

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

In the Matters of)	MB Docket No. 05-95
)	NAL/Acct No. MB 20041810004
)	
KEGG COMMUNICATIONS, INC.)	
Licensee of Station K216EQ)	
Daingerfield, Texas)	Facility ID No. 92810
)	
and)	
)	
Application for Construction Permit for a New)	Facility ID No. 94199
Noncommercial Educational FM Station in)	File No. BPED-19990907MG
Daingerfield, Texas)	

MEMORANDUM OPINION AND ORDER

Adopted: July 6, 2005

Released: July 7, 2005

By the Acting Chief, Enforcement Bureau:

I. INTRODUCTION

1. By this *Memorandum Opinion And Order*, acting pursuant to authority delegated to the Enforcement Bureau under section 0.111(a)(17) of the Commission's rules,¹ we dismiss the above-captioned proceeding pursuant to section 1.92(d) of the Commission's rules.² We conclude, based on the evidence described herein that KEGG Communications, Inc. ("KCI") surrendered the license for FM translator Station K216EQ, Daingerfield, Texas and that the Media Bureau canceled that authorization.³ We further note that the presiding Administrative Law Judge ("Presiding Judge") dismissed with prejudice KCI's captioned application for a construction permit for a new noncommercial educational FM station in Daingerfield, Texas, and that KCI did not timely seek review of that action pursuant to section 1.302 of the Commission's rules.⁴ Accordingly, we do not make any findings relative to the issues designated below, including whether KCI is qualified to be and remain the licensee of Station K216EQ, and we dismiss the proceeding.

II. BACKGROUND

2. On March 15, 2005, the Commission released an *Order to Show Cause, Hearing*

¹ 47 C.F.R. § 0.111(a)(17). Pursuant to this rule, the Enforcement Bureau has delegated authority, *inter alia*, to "[i]ssue or draft appropriate orders after a hearing has been terminated by an Administrative Law Judge on the basis of waiver."

² 47 C.F.R. § 1.92(d).

³ See *Broadcast Actions*, Public Notice at 11, 2005 WL 1123285, (rel. May 12, 2005) (REPORT NO. 45983) (License cancelled May 9, 2005).

⁴ See *Memorandum Opinion and Order*, FCC 05M-26 at 2 (rel. May 4, 2005) ("*Dismissal Order*"). See also 47 C.F.R. § 1.302.

Designation Order and Notice of Opportunity for Hearing (“*OSC*”), designating this case for hearing.⁵ The *OSC* specified the following issues:

- (1) To determine the extent to which KCI, licensee of noncommercial educational FM translator station K216EQ, complied with the FM Translator provisions specified in Sections 74.1231(b), 74.1231(f), 74.1231(g), and 74.1284(b) of the Commission’s rules;
- (2) To determine whether KCI made misrepresentations of fact or was lacking in candor in violation of Section 73.1015 of the Commission’s rules with regard to K216EQ’s primary station and/or whether K216EQ originated programming; and
- (3) To determine, based on the evidence adduced pursuant to all of the above, whether KCI is qualified to be and to remain the licensee of K216EQ.⁶

3. The *OSC* also ordered that the Presiding Judge, notwithstanding the resolution of the designated issues, determine whether the Commission should impose a monetary forfeiture against KCI for violations of sections 74.1231(b), 74.1231(f), 74.1231(g), 74.1284(b) and 73.1015 of the Commission’s rules. The *OSC* set the maximum forfeiture amount at \$300,000.

4. The *OSC* ordered KCI, pursuant to section 1.221(c) of the Commission's rules,⁷ within twenty (20) days of the date of the mailing of the *OSC*, in person or by its attorney, to file a written notice of appearance in order to avail itself of the opportunity to be heard.⁸ The *OSC* directed that the notice of appearance state that KCI would appear on the date fixed for the hearing and present evidence on the specified issues.⁹ On March 17, 2005, the Chief Administrative Law Judge issued an *Order*, setting April 27, 2005 as the date for the prehearing conference and further ordering that all hearing proceedings were to take place in Washington, D.C.¹⁰

5. On March 23, 2005, KCI sent to the Presiding Judge by facsimile a self-styled “Show Cause Reply” which was dated March 16, 2005.¹¹ In the Show Cause Reply, KCI requested, *inter alia*, that its license not be revoked, and it contended that Station K216EQ was in compliance with the Commission’s translator rules.¹² As for the hearing, KCI, by its President, Bill Wright, stated: “I plan to attend the hearing as related to translator station K216EQ. I am requesting that the location be held at the FCC Field Office in Dallas so I may attend. Because of personal matters, I cannot make a trip to Washington, D.C.”¹³

⁵ *KEGG Communications, Inc.*, Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing, 20 FCC Rcd 5768 (2005).

⁶ *OSC*, 20 FCC Rcd at 5771, ¶ 9. The *OSC* did not specify any issues with regard to KCI’s construction permit application. The *OSC* noted that KCI had filed a request that its application be dismissed, which it declined to grant because the majority of the evidence in this case arose in the context of processing that application. The *OSC* provided, however, that the Presiding Judge could dismiss that application, if and when he believed it appropriate. *OSC*, 20 FCC Rcd at 5771 n. 8.

⁷ 47 C.F.R. § 1.221(c).

⁸ *OSC*, 20 FCC Rcd at 5771, ¶ 12.

⁹ *Id.*

¹⁰ FCC 05M-13 (rel. Mar. 17, 2005).

¹¹ *See* Judge’s Ex. 2.

¹² *Id.* at 1-2.

¹³ *Id.* at 4.

6. On March 30, 2005, the Presiding Judge dismissed KCI's Show Cause Reply.¹⁴ The *MO&O* concluded that the Show Cause Reply failed to comply with numerous Commission procedural rules.¹⁵ Initially, the *MO&O* concluded that the Show Cause Reply was not properly or officially filed with the Commission.¹⁶ In addition, the *MO&O* held that KCI's mere statement that it "plans to attend the hearing" did not comport with the requirements of section 1.221(c) of the Commission's rules.¹⁷ Nevertheless, the *MO&O* gave KCI another opportunity to file a written appearance "which complies in all respects with the Commission's rules."¹⁸ The *MO&O* set April 15, 2005, as the due date for KCI's written appearance.¹⁹

7. KCI did not file a written appearance by the required date. Instead, on April 18, 2005, KCI sent a facsimile to the Presiding Judge withdrawing the pending construction permit application and surrendering the license for Station K216EQ.²⁰ In the facsimile, KCI's President, Mr. Wright, stated:

At this time I am surrendering the license of K216EQ[,] Daingerfield[,] Texas, and requesting the application pending before the FCC In [sic] regards to KEGG Christian Communication [sic] be dismissed without prejudice.²¹

On April 19, 2005, the Presiding Judge caused KCI's facsimile to be filed with the Commission's Office of the Secretary.²² The Presiding Judge convened a prehearing conference in this proceeding on April 27, 2005. KCI did not attend or enter a notice of appearance, nor did anyone do so on its behalf.²³

8. In light of all the foregoing, the Presiding Judge determined that, having failed to file a notice of appearance, KCI had waived its right to a hearing with respect to its FM translator station.²⁴ Accordingly, the Presiding Judge dismissed KCI's construction permit application, terminated the proceeding, and certified the case to the Commission for disposition in accordance with section 1.92(c) of the Commission's rules.²⁵ The Commission has delegated authority to the Enforcement Bureau for revocation proceedings, terminated on the basis of waiver of the opportunity for a hearing, pursuant to section 0.111(a)(17) of the Commission's rules.²⁶

¹⁴ See *Memorandum Opinion and Order*, FCC 05M-16 (rel. Mar. 30, 2005) ("*MO&O*").

¹⁵ Specifically, the *MO&O* concluded that the Show Cause Reply and its submission to the Presiding Judge were in violation of sections 0.401, 1.7, 1.47, 1.51(a)(1), 1.52, 1.209, 1.211, 1.291(a)(4), and 1.296 of the Commission's Rules. *Id.* at 2, ¶ 4.

¹⁶ *Id.*

¹⁷ *Id.* at 2, ¶ 5.

¹⁸ *Id.* at 2, n.2.

¹⁹ *Id.* at 3.

²⁰ See Judge's Ex. 3.

²¹ *Id.* at 1. As noted above, the Media Bureau canceled the license for Station K216EQ on May 9, 2005.

²² See *Dismissal Order*, note 4 *supra*, at 2, ¶ 5.

²³ *Id.* at 2, ¶ 6.

²⁴ *Id.* at 2, ¶¶ 7-8.

²⁵ *Id.* at 2. See also 47 C.F.R. § 1.92(c).

²⁶ 47 C.F.R. § 0.111(a)(17).

III. DISCUSSION

9. KCI did not timely file a notice of appearance. Instead, it surrendered its license for Station K216EQ, and requested dismissal of its above-captioned construction permit application.

10. Section 1.92(a)(1) of the Commission's rules provides that the failure to file the requisite notice of appearance constitutes a waiver of the right to a hearing with regard to the issues specified in the *OSC*.²⁷ Having failed to file a timely written appearance as prescribed by section 1.91(c) of the Commission's rules, KCI waived its right to a hearing on the specified issues.²⁸ However, in light of KCI's surrender of its license for Station K216EQ and the Media Bureau's subsequent cancellation of that license, revocation of that license has become moot. Consequently, in accordance with section 1.92(d) of the Commission's rules, we dismiss the hearing proceeding. Moreover, in light of the cancellation of KCI's license for Station K216EQ and the dismissal of its captioned construction permit application, imposition of a forfeiture is not appropriate here.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to sections 1.92(d) and 0.111(a)(17) of the Commission's rules,²⁹ that the captioned hearing proceeding IS DISMISSED.

12. IT IS FURTHER ORDERED that a copy of this Order shall be sent to KEGG Communications, Inc., P.O. Box 497931, Garland, Texas 75049, attention: Bill Wright, President.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief, Enforcement Bureau

²⁷ 47 C.F.R. § 1.92(a)(1).

²⁸ 47 C.F.R. § 1.91(c). *See also* 47 C.F.R. § 1.92(a)(1).

²⁹ 47 C.F.R. §§ 1.92(d) and 0.111(a)(17).