

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

In the Matter of)	
)	
Chinese Voice of Golden City)	
)	
DKQLS-LP, Las Vegas, Nevada)	Facility ID No. 194198
)	
Application for a Low Power FM License)	File No. BLL-20171120AAB
Broadcast Station License)	
)	
Application for Modification to Transmission)	File No. BMLL-20190809AAL
Parameters of Licensed Facility)	

MEMORANDUM OPINION AND ORDER

Adopted: January 15, 2020

Released: January 15, 2020

By the Chief, Media Bureau:

I. INTRODUCTION

1. We have before us a Petition for Reconsideration (Petition) filed by Chinese Voice of Golden City (CVGC). Prior to December 13, 2018, CVGC held a license to operate KQLS-LP, Las Vegas, Nevada (Station).¹ CVGC seeks reconsideration of a Media Bureau (Bureau) letter decision, which found the Station’s license had expired as a matter of law on December 13, 2018, dismissed CVGC’s application to modify the Station’s license to reflect the fact that the Station was constructed at geographic coordinates different from those specified in the Station’s license (and the construction permit which that license covered), and dismissed its request for special temporary authority (STA Request) to operate from the site in use.² For the reasons discussed below, we deny the Petition.

II. BACKGROUND

2. CVGC applied for a construction permit (Permit) for a new LPFM station at Las Vegas, Nevada, on November 15, 2013.³ Because the facilities CVGC proposed did not comply with the second-adjacent channel minimum distance separation requirements set forth in section 73.807 of the Commission’s rules (Rules) with respect to KISF(FM), Las Vegas, Nevada, and KCYE(FM), Boulder City, Nevada,⁴ CVGC requested a waiver of those requirements. In support of its waiver request, CVGC submitted a technical exhibit that stated the interference contour of the proposed facilities would extend no more than 24 meters in the direction of KISF(FM) and KCYE(FM), asserted that “there are no dwellings within 24 meters of the proposed tower,” and further alleged that the interference contour “is

¹ The Station is now identified in our licensing database as DKQLS-LP.

² *Chinese Voice of Golden City*, File Nos. BLL-20171120AAB, BMLL-20190809AAL, Letter Order (MB Nov. 19, 2019) (*Letter Order*).

³ File No. BNPL-20131115AGM (Permit Application).

⁴ CVGC noted that section 73.807 required the proposed transmitter site to be 93 kilometers from these stations and indicated that the proposed transmitter site was 28.5 kilometers from that of KCYE(FM) and 23.7 kilometers from that of KISF(FM). Permit Application, Attach. 11.

well above ground level.”⁵ The Bureau approved CVGC’s second-adjacent channel spacing waiver request based on this showing of no population within the 24-meter radius of the proposed Station’s interference contour.⁶

3. The Bureau granted the Permit Application on November 20, 2014.⁷ The Permit specified that the geographic coordinates for the Station’s antenna were 36°11’24”N, 115°08’35”W (Permit Site). The construction deadline was November 20, 2017.⁸ CVGC timely filed an application (License Application) for a license to cover the facilities authorized in the Permit.⁹ Therein, CVGC certified that it had constructed the Station as authorized. Staff granted the License Application on December 12, 2017.¹⁰

4. Subsequently, on August 9, 2019, CVGC filed an application (License Modification Application) to modify the Station’s license.¹¹ Therein, CVGC stated that it had “recently determined that the coordinates included in its License Application were in error by 256 feet.”¹² CVGC indicated that the correct coordinates were 36°11’21.6”N, 115°08’36.1”W (West Owens Avenue Site).¹³ On October 22, 2019, CVGC filed the STA Request.¹⁴

5. On November 19, 2019, the Bureau issued the *Letter Order*. The Bureau noted that the Commission’s records indicated that the Station had been operating from an unauthorized site since December 12, 2017. Based on this, the Bureau found that the Station’s license had expired pursuant to section 312(g) of the Communications Act of 1934, as amended (Act).¹⁵ The Bureau indicated that “the facts of this case do not support reinstatement of the license to promote fairness and equity.”¹⁶ In reaching this conclusion the Bureau noted that the Commission has exercised its statutory discretion to reinstate a license that expired pursuant to section 312(g) “only when failure to timely resume broadcasts was for a compelling reason beyond the licensee’s control.”¹⁷ Finally, the Bureau noted that “CVGC improperly requested to make the coordinate change on an application for modification of license,” citing section 73.875(b)(2).¹⁸ Based on these findings, the Bureau modified the Commission’s databases to

⁵ *Id.*

⁶ *Id.*

⁷ *Broadcast Actions*, Public Notice, Report No. 48373, at 11 (MB Nov. 25, 2014).

⁸ The Permit originally had an expiration date of May 20, 2015. However, on May 25, 2016, the construction deadline was extended for an additional 18 months.

⁹ File No. BLL-20171120AAB (License Application).

¹⁰ *Broadcast Actions*, Public Notice, Report No. 49133, at 4 (MB Dec. 15, 2017).

¹¹ File No. BMLL-20190809AAL (License Modification Application). The Bureau granted the License Modification Application on August 16, 2019, but rescinded that grant on August 20, 2019. *See Broadcast Actions*, Public Notice, Report No. 49555, at 4 (MB Aug. 21, 2019); *Broadcast Applications*, Public Notice, Report No. 29557, at 7 (MB Aug. 23, 2019).

¹² *See License Modification Application*, Exh. 5.

¹³ *Id.*

¹⁴ File No. BSTA-20191022AAR.

¹⁵ 47 U.S.C. § 312(g); *see also Letter Order* at 2.

¹⁶ *Letter Order* at 2.

¹⁷ *Letter Order* at 1 n. 5.

¹⁸ *Letter Order* at 1, citing 47 CFR § 73.875(b)(2). Section 73.875(b)(2) of the Rules permits certain changes to LPFM facilities—including “[a]ny change in station geographic coordinates, including coordinate corrections and

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reflect expiration of the Station's license and deleted the Station's call sign. It also dismissed the License Modification Application and the STA Request.

6. CVGC then filed the Petition, arguing that the *Letter Order*: (a) relies on the wrong licensed coordinates; (b) conflicts with section 73.1690(c)(11) of the Rules; (c) contradicts Commission precedent; and (d) errs in finding that the facts do not support reinstatement of the license to promote fairness and equity.¹⁹

7. In connection with its consideration of the Petition and related pleadings, the Bureau reviewed certain records from an Enforcement Bureau (EB) investigation of the Station. In particular, Bo Tian, President of CVGC, provided a detailed history of the Station's site changes with a statement dated August 8, 2019, one day before he certified and filed the License Modification Application.²⁰ The Tian Statement discloses that: (a) the Station never operated from the Permit Site; (b) the Station was put into operation with mobile facilities at the West Owens Avenue Site on or about November 18, 2017; (c) on or about January 20, 2018, CVGC relocated the Station without Commission approval to the rooftop of 1707 East Charleston Boulevard (East Charleston Boulevard Site), "which is 2.27 miles from [the West Owens Avenue Site] but closer to Chinatown;"²¹ and (d) following EB inspections, including in April of 2019, CVGC stopped operating from the East Charleston Boulevard Site and resumed operations with mobile facilities at the West Owens Avenue Site on or about May 2, 2019.²²

III. DISCUSSION

8. For the reasons stated below, we deny the petition for reconsideration. At the outset, we acknowledge that the *Letter Order* contains a typographical error related to the coordinates specified in the Station's license.²³ However, because the decision relied upon section 73.875(b)(2) and that section requires the filing of a construction permit application on FCC Form 318 for "any change in station

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any move of the antenna to another tower structure located at the same coordinates"—to be made "only after the grant of a construction permit application on FCC Form 318."

¹⁹ CVGC concurrently filed with the Media Bureau a Motion for Stay, which urged the Bureau to "stay the effectiveness of [the *Letter Order*] and allow KQLS-LP to continue broadcasting while its Petition is pending." Motion for Stay of Chinese Voice of Golden City, Pleading File No. 0000092790, at 2 (filed Dec. 5, 2019). It subsequently filed an Emergency Stay Request with the Commission, which sought a stay of the actions taken in the *Letter Order* "while the Bureau considers the Petition." Emergency Stay Request of Chinese Voice of Golden City, Pleading File No. 0000094993, at 2-3 (filed Dec. 17, 2019). Additionally, Silver State Broadcasting, LLC (SSB) filed a Motion for Leave to File Out of Time, Opposition to Petition for Reconsideration, Opposition to Motion for Stay, and Petition for Expedited Action on January 2, 2020. Pleading File Nos. 0000094773, 0000094771, and 0000094769. CVGC filed a Reply to Opposition to Petition for Reconsideration on January 13, 2020. Pleading File No. 0000097041. Because we herein address the merits of the Petition and uphold the actions taken in the *Letter Order*, CVGC's stay requests, SSB's pleadings, and CVGC's reply to SSB's opposition are rendered moot and therefore are dismissed.

²⁰ Statement of Bo Tian (Aug. 8, 2019) (Tian Statement).

²¹ *Id.* at 2, para. 8.

²² *Id.* at 2, paras. 7-11. The Tian Statement indicates that the Station's operations from the West Owens Avenue Site used a "mobile production van" with transmission capability from November 2017 to January 2018 and May-July 2019 (*id.*) and then a tower/antenna mounted on a trailer (*id.* and Attach. 2). In light of our action here, we need not decide whether either of those mobile operations were licensable. See *Matinee Media Corp.*, Letter Order, 33 FCC Rcd 6685 (MB 2018).

geographic coordinates,” we find this error was harmless.²⁴

9. Next, we reject CVGC’s argument that the Bureau erred in applying section 73.875(b)(2) of the Rules in a manner that “completely ignores” section 73.1690(c)(11), which it asserts “covers all broadcast licensees” and thus “clearly applies to LPFM license[e]s.”²⁵ This argument ignores section 73.801 of the Rules, which contains a list of the broadcast regulations applicable to LPFM stations.²⁶ That list does not include section 73.1690(c)(11), and therefore CVGC’s argument is meritless.²⁷

10. We note that the Bureau’s *Letter Order*, based on the very limited information set forth in the License Modification Application, concluded that the Station operated without Commission approval from the West Owens Avenue Site for more than a year, resulting in license forfeiture under section 312(g). The Tian Statement shows that the Station never operated from the only authorized site (the Permit Site), but instead operated from two unauthorized sites (the West Owens Avenue Site and the East Charleston Boulevard Site) for more than a year in total, including more than a year at the latter site. This change in the Bureau’s understanding of the facts does not alter the conclusion in the *Letter Order* that the Station’s license was forfeited pursuant to section 312(g), but it completely undermines CVGC’s argument that this case involves a mere coordinate correction of less than three seconds and that the Bureau’s action is inconsistent with cases involving coordinate corrections.²⁸

11. We further reject CVGC’s suggestion that we create a *de minimis* exception to section 73.875(b)(2).²⁹ This case illustrates why accuracy is essential for LPFM construction. The permit was issued based on a second-adjacent channel waiver showing that there were no structures within the radius of the Station’s 24-meter interference contour. A change in coordinates in any direction requires a new engineering analysis. CVGC does not even claim to have undertaken any such analysis, let alone submitted it for prior Commission review and approval as required under section 73.875 of the Rules.

12. We also reject CVGC’s arguments that the *Letter Order* “is contrary to a long line of

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²³ The *Letter Order* misstates the Station’s licensed coordinates as 35°11’24”N, 115°08’35”W instead of the licensed coordinates of 36°11’24”N, 115°08’35”W. *Letter Order* at 1.

²⁴ See, e.g., *Greater Boston Television Corp. v. FCC*, 44 F.2d 841, 851 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971) (The court will not upset a decision because of errors that are not material, “there being room for the doctrine of harmless error”). Likewise, it appears from the Tian Statement that the correct date for the Station’s license expiration pursuant to section 312(g) may have been as early as November 19, 2018, but that does not alter the outcome here.

²⁵ Petition at 8.

²⁶ 47 CFR § 73.801.

²⁷ Moreover, in adopting section 73.1690(c)(11), the Commission not only limited the applicability of its new streamlined coordinate correction procedure to corrections involving changes by full-service broadcast stations of less than three seconds latitude and three seconds longitude, but also specified that the procedure could be used only when the coordinate corrections “do not result in short-spacings or aggravate existing short-spacings.” *1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules*, Second Report and Order, 15 FCC Rcd 21649, 21668, para. 36 (2000). Thus, section 73.1690(c)(11) provides that a correction in coordinates “may not result in any new short spacings or increases in existing short spacings.” 47 CFR § 73.1690(c)(11). CVGC has never argued or shown that there was no increase of the Station’s short-spacing at the West Owens Avenue Site. As for the East Charleston Boulevard Site, there is no colorable argument that the difference in coordinates from the Permit Site is less than three seconds, nor was there a claim made that the short-spacing would not be increased there.

²⁸ Petition at 6-7, 10-11.

²⁹ In support of this argument, CVGC cites Commission precedent that pre-dates and is codified in section 73.1690(c)(11). Petition at 8, 14-15.

Commission precedent” and that the Commission “usually issues a notice of violation or a notice of apparent liability for forfeiture when it has reason to believe that a licensee’s coordinates are not correct.”³⁰ There are critical differences between rule violations and section 312(g) of the Act. While the Commission has discretion to shape a remedy for rule violations,³¹ license expiration under section 312(g) is automatic as a matter of law, absent specific circumstances, such as “to promote equity and fairness.”³² To that end, notices of violation put a licensee on notice that a rule violation has been found and seek information about the violation and how the licensee proposes to remedy it. Such an inquiry was unnecessary in this case, as CVGC admitted to operating at an unauthorized site for over a year.³³ Similarly, we reject CVGC’s contention that a notice of apparent liability for forfeiture (NALF) would be a more appropriate sanction. None of the NALFs cited by CVGC concern operation from unauthorized facilities for more than a year, thereby leading to license expiration under section 312(g).³⁴

13. Further, CVGC’s reliance on the Commission’s actions in *Lighthouse* and *KM* is misplaced.³⁵ In those cases, the Commission considered siting errors to be correctible when the permittee attempted to build pursuant to its existing authorization and the results were non-conforming. Although the Commission can extend or reinstate a license that has automatically expired to “promote equity and fairness,” such waivers are fact-specific. In both *Lighthouse* and *KM*, operation from the unauthorized location did not cause or exacerbate any short-spacing.³⁶ CVGC did not claim or show that is the case here.³⁷ Furthermore, because the Station actually operated for more than a year from a site over two miles away from its licensed site, there is a much larger variance involved here, as well as no question about the licensee’s decision to operate from an unauthorized location to improve the Station’s coverage.³⁸

14. Next, we turn to CVGC’s assertion that the *Letter Order* requires “absolute accuracy” in the geographic coordinates submitted by applicants, which it argues is not possible.³⁹ This argument appears to be a criticism of the policy set forth in section 73.875 of the Rules. General criticisms of Commission policy and suggested revisions to that policy are more appropriately raised in a petition for rulemaking rather than in a fact-specific adjudicatory proceeding such as this.⁴⁰ The institution of notice-

³⁰ Petition at 8-12.

³¹ See 47 U.S.C. § 503.

³² 47 U.S.C. § 312(g).

³³ License Modification Application, Exh. 5.

³⁴ *Sun Tan Educational Media*, Order, DA 19-638, 2019 WL 4240779 (MB and EB Sept. 5, 2019) (four months of unauthorized operation); *Zuma Beach FM Emergency and Community Broadcasters, Inc.*, Memorandum Opinion and Order, DA 19-637, 2019 WL 3037167 (MB July 10, 2019) (one month of unauthorized operation); *Alabama Media, LLC*, Notice of Apparent Liability for Forfeiture, DA 19-212 (MB Mar. 27, 2019) (less than a year of unauthorized operation); *Wendolynn Tellez*, Forfeiture Order, 33 FCC Rcd 4594 (MB May 7, 2018) (less than a year of unauthorized operation).

³⁵ See *KM Radio of St. Johns, LLC*, Memorandum Opinion and Order, 19 FCC Rcd 5847 (2004) (*KM*); *Lighthouse Cristian Center*, Memorandum Opinion and Order, 32 FCC Rcd 6444 (MB 2017) (*Lighthouse*).

³⁶ *KM*, 19 FCC Rcd at 5850-51, para. 9; *Lighthouse*, 32 FCC Rcd at 6450, para. 17.

³⁷ See *supra* paras. 10-11.

³⁸ In *Lighthouse*, the constructed facility was 364 feet from the licensed site. *Lighthouse*, 32 FCC Rcd at 6446 n.12. In *KM*, the constructed facility was 900 feet from the licensed site. *KM*, 19 FCC Rcd at 5850-51, para. 9.

³⁹ Petition at 13.

⁴⁰ See, e.g., *Community Television of Southern California v. Gottfried*, 459 U.S. 498, 511 (1984) (citation omitted) (“rulemaking is generally a ‘better, fairer and more effective’ method of implementing a new industry-wide policy”); *Sunburst Media L.P.*, Memorandum Opinion and Order, 17 FCC Rcd 1366 (2001) (stating “it has long

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and-comment rulemaking, if warranted, would allow for the development of a complete record on which the Commission could make an informed decision.

15. We further reject CVGC's assertion that reinstatement of the Station's license is appropriate to "promote equity and fairness."⁴¹ The Commission exercises its statutory discretion to extend or reinstate a license that has expired pursuant to section 312(g) "only in rare circumstances where a station was silent as the result of natural disasters or other compelling reasons beyond the licensee's control."⁴² CVGC does not allege that the Station's construction at the wrong location was beyond its control. Rather, CVGC erroneously claims that "CVGC made no changes to its licensed facilities"⁴³ when in fact it moved its transmitter site without prior approval to be closer to Chinatown and then sought to reverse course, in the guise of a coordinate correction, after an EB inspection revealed the blatant rule violation. Moreover, it would not "promote equity and fairness" to extend or reinstate the expired license here considering that the Station did not show the unauthorized site changes did not cause or exacerbate any short-spacing.

16. Finally, based on the Tian Statement, we conclude that CVGC may have withheld material information in the License Modification Application and made incorrect statements to the Commission in the Petition when it repeatedly claimed that the Station's actual transmitter site was never changed.⁴⁴ It is possible that CVGC has engaged in misrepresentation and/or lack of candor. However, given that this decision affirms the cancellation of the Station's license and dismissal of the License Modification Application and STA Request, we will not at this time pursue enforcement action. We will, however, require that CVGC and its principals attach a copy of this decision to any FCC broadcast application that any of them file in the next five years so that a character assessment can be made in connection with any such application.⁴⁵

IV. ORDERING CLAUSES

17. ACCORDINGLY, IT IS ORDERED that the Petition for Reconsideration filed by Chinese Voice of Golden City on December 5, 2019, IS DENIED, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, and section 1.106 of the Commission's Rules.⁴⁶

18. IT IS FURTHER ORDERED that the Motion for Stay and the Emergency Stay Request filed by Chinese Voice of Golden City on December 5, 2019, and December 17, 2019, respectively, ARE DISMISSED.

19. IT IS FURTHER ORDERED that the Motion for Leave to File Out of Time, the Opposition to Petition for Reconsideration, the Opposition to Motion for Stay, and the Petition for

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been Commission practice to make decisions that alter fundamental components of broadly applicable regulatory schemes in the context of rule making proceedings, not adjudications").

⁴¹ Petition at 15-17.

⁴² *Christian Broadcasting of East Point, Inc.*, 30 FCC Rcd 13975, para. 4 (2015). See *Eagle Broadcasting Group, Ltd. v. FCC*, 563 F. 3d 543, 553 (D. C. Cir. 2009) ("Under the statute, unauthorized and unlicensed transmissions are no better than silence."). See also *Letter Order* at 1 n. 5, citing *V.I. Stereo Comm'n Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006); *Harry Martin, Esq.*, Letter Order, 23 FCC Rcd 15012 (MB 2008); *Mark Chapman, Court-Appointed Agent*, Letter Order, 22 FCC Rcd 6578 (MB 2007).

⁴³ Petition at 16.

⁴⁴ 47 CFR §1.17; Petition at 7, 10, 15, 16, 17.

⁴⁵ See *E-String Wireless, Ltd.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 133, 139, para. 18 (MB 2016).

⁴⁶ 47 U.S.C. § 155(c)(5); 47 CFR § 1.115(g).

Expedited Action filed by Silver State Broadcasting, LLC on January 2, 2020, and the Reply to Opposition to Petition for Reconsideration filed by Chinese Voice of Golden City on January 13, 2020, ARE DISMISSED.

20. IT IS FURTHER ORDERED that Chinese Voice of Golden City (and each of its principals, Bo Tian, Jinghua Liu, Ai-Chu Chang, and Rongrong Li, as well as any entity in which any of them holds an interest that is attributable under the standard set forth in 47 CFR § 73.3555 or subject to the ownership and control disclosure standard set forth in 47 CFR § 1.2112) SHALL SUBMIT a copy of this Memorandum Opinion and Order with every broadcast application – FCC Form 301, 302 (any version), 303-S, 308, 309, 310, 314, 315, 316, 318, 319, 340, 345, 346, 347, 349 or 350 – that any of them file with the Commission for a period of five years from the release date of this Memorandum Opinion and Order.

21. This action is taken pursuant to delegated authority under section 0.283 of the Commission's rules.⁴⁷

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Media Bureau

⁴⁷ 47 CFR § 0.283.