

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

In the Matter of
Southern TV Corporation
DWGSA-CA, Savannah, GA
Facility ID No. 69447

ORDER ON RECONSIDERATION

Adopted: March 31, 2016

Released: March 31, 2016

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this Order on Reconsideration, we dismiss the February 12, 2016 Petition for Reconsideration (Petition) filed by Southern TV Corporation (STV), the former licensee of deleted Class A television station DWGSA-CA, Savannah, GA (Station), pursuant to our delegated authority under Section 1.106(b)(3) of the Commission’s Rules (Rules). STV seeks reconsideration of the Memorandum Opinion and Order (MO&O) issued by the Commission denying STV’s Application for Review. The MO&O affirmed the Video Division’s (Division) cancellation of the Station’s license and deletion of its call-sign pursuant to Section 312(g) of the Communications Act of 1934 (Act), as well as the dismissal of its request for Special Temporary Authority (STA) to operate the Station at variance from its license. For the foregoing reasons we dismiss the Petition.

II. BACKGROUND

2. On September 30, 2015, STV filed an Application for Review of the Division’s actions described above. On review, STV had claimed that the Station’s extended silence was due to the Division’s refusal to grant its STA request pursuant to an alleged Division policy against acting on Class A STA requests. STV argued that this purported policy was discriminatory and ran afoul of both Commission precedent and the Administrative Procedure Act. It requested that the Commission overturn the policy and reinstate the Station’s license and STA, pursuant to the “fairness and equity” provision of Sections 312(g) of the Act. In the MO&O, the Commission concluded that STV had failed to make the

1 Petition for Reconsideration of Southern TV Corp. (filed Feb. 12, 2016) (Petition).

2 47 C.F.R. § 1.106(b)(3).

3 Southern TV Corp., Memorandum Opinion and Order, FCC 16-2 (rel. Jan. 13, 2016) (MO&O).

4 Application for Review of Southern TV Corp. (Sept. 30, 2015) (AFR).

5 Pursuant to Section 312(g), if a broadcast station “fails to transmit broadcast signals for any consecutive 12-month period,” its license expires automatically at the end of that period. Section 312(g) allows for license reinstatement only 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.” 47 C.F.R. § 312(g).

6 See Letter from Hossein Hashemzadeh, Chief, Video Division to Southern TV Corp. (Vid. Div., Feb. 3, 2015); Letter from Barbara A. Kreisman, Chief, Video Division to Peter Tannenwald and Davina Sashkin (Vid. Div. Sept. 1, 2015)(Letter Decision).

7 AFR at 1.

8 AFR at 2.

requisite showing to warrant such reinstatement of the Station's license.<sup>9</sup> It also determined that "STV's allegation of the existence of such a Division policy was unsubstantiated and irrelevant to the merits of the Division's underlying decision not to grant STV yet another STA to operate the Station with reduced facilities."<sup>10</sup> Rather, the Commission concluded that the Division "acted appropriately due to STV's failure to make the showing necessary to warrant the issue of yet another STA to operate at reduced facilities."<sup>11</sup>

3. On February 12, 2016, STV filed a Petition for Reconsideration seeking review of the *MO&O*. STV again maintained that it was the result of the imposition of the Division's "unlawful" purported policy against acting on Class A STA requests that it was unable to resume service and prevent automatic expiration of the Station's license under Section 312(g).<sup>12</sup> In support of its renewed allegation that such a policy existed, STV attached to its Petition a list of 28 STA requests that it alleged were filed on or after November 19, 2012 and remained pending as of February 11, 2016. It also referenced two Class A STAs that STV appeared to contend were the only two such STAs granted in all of 2015.<sup>13</sup> STV did not raise any other arguments or challenges to the Commission's *MO&O*, including the Commission's conclusion that, independent of this purported policy, STV had failed to substantively make the showing necessary to obtain another STA to operate at variance from its licensed parameters.

### III. DISCUSSION

4. Commission rules specify limited circumstances under which a party may seek reconsideration of a Commission denial of an Application for Review. Under Section 1.106(b)(2), in such a case, a Petition for Reconsideration will be entertained only if the petition (i) "relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission," and/or (ii) "relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity."<sup>14</sup> A petition that fails to introduce relevant new facts or changed circumstances may be dismissed by staff as repetitious.<sup>15</sup>

5. STV's Petition solely seeks to provide support for its unsuccessful argument that an "unlawful" and "discriminatory" Division policy against acting on Class A STA requests resulted in the denial of its request and that such denial prevented the Station from resuming service prior to expiration of its license under Section 312(g) of the Act.<sup>16</sup> This argument was previously advanced by STV in its filings below<sup>17</sup> and fully addressed and repeatedly rejected in decisions by both the Division and

---

<sup>9</sup> *MO&O* at para. 7.

<sup>10</sup> *Id.* at para. 5. The STA request at issue was STV's ninth request for reduced facilities and/or silent authority filed between 2009 and 2012. Section 73.1635(a)(4) of the Rules requires that a licensee "demonstrate that any further extensions requested are necessary and that all steps to resume normal operation are being undertaken in an expeditious and timely fashion." 47 C.F.R. § 73.1635(a)(4).

<sup>11</sup> *Id.*

<sup>12</sup> Petition at 2.

<sup>13</sup> *Id.* at 4.

<sup>14</sup> 47 C.F.R. § 1.106(b)(2).

<sup>15</sup> 47 C.F.R. § 1.106(b)(3).

<sup>16</sup> See Petition at 2. As noted above, STV does not take issue with any other Commission finding in the *MO&O*. See *supra* para. 3.

<sup>17</sup> AFR at 3-4, 5; Petition for Reconsideration of Southern TV Corp. at 1-2 (filed Feb. 25, 2015); Petition for Relief under Section 312(g) of the Communications Act of Southern TV Corporation at 2 (filed May 2, 2013).

Commission.<sup>18</sup> Although STV purports to provide additional evidence in support of its argument that the policy, in fact, exists, it does not show why these facts could not have been raised in earlier pleadings.<sup>19</sup> Regardless, both the Division and Commission have concluded not only that STV's "unlawful" policy argument is meritless, but also that such purported policy had no bearing on the underlying decision that STV failed to make the requisite showing to warrant grant of a ninth STA to operate the Station at variance from its licensed parameters. They similarly concluded that the Station's failure to transmit a broadcast signal for twelve consecutive months was a result of STV's own actions, finances, and/or business judgments and not a result of forces beyond STV's control.<sup>20</sup> The number of STA requests filed by other parties involving other stations pending before the Commission and the reason that those requests may remain pending has no bearing on the specific facts presented to the Commission regarding STV's particular STA request and its request for license reinstatement pursuant to the "fairness and equity" provision of Section 312(g) of the Act.

#### IV. ORDERING CLAUSE

6. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 405(a), and Section 1.106(b)(3) of the Commission's rules, 47 C.F.R. § 1.106(b)(3), the Petition for Reconsideration filed by Southern TV Corporation IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

---

<sup>18</sup> *MO&O* at para. 5; *Letter Decision* at 5 and fn. 40.

<sup>19</sup> While STV contends that between November 19, 2012 and February 11, 2016, 28 Class A STA requests were filed that remain pending, STV glosses over the fact that, during the very same time period, there were 56 Class A STA requests both filed and acted on, including 33 that were granted by the Division. The granting of STA requests is permissive in nature and their review is fact-specific. *See* 47 USC § 309(f) (providing staff with discretion to act on an STA request "if it finds that there are extraordinary circumstances requiring temporary operations in the public interest and that delay... would seriously prejudice the public interest"); 47 C.F.R. § 73.1635 (implementing that provision of the Act and specifying special considerations for evaluating STA requests and those for extension of STAs). Accordingly, staff must evaluate each STA request on a case-by-case basis. The fact that some STA requests remain pending does not demonstrate a Division policy prohibiting action on Class A STA requests. In fact, a complete analysis of the Commission's application databases (CDBS and LMS) clearly refutes such a claim.

<sup>20</sup> *MO&O* at paras. 5-7; *Letter Decision* at 4-5.