when DBI acquired the station's assets through lien-satisfaction proceedings. *OSC* at ¶ 3.

B. RMI Has Repeatedly Failed to Respond to Commission Inquiries

13. It is well settled that licensees must comply with Commission orders, including those requiring the provision of information.³⁵ Without such licensee cooperation, the Commission's ability to regulate effectively is seriously undermined. In its *2001 LOI* and *2002 LOI*, the staff made detailed inquiries questioning whether RMI had violated Section 310(d) of the Act,³⁶ and Section 73.3540 of the Commission's rules³⁷ by transferring control of Station WMGA(AM) to others, including DBI, without prior authorization of the Commission, as well as whether it had violated other rules. The staff sent the *2001 LOI* and *2002 LOI* by certified mail, return receipt requested, to RMI and DBI, at their respective addresses of record, and specifically "directed" that the companies file their responses within thirty days. On August 28, 2001, DBI responded to the *2001 LOI*, the only occasion on which it provided the Commission with information about this case. RMI did not respond to either the *2001 LOI* or *2002 LOI*, although signed United States Postal Service certified-mail postcards were returned, establishing that G. Chris Elder, Susan Fuller Elder, and Paul Sullivan signed for and accepted delivery of both letters on behalf of RMI.³⁸ Thus, we conclude that RMI violated Commission directives by repeatedly failing to respond to the staff's inquiries.

C. RMI Has Violated Numerous Commission Rules In Its Operation of Station WMGA(AM)

14. The FCC's March 21, 2001, on-site inspection established that the station also violated numerous Commission rules, including: (1) Section 73.1745 of the Commission's rules³⁹ (unauthorized power) by failing to change to its critical hours directional array as required by its license; (2) Section 17.50 of the Commission's rules⁴⁰ (antenna cleaning and repainting) by failing to repaint its tower structures after seventy-five percent of their orange and white paint had flaked off; (3) Section 17.51 of the Commission's rules⁴¹ (time when lights should be exhibited) by leaving its towers completely unlit during nighttime hours; (4) Section 17.48 of the Commission's rules⁴² (notification of extinguishment or improper functioning of lights) by failing to report the station's tower light extinguishment to the Federal Aviation Administration ("FAA")

³⁵ *In re SBC Communications, Inc.*, 17 FCC Rcd 7589, 7595 (2002) (\$100,000 forfeiture imposed for failure to comply with Commission order to provide sworn statement verifying truth and accuracy of responses to Enforcement Bureau letter of inquiry).

³⁶ 47 U.S.C. § 310(d).

³⁷ 47 C.F.R. § 73.3540.

³⁸ *OSC* at ¶ 13. The staff's *2001 LOI* and *2002 LOI* to RMI was sent by certified-mail both to its official business address according to Commission records, 1151 Hendricks Street, Covington, GA 30209, and to Mr. G. Chris Elder, RMI's corporate principal, at his personal address, 1140 Milstead, Conyers, GA 30012.

³⁹ 47 C.F.R. § 73.1745.

⁴⁰ 47 C.F.R. § 17.50.

⁴¹ 47 C.F.R. § 17.51.

⁴² 47 C.F.R. § 17.48.

Flight Service Station nearest Moultrie, Georgia; (5) Section 17.4 of the Commission's rules⁴³ (antenna structure registration) by failing to register its station towers with this agency; (6) Section 11.35 of the Commission's rules⁴⁴ (equipment operational readiness) by failing to maintain EAS equipment readiness; (7) Section 11.15 of the Commission's rules⁴⁵ (EAS operating handbook) by failing to maintain a copy of the EAS Operating Handbook at normal duty stations; (8) Section 73.1820 of the Commission's rules⁴⁶ (station log) by failing to keep a station log; (9) Section 73.1125 of the Commission's rules⁴⁷ (station main studio location and staffing) by leaving the station's main studio unattended; (10) and Section 73.1870 of the Commission's rules⁴⁸ (chief operators) by failing to designate a chief operator at the station.

15. Section 17.50 of the Commission's rules requires that antenna structures requiring painting shall be cleaned or repainted as often as necessary to maintain good visibility.⁴⁹ Section 73.51 of the Commission's rules further requires that all red obstruction lighting shall be exhibited from sunset to sunrise.⁵⁰ The Commission has statutory authority affirmatively to require repainting and/or illumination of radio towers in cases where it finds that there is a reasonable possibility that the towers may constitute a menace to air navigation.⁵¹ During the March 2001 inspection, the Commission field agent discovered that RMI had left the structures completely unlit during nighttime hours.⁵² He also found that approximately seventy-five percent of the orange and white paint of the station's broadcast tower structures had flaked off.⁵³

16. Section 17.48(a) of the Commission's rules further requires that owners of antenna structures that have been assigned lighting specifications shall report their malfunctioning or extinguishment of any top steady burning or flashing obstruction light that is not corrected within thirty minutes to the nearest Flight Service Station of the FAA.⁵⁴ Furthermore, Section 17.4(a)(2) of the Commission's rules requires that the owner of any existing

⁴³ 47 C.F.R. § 17.4.

⁴⁴ 47 C.F.R. § 11.35.

⁴⁵ 47 C.F.R. § 11.15.

⁴⁶ 47 C.F.R. § 73.1820.

⁴⁷ 47 C.F.R. § 73.1125.

⁴⁸ 47 C.F.R. § 73.1870.

⁴⁹ See 47 C.F.R. § 17.50.

⁵⁰ See 47 C.F.R. § 17.51.

⁵¹ 47 U.S.C. § 303(q); *Report and Order Streamlining the Antenna Structure Clearance Procedure and Revision of the Rules Concerning Construction, Marking and Lighting of Antenna Structures*, 11 FCC Rcd 4272 (1995).

⁵² OSC at ¶ 6.

⁵³ *Id.*

⁵⁴ See 47 C.F.R. § 17.48(a).

structure that has been assigned painting or lighting requirements prior to July 1, 1996, as here, must register its structure with the FCC prior to July 1, 1998.⁵⁵ In this case, further inspection revealed that no notice had been provided the FAA Flight Service Station nearest Moultrie, Georgia, for the station's light extinguishment,⁵⁶ as required by Section 17.48(a) of the Commission's rules,⁵⁷ and that the station's towers have not been registered with this agency, as required by Section 17.4(a)(2) of the Commission's rules.⁵⁸ In view of the foregoing, RMI has violated Sections 17.50, 17.51, 17.48(a), and 17.4(a)(2) of the Commission's rules.⁵⁹

V. License Revocation

17. RMI's failure to respond to two staff directives impeded the Commission's orderly ascertainment of the facts surrounding the operation of the station and exacerbates the unauthorized transfer of control of RMI by protracting the investigation and thus the licensee's continuing unlawful abdication of station control. RMI's total failure to respond to Commission inquiries, coupled with its unauthorized transfer of control and multiple other rule violations, warrants the strongest possible Commission sanctions.⁶⁰

18. The Commission's *Broadcast Character Policy Statement*⁶¹ provides that violations of the Communications Act or of the Commission's rules are matters predictive of licensee behavior and are directly relevant to the functioning of the Commission's regulatory mission. The violations described above mandate the conclusion that RMI does not possess the requisite qualifications to be or remain a Commission licensee. For the reasons discussed above, RMI has demonstrated that its conduct as a licensee before the Commission is unreliable. Based on the foregoing, we conclude, as a matter of law, that RMI's broadcast license for WMGA(AM) should be revoked. In light of our decision to revoke RMI's license, we do not impose a forfeiture. We believe license revocation is a sufficient sanction in this context.

VI. Ordering Clauses

⁵⁵ See 47 C.F.R. § 17.4(a)(2). Due to the height of its four-tower array, Station WMGA(AM)'s current license contains painting and lighting requirements imposed following the recommendation of FAA Study 00S04723.

⁵⁶ See OSC at ¶ 6.

⁵⁷ 47 C.F.R. § 17.48(a).

⁵⁸ 47 C.F.R. § 17.4(a)(2).

⁵⁹ See 47 C.F.R. §§ 17.50, 17.51, 17.48(a), and 17.4(a)(2).

⁶⁰ See *In re William E. Blizzard, Jr., t/a Macon County Broadcasting Co.*, 25 FCC 2d 926 (1970) (Commission found the licensee's repeated failure to respond to staff inquiries was dilatory, warranting license revocation); *In re Revocation of the License of Shedd-Agard Broadcasting, Inc. (KLSU)*, 41 FCC 2d 93 (I.D. 1973).

⁶¹ *Policy Regarding Character Qualifications In Broadcast Licensing*, 102 FCC 2d 1179 (1986), *on recon.*, 1 FCC Rcd 421 (1986), *appeal dismissed sub nom. National Association for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. 1987). See also *Policy Regarding Character Qualifications in Broadcast Licensing*, 5 FCC Rcd 3252 (1990), *on recon.*, 6 FCC Rcd 3448 (1991), *modified*, 7 FCC Rcd 6564 (1992).

19. Accordingly, IT IS ORDERED, pursuant to Section 312 of the Communications Act of 1934, as amended,⁶² and Sections 1.92(d) and 0.111(a)(16) of the Commission's rules,⁶³ that the captioned broadcast license held by RMI IS REVOKED, effective the fortieth (40th) day after release of this Order, unless RMI files a petition for reconsideration within thirty (30) days of the release of this Order, in which case the effective date will be suspended pending further Order of the Commission.

20. IT IS FURTHER ORDERED that copies of this ORDER OF REVOCATION AND FORFEITURE shall be sent by Certified Mail Return Receipt Requested to Radio Moultrie, Inc., 1151 Hendricks Street, Covington, Georgia 30209; to Mr. G. Chris Elder, 1140 Milstead, Conyers, Georgia, 30012. Courtesy copies shall be sent via regular mail to Mr. Gary A. Mitchell d/b/a Dixie Broadcasting, Inc., 30 North Norton Avenue, Sylacauga, Alabama, 35150; to Mr. Aubrey Smith, P.O. Box 2239, Tifton, Georgia, 31793; and to Sam and Gracie Zamarron, P.O. Box 2239, Tifton, Georgia, 31793.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁶² 47 U.S.C. § 312.

⁶³ 47 C.F.R. §§ 1.92(d) and 0.111(a)(16).

