



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

February 24, 2010

DA 10-308

In Reply Refer To:

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In re: KRAM(AM), West Klamath, Oregon
Facility ID No. 71966

File Nos. BLSTA-20070815ABF
BR-20060310AGJ

Application for License Renewal and
Informal Objection

Request for Authority to Remain Silent

Dear Counsel:

We have before us a request for special temporary authority to remain silent (“STA”)¹ and a contested application for license renewal² from Scott D. MacArthur, licensee of radio station KRAM(AM), West Klamath, Oregon (“Station”). Because the Station has failed to broadcast for 12 consecutive months, it is subject to automatic license forfeiture under Section 312(g) of the Communications Act of 1934, as amended (“Act”).³ For the reasons set forth below, we find that the Station’s license has expired as a matter of law. We accordingly delete the call sign and dismiss both the pending license renewal application and the STA request. We dismiss the Informal Objection filed against the license renewal application as moot.

Background. Sandra Falk was the Station licensee from 1996 until her death on June 23, 2006. Sandra Soho, Falk’s sole beneficiary, managed Falk’s estate until the State of Oregon petitioned for her

¹ File No. BLSTA-20070815ABF (filed Aug. 14, 2007).

² File No. BR-20060310AGJ (filed Mar. 10, 2006). Robert Wynne filed an informal objection to the renewal of the Station’s license on the grounds that the Station had been silent since 1999. *See* Letter to Ms. Dortch from Robert Wynne, President, Wynne Broadcasting Company, Inc. (Jul. 6, 2006) (“Informal Objection”).

³ *See* 47 U.S.C. § 312(g); *see also* 47 C.F.R. § 73.1740(c)). The statute reads, “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...except that the Commission may extend or reinstate such station license...for any other reason to promote equity and fairness.” 47 U.S.C. § 312(g).

removal on grounds that she was involved in a fraudulent real estate transfer of Falk's real property and that she concealed the facts concerning the sale from the court.⁴ The court appointed MacArthur personal representative of Falk's estate on October 17, 2006.⁵

On July 6, 2007, the Commission inquired as to the status of the Station.⁶ MacArthur's reply indicated that it had been silent since July 1, 2006.⁷ After more than three years of silence, MacArthur reportedly returned the Station to the air on July 15, 2009,⁸ from a site located at North Latitude 42-11-37 and West Longitude 121-46-23.⁹ The coordinates of this site do not correspond precisely to those listed in the Station license.¹⁰

Discussion. Section 312(g) of the Act provides 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...."¹¹ The record in this case indicates that the Station remained continuously off the air from July 1, 2006, until July 15, 2009, when it resumed operation at an unauthorized site. Moreover, well-established Commission precedent dictates that licensees cannot avoid the statutory deadline set forth in Section 312(g) of the Act through the use of non-conforming facilities.¹² Consequently, we find that the Station license has expired as a matter of law.

⁴ See Letter to Ms. Dortch from Erwin G. Krasnow, Esq., Attorney for Scott D. MacArthur (Aug. 2, 2007), Declaration of Scott D. MacArthur at 3, *citing* State's Petition for Immediate Removal, page 3-4. Since that ruling, Soho was sentenced to 38 months in prison and 30 days in county jail, fined in the amount of \$499,308, and ordered to pay restitution in the amount of \$8,746.79. (*See KBUG(FM), Malin, Oregon*, DA 10-131, Letter (Jan. 26, 2010), *citing State of Oregon v. Sandra Soho*, Judgment, Case No. 0602044CR (Circuit Court, Klamath County, Feb. 12, 2009)).

⁵ See Letter to Ms. Dortch from Erwin G. Krasnow, Esq., Attorney for Scott D. MacArthur (Aug. 2, 2007), Declaration of Scott D. MacArthur at 1, *citing* State of Oregon Klamath Circuit Court Order, Oct. 17, 2006. On August 8, 2007, the Commission granted MacArthur's involuntary assignment application. See File No. BAL-20070717AAA.

⁶ See Letter from H. Taft Snowdon, Attorney, Audio Division, Media Bureau, to Scott D. MacArthur (Jul. 6, 2007).

⁷ See Letter to Ms. Dortch from Erwin G. Krasnow, Esq., Attorney for Scott D. MacArthur, Declaration of Scott D. MacArthur at 3 (Aug. 2, 2007) (MacArthur states that Soho informed him that the station had been silent since 2006).

⁸ See Letter to Ms. Dortch from Erwin G. Krasnow, Esq., Attorney for Scott D. MacArthur (Jul. 16, 2009).

⁹ See Agreement for Broadcast Tower Lease, Apr. 30, 2008.

¹⁰ The site of the licensed facility is located at North Latitude 42-11-38 and West Longitude 121-46-27. See File No. BL-19890216AC.

¹¹ See *Implementation of Section 403(l) of the Telecommunications Act of 1996*, 11 FCC Rcd 16499 (1996); see also 47 C.F.R. § 73.1740(c).

¹² See *Great Lakes Community Broadcasting, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 8239, 8244-47 (MB 2009) (finding that "construction with unauthorized facilities does not override the 'automatic forfeiture' provision in our Rules") (*citing Eagle Broadcasting Group, Ltd. v. FCC*, 563 F.3d 543, 545 (D.C. Cir. 2009) (affirming Commission's determination that station's broadcast license had expired pursuant to Section 312(g) of the Act, due to its failure to broadcast at its authorized facilities for one year) and *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 603 (2008) (affirming staff decision that station's license had expired as a matter of law due to the station's failure to broadcast at its authorized facilities for one year)).

Notwithstanding the fact that the Station was silent for more than 12 consecutive months, the Commission retains discretion under Section 312(g) of the Act to extend or reinstate such license “to promote equity and fairness.”¹³ However, the exercise of that discretion is not warranted here, where for nearly four years the Station was either silent or engaging in unauthorized operation.

Conclusion. For the foregoing reasons, pursuant to §§ 0.61 and 0.283 of the Commission’s Rules, the application for STA to remain silent (File No. BLSTA- 20070815ABF) IS DISMISSED; and the pending license renewal application (File No. BR-20060310AGJ) IS DISMISSED. Robert Wynne’s informal objection to the Station’s license renewal application IS DISMISSED AS MOOT.

The Commission’s public and internal databases will be modified to indicate that the broadcast license (File No. BL-19890216AC) for the Station EXPIRED as a matter of law, on or about July 1, 2007, and we HEREBY DELETE the station’s call sign, KRAM(AM).

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Scott D. MacArthur
Robert Wynne

¹³ 47 U.S.C. § 312(g).