



Federal Communications Commission  
Washington, D.C. 20554

October 28, 2008

**DA 08-2361**

*In Reply Refer to:*

1800B3-MJW

Released: October 28, 2008

Family Life Ministries, Inc.  
c/o Joseph C. Chautin, III, Esq.  
Hardy, Carey Chautin & Balkin, LLP  
1080 West Causeway Approach  
Mandeville, LA 70471

In re: **Family Life Ministries, Inc.**  
DW245AV, Northeast, Pennsylvania  
Facility ID No. 14451  
File No. BPFT-20070720ABM

**Petition for Reconsideration**

**Application for Modification of License**

Dear Counsel:

We have before us a Petition for Reconsideration (the "Petition") filed by Family Life Ministries, Inc. ("FLM") seeking reconsideration of two staff letters, the first notifying FLM that the license for translator station DW245AV (the "Translator") had expired,<sup>1</sup> the second notifying FLM that its application for renewal of the Translator license had been dismissed.<sup>2</sup> We also have before us an application for modification of the Translator license (the "Application") specifying a new site. For the reasons set out below, we deny the Petition and dismiss the Application.

**Background.** The Commission granted FLM a license for the Translator on April 26, 2005. FLM claims that, immediately thereafter, it discovered that the Translator "utterly failed" to provide its intended coverage.<sup>3</sup> FLM then removed the Translator equipment and canceled its "prohibitively expensive"<sup>4</sup> tower lease.

FLM pursued a lease for another tower (the "Second Tower") owned by Adelpia Communications Corporation, which FLM knew was in bankruptcy and attempting to sell its tower to a third party.<sup>5</sup> By March 29, 2006, when FLM filed an application for renewal of the Translator's license, the Translator remained inoperative.<sup>6</sup> At that time, FLM was attempting to identify the new owner of the Second Tower.<sup>7</sup> Over a year passed and, on April 5, 2007, the staff advised FLM that the Translator license would be deemed expired by operation of law unless FLM demonstrated that the Translator had

---

<sup>1</sup> The "D" prefix to the call sign signifies that the authorization has been canceled.

<sup>2</sup> See *Letter to Family Life Ministries, Inc.*, Apr. 5, 2007 ("*License Expiration Notice*"); *Letter to Family Life Ministries*, Jun. 26, 2007 ("*Renewal Dismissal*").

<sup>3</sup> Petition at 2. ("Almost as soon as it obtained the license, however, FLM realized that the tower site that was the only site that appeared suitable at the time, was incapable of fulfilling the two functions FLM had intended for the translator.") *Id.* at 6. ("[T]he site that it had originally used for Northeast's translator utterly failed in this regard.")

<sup>4</sup> *Id.* at n.2.

<sup>5</sup> *Id.*

<sup>6</sup> See *id.* at 3.

<sup>7</sup> *Id.*

resumed operation before March 30, 2007.<sup>8</sup> On May 1, 2007, FLM responded and reported that the translator was still silent and that FLM had encountered difficulty in locating a new site.<sup>9</sup> It asked the Commission to reinstate the Translator license pursuant to the provision in Section 312(g) of the Communications Act of 1934, as amended (the “Act”)<sup>10</sup> that gives the Commission discretion to reinstate licenses “to promote equity and fairness.” The staff rejected FLM’s request, finding, (a) that the Translator had been silent for “considerably longer than 12 consecutive months,” (b) that there was no “persuasive evidence . . . that the Station’s silence was due to circumstances beyond its control.” and (c) that “the record in this case discloses that the Station was taken off the air due to Family Life’s desire to meet its goals for the station in a more economical manner.”<sup>11</sup>

In its Petition, FLM reports that its attempt to relocate to the Second Tower has failed because it was “not able to reach a satisfactory agreement” with the tower’s new owner, Time-Warner.<sup>12</sup> FLM does not state whether it was cost, or some other factor, that led it to conclude that the agreement was unsatisfactory. FLM claims, however, that it now has permission to locate the Translator at another new site. The Application, tendered with the Petition, specifies that new site.<sup>13</sup>

The Petition essentially restates the arguments made in FLM’s May 1, 2007, letter to the staff: (a) that maintaining operation of the translator at the original site was a matter outside its control because the coverage was inadequate and the lease payments were “prohibitively expensive,” and “exorbitant,”<sup>14</sup> and (b) FLM was diligent in pursuing a lease for the Second Tower but encountered unforeseen obstacles, for example, that Adelphia referred FLM’s representative to Comcast which “strung him along for several months before sending him to Time-Warner.”<sup>15</sup> FLM claims that, but for the “appalling lack of responsiveness of the telecom companies, FLM probably would have been able to get on the tower within the 12-month period.”<sup>16</sup>

FLM urges the Commission to exercise its discretion in favor of reinstating the Translator license, citing the *V.I. Stereo Communications Corporation* decision in which the Commission reinstated the license of WVIS(FM), Vieques, Puerto Rico, when that station had remained off the air for more than twelve months due to circumstances beyond its control -- damage from successive hurricanes.<sup>17</sup> FLM claims that its situation is comparable because the “bankruptcy proceedings against Adelphia and the subsequent reassignment of the tower” were circumstances beyond FLM’s control.<sup>18</sup>

**Discussion.** FLM has not explained why the Translator “utterly failed” to provide its intended coverage from its original site.<sup>19</sup> Moreover, we are unpersuaded that the cost of the lease at the original site was so “prohibitively expensive” that FLM’s discontinuing operation of the Translator was beyond its

---

<sup>8</sup> See *License Expiration Notice* at 1.

<sup>9</sup> See Petition at 4.

<sup>10</sup> 47 U.S.C. § 214(g).

<sup>11</sup> *Renewal Dismissal* at 2.

<sup>12</sup> Petition at 3.

<sup>13</sup> See *id.*

<sup>14</sup> *Id.* at 5, n.3.

<sup>15</sup> *Id.* at 3.

<sup>16</sup> *Id.* at 5.

<sup>17</sup> *Id.* (citing *V.I. Stereo Communications, Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006)).

<sup>18</sup> Petition at 6.

<sup>19</sup> FLM states that “[g]iven its time constraints, FLM could find only one suitable tower from which to operate the translator.” *Id.* at 2.

control.<sup>20</sup> Had the cost been “exorbitant,” - as FLM asserts<sup>21</sup> - it is not apparent why FLM would have agreed to the lease in the first instance.

We are likewise unpersuaded that FLM’s inability to timely locate a new site was a matter outside its control. Sites other than the Second Tower were available. Thus, after FLM was unable to reach a “satisfactory agreement” with Time-Warner for the Second Tower, it “went door-to-door and was able to find an acceptable location elsewhere.”<sup>22</sup> With diligence, FLM would have begun that “door-to-door” tower search as soon as it knew that it was unlikely that negotiations for the Second Tower would be completed in time to return the Translator to service before the license expired, *e.g.*, when it realized it was being “strung along . . . for several months”<sup>23</sup> in its efforts to identify the new owner of the Second Tower.

The short answer to FLM’s claim that its circumstances are comparable to those encountered by WVIS(FM) in Puerto Rico<sup>24</sup> is that a hurricane is an act of God and not within a licensee’s control. FLM’s choosing an unsuitable and/or uneconomic site initially, and then failing timely to find a replacement site, however, were FLM’s own acts, well within its control.

FLM’s attempt to distinguish the *Zacarias Serrato* decision<sup>25</sup> is unpersuasive. There, the licensee claimed it was unable to locate an affordable transmitter site within twelve months after terminating operations at its original site. The Commission declined to reinstate the license, finding that the licensee’s failure to return the station to service within twelve months was “essentially due to a business decision on the part of the licensee not to find an alternative site promptly.”<sup>26</sup> Similarly, FLM’s deactivating the Translator and pursuing the Second Tower to the exclusion of all other available sites was a business decision for which FLM, alone, is responsible.

**Decision/Action.** Section 312(g) of the Act and Section 73.1750 of the Rules provide for automatic termination of inactive licenses so that scarce broadcast spectrum does not lie fallow and unavailable to others capable of instituting and maintaining service to the public.<sup>27</sup> In furtherance of that objective, and in accord with precedent,<sup>28</sup> we decline to exercise our discretion under the Section 312(g)

---

<sup>20</sup> Petition at 2, n.2.

<sup>21</sup> *Id.* at 5, n.3.

<sup>22</sup> *Id.* at 3.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 5.

<sup>25</sup> *Id.* (citing *Zacarias Serrato (KHOS-AM)*, Letter, 20 FCC Rcd 17232 (MB 2005)).

<sup>26</sup> 20 FCC Rcd at 17232

<sup>27</sup> *Cf. 1998 Biennial Review - Streamlining of Mass Media Applications, Rules and Processes*, Report and Order, 13 FCC Rcd 23056, 23093 (1998), *recon. granted in part*, Memorandum Opinion and Order, 15 FCC Rcd 17525 (1999). (Commission construction deadlines “strike a balance between our fundamental interests in expediting new service to the public and preventing the warehousing of scarce spectrum . . . .”)

<sup>28</sup> *See Eagle Broadcasting*, Memorandum Opinion and Order, 23 FCC Rcd 588, 601 (2008) (licensee’s “securing local permissions [and] filing the . . . Application with the Commission” for a new site did not justify discretionary relief under 47 U.S.C. 312(g) when station had remained silent for more than a year). *See also Kirby Young*, Letter, 23 FCC Rcd 35 (MB 2008) (discretionary relief under 47 U.S.C. 312(g) denied when station remained silent for more than a year and no “natural disasters or other compelling circumstances forced the cessation of the Station’s operations.”); *but see Mark Chapman*, Letter, 22 FCC Rcd 6578, 6580 (MB 2007) (relief granted under 47 U.S.C. 312(g) to accommodate court ruling).

“equity and fairness” provisions to reinstate FLM’s license which expired by operation of law due to circumstances within FLM’s control.<sup>29</sup>

Accordingly IT IS ORDERED that the Petition for Reconsideration filed by Family Life Ministries IS DENIED. IT IS FURTHER ORDERED that the Application for Modification of License, File No. BPFT-20070720ABM, tendered by Family Life Ministries, IS DISMISSED AS MOOT.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

---

<sup>29</sup> Once the FLM license expired, there was no authorization remaining for FLM to “modify.” Therefore, we are dismissing the modification Application. *See WCYQ Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 16900, 16904 (2003) (“by operation of law, there no longer existed any translator station license to modify, and the modification application had become null and void”).