



Federal Communications Commission
Washington, D.C. 20554

May 23, 2013

DA 13-1180
Released: May 23, 2013

The Bon-Tele Network, Inc.
168 Canterbury Lane
McMurray, Pennsylvania 15317

Re: Petition for Reconsideration,
License Cancellation of W63AU
Pittsburgh, Pennsylvania
Facility ID No. 65469

Dear Petitioner:

This is with respect to a Petition for Reconsideration¹ filed by The Bon-Tele Network, Inc. ("Bon-Tele"), seeking review of a letter decision released by the Video Division on February 1, 2013 cancelling the license of Station W63AU pursuant to 47 U.S.C. § 312 (g).² For the following reasons, we dismiss the Petition for Reconsideration.

Background. In 2011, the Commission formally notified all low power television stations operating on out-of-core channels 52-69, including Bon-Tele which was operating on Channel 63, that they must cease operations on those channels by December 31, 2011.³ The Commission further informed the displaced stations that their failure to transmit a broadcast signal for 12 consecutive months would result in automatic cancellation of the station's license under Section 312(g) of the Communications Act.⁴ Thus, by December 31, 2011 at the latest, Bon-Tele was required to cease out-of-core operations on Channel 63, and by December 31, 2012 at the latest, Bon-Tele was required to resume broadcast operations on a new in-core facility.

Although Bon-Tele held a construction permit for an in-core facility on channel 39,⁵ it did not construct and operate the facility within 12 months of terminating its out-of-core operations. Accordingly, in its February 1, 2013 letter decision, the Video Division informed Bon-Tele that because the station failed to transmit a broadcast signal since at least December 31, 2011, the license was

¹ The Bon-Tele Network, Inc., Petition for Reconsideration ("Bon-Tele Petition for Reconsideration") (received March 12, 2012).

² Letter from Hossein Hashemzadeh to The Bon-Tele Network, Inc. (Feb. 1, 2013) ("Cancellation Order").

³ See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Second Report and Order, 26 FCC Rcd 10732, 10743 (2011). Low power licensees had first been notified in 1997 that they would eventually need to clear this band. *Id.* at 10743-44.

⁴ *Id.* at 10749, n. 103. Section 312(g) of the Communications Act of 1934, as amended, provides that "[i]f 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 except that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness."

⁵ File No. BDISDTL-20110818AAS.

determined to be expired under Section 312(g) of the Communications Act. Cancellation of the license appeared on public notice on February 11, 2013.

On March 12, 2013, Bon-Tele's Petition for Reconsideration was received in the FCC mailroom. In its petition, Bon-Tele does not dispute that it received adequate notice of the applicability of Section 312(g) or that its failure to broadcast a signal for 12 consecutive months triggered the automatic expiration provision of Section 312(g) of the Act. Instead, Bon-Tele relies on the provision of Section 312(g) which states that the Commission may extend or reinstate a license expired under that section "to promote equity and fairness."⁶ The Licensee recounts its service to the community and efforts in promoting and advancing low power television service as the bases for requesting that the Commission invoke this provision.⁷

Discussion. We dismiss the petition for reconsideration because it was not properly filed in accordance with the Commission's Rules. Petitions for reconsideration must be filed with the Office of the Secretary.⁸ Petitions that are not submitted to the Secretary are not considered properly filed,⁹ and the Rules further notify Commission filers that documents submitted to the wrong location will not be processed.¹⁰ Bon-Tele apparently sent its petition directly to the FCC's mailroom and not to the Secretary's Office. We therefore dismiss the petition as improperly filed.¹¹

Bon-Tele also cannot cure this deficiency through a second filing with the Secretary. Section 405(a) of the Act, as implemented by section 1.106(b) of the Commission's rules, specify that petitions for reconsideration must be filed within 30 days of the public notice of the underlying order.¹² Any filing made by Bon-Tele at this time would be past the 30-day deadline for filing a petition for reconsideration of the cancellation, which appeared on public notice on February 11, 2013. The United States Court of Appeals for the District of Columbia Circuit has consistently held that the Commission is without authority to extend or waive the statutory thirty-day filing period for filing petitions for reconsideration specified in Section 405(a) of the Communications Act,¹³ absent compelling circumstances.¹⁴ We note

⁶ Bon-Tele Petition for Reconsideration at 1.

⁷ *Id.* at 1-4.

⁸ 47 C.F.R. § 1.106(i) ("Petitions for reconsideration, oppositions, and replies shall . . . be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554, by mail, by commercial courier, by hand, or by electronic submission through the Commission's Electronic Comment Filing System or other electronic filing system (such as ULS)."); *cf. Convergence Entertainment and Communications, LLC*, Order, 2013 WL 1187689 at *2 n.11 (Vid. Div. March 20, 2013), *Thomas R. Morrison*, Letter Decision, 24 FCC Rcd 5805, 5806 (WTB 2009).

⁹ 47 C.F.R. § 1.106(i) ("Petitions submitted only by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed.").

¹⁰ 47 C.F.R. § 0.401; *see also* 47 C.F.R. § 1.7 ("documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission").

¹¹ *Thomas R. Morrison*, 24 FCC Rcd at 5806 (dismissing petition for reconsideration that was not filed with the Secretary's office); *Thomas K. Kurian*, Order on Further Reconsideration, 22 FCC Rcd 13223, 13224 (WTB 2007).

¹² 47 C.F.R. § 405(a) ("A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of."); 47 C.F.R. § 1.106(b) ("The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action . . .")

¹³ *See Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986); *Gardner v. FCC*, 530 F.2d 1086 (D.C. Cir. 1976).

the filing requirement of Section 405(a) of the Act applies even if the petition for reconsideration is filed only one day late.¹⁵

We further find that even if Bon-Tele's Petition was not procedurally defective, the Petition would fail on the merits. Bon-Tele maintains that equity and fairness support reinstatement of this expired license. We have carefully considered Bon-Tele's request and conclude that it has failed to demonstrate circumstances that warrant exercise of our discretion under Section 312(g) to reinstate a license "to promote equity and fairness." In the past, the Commission has exercised its discretion in cases involving natural disaster or other compelling circumstances outside of the licensee's control which forced cessation of the station's operations. For example, in *V.I. Stereo Communications Corp.*,¹⁶ the Commission on reconsideration concluded that the station's extended silence was understandable and that reinstatement was warranted, given the fact that the station's tower had been destroyed by a hurricane and, after it was rebuilt, again sustained substantial damage from three more hurricanes. In another case, the staff reinstated an expired permit when the station's extended silence was the result of the licensee's compliance with an order issued by a state court.¹⁷

Here, Bon-Tele has not demonstrated the occurrence of similarly compelling circumstances which forced the station to remain silent for more than 12 months. Instead, Bon-Tele relies on its past broadcasting experience and achievements as potential grounds for reinstating the license. We find this argument unpersuasive, however, given that the ability to avoid the license's cancellation was within Bon-Tele's control. Bon-Tele had ample notice of the need to construct and operate its in-core facility by no later than December 31, 2012 and full awareness of the implications of failing to transmit a broadcast signal for twelve consecutive months.¹⁸

Thus, in accordance with precedent, we decline to exercise our discretion under the Section 312(g) "equity and fairness" provision to reinstate the license, which expired by operation of law due to circumstances within Bon-Tele's control. Accordingly, **IT IS ORDERED** that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of

¹⁴ See *Reuters, Ltd. v. FCC*, 781 F.2d at 952 (holding that express statutory limitations barred the Commission from acting on a petition for reconsideration that was filed after the due date); *Gardner v. FCC*, 530 F.2d at 1091 (excepting where "extraordinary circumstances indicate that justice would thus be served").

¹⁵ See, e.g., *Panola Broadcasting Co.*, Memorandum Opinion and Order, 68 FCC 2d 533 (1978) (dismissing petition for reconsideration that was filed one day after the statutorily allotted time for filing requests for reconsideration); *Metromedia, Inc.*, Memorandum Opinion and Order, 56 FCC 2d 909 (1975).

¹⁶ *V.I. Stereo Communications Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006).

¹⁷ *Mark Chapman, Court-Appointed Agent*, Letter, 22 FCC Rcd 6578 (Audio Div. 2007)

¹⁸ See *A-O Broadcast Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617 (2008) (rejecting past broadcasting experience as a legal or equitable basis for overcoming the cancellation provision of Section 312(g) of the Act).

the Commission's rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by The Bon-Tele Network, Inc. on March 12, 2013 **IS DISMISSED**.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau