



Federal Communications Commission
Washington, D.C. 20554

DA 22-1352

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In Reply Refer to:

1800B-IB

Amy Meredith
Powell Meredith Communications Co.
7884 Peacock Lane
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(via email to: amymeredithradiolane@gmail.com)

In re: DW270CS, Gulfport, MS
Facility ID No. 142760
File Nos. BLSTA-20211123AAJ,
BNPFT-20150518AFL,
0000153439

Dear Ms. Meredith:

The Media Bureau (Bureau) has before it a petition¹ from Powell Meredith Communications Co. (PMC) seeking reconsideration of a Bureau decision² that: (1) rescinded the license grant for FM translator station W270CS, Gulfport, MS (Station);³ (2) determined that the underlying construction permit⁴ was forfeited for failure to meet a license condition; and (3) dismissed as moot an application for special temporary authority (STA) to remain silent.⁵ For the reasons set forth below, we deny reconsideration.

Background. On September 1, 2021 the Bureau granted a license application in which PMC asserted that it had completed construction at the location authorized in its construction permit, a commercial tower owned by Pinnacle, LLC (Pinnacle and/or Pinnacle Site).⁶ The License included a standard condition which: (1) required continuous operation for the first year from an authorized, durable structure; (2) provided that failure to do so would establish a rebuttable presumption that construction had only been temporary; and (3) stated that failure to present evidence sufficient to rebut the presumption of

¹ Petition for Reconsideration of the Rescission of the Grant of FM Translator W270CS Gulfport, MS (rec. Jun. 29, 2022) (Petition).

² Amy Meredith, Letter Order, DA 22-633 (MB Jun. 14, 2022) (Decision).

³ See File No. 0000153439 (granted Sept. 1, 2021, grant rescinded Jun. 14, 2022).

⁴ See File No. BNPFT-20150518AFL (granted Jan. 29, 2016, expired Aug. 4, 2021).

⁵ See Application File No. BLSTA-20211123AAJ (rec. Nov. 23, 2021) (STA Application).

⁶ PMC referenced the antenna structure registration number and coordinates of the Pinnacle tower. See Application File No. 0000153439, Antenna Location Data (rec. Jul. 20, 2021) (License Application) (granted Sept. 1, 2021) (License). PMC apparently left blank, however, the certifications that it was required to make that it had complied with all license terms and conditions. See *id.*, Legal Certifications, Obligations.

temporary construction would result in rescission of the license grant.⁷ The Bureau has placed this condition on all new radio broadcast licenses since June 2015 to address temporary construction practices that were prevalent prior to that time and that the Commission considered abusive.⁸

On November 23, 2021, *i.e.*, only three months into the Station's first year of licensure, PMC requested STA to remain silent, thereby raising the presumption that construction had been temporary.⁹ Because information in the record was insufficient to rebut the presumption,¹⁰ the Bureau sent a letter of inquiry (LOI) to PMC.¹¹ PMC admitted in its Response that it had operated only between July 19, 2021 and August 30, 2021, *i.e.*, that it had operated while the License Application was pending but had never operated following the September 1, 2021 license grant. PMC also disclosed that it had not built at the authorized Pinnacle Site but, rather, approximately 30 yards away on an amateur (ham) radio tower in a

⁷ The condition stated in full: "Grant of this license application is conditioned upon the continuous operation of the licensed facility for the twelve-month period following grant, including specifically: (a) operation of the station in accordance with the station's FCC authorization with (i) an antenna mounted on a pole, tower, or other structure that is attached to a durable, non-movable structure, (ii) the antenna connected to a permanent power source, and (iii) if located on public property, advance approval by a written governmental authorization; and (b) operation of the station each day in accordance with the FCC's rules for minimum operating schedule [47 C.F.R. § 73.1740(a) for FM stations, 47 C.F.R. § 73.561(a) for NCE-FM stations and 47 C.F.R. § 73.850(b) for LPFM stations] without recourse to the procedures set out in 47 C.F.R. §§ 73.1740(a)(4), 73.561(d), and 73.850(d). The failure of the station to operate in compliance with any of the foregoing requirements will result in the rescission of this grant, dismissal of the license application and the forfeiture of the associated construction permit pursuant to 47 C.F.R. § 73.3598(e) unless the licensee rebuts the resulting presumption that the authorized facilities were temporarily constructed. Evidence of non-temporary construction could include, but is not limited to, station logs, utility bills, lease documents, photographs of the installed antenna/transmitter/studio equipment, and other relevant documentation." (License Condition).

⁸ For example, some broadcast permittees had built non-licensable facilities at roadside locations without any reasonable assurance of site availability, operated intermittently using temporary equipment such as telescoping antennas and portable generators, and ceased operations shortly after filing a license application. *E.g.*, *Tango Radio, LLC*, Memorandum Opinion and Order, 30 FCC Rcd 10564, 10567-68, paras. 7-8 (2015) (*Tango*); *Broadcast Towers, Inc.*, Order and Consent Decree, 26 FCC Rcd 7681, 7684, para. 4 (MB 2011). Temporary construction was especially prevalent in the FM translator service. *See, e.g.*, *Radio Power, Inc.*, Inquiry Letter, 27 FCC Rcd 1465 (MB 2012).

⁹ PMC cited technical problems but did not provide details. *See* STA Application, Station Status Question. In response to an informal staff e-mail in January 2022, PMC stated that flooding from Hurricane Ida damaged the transmitter on August 30, 2021. *See* Email from Amy Meredith, amymeredithradiolane@gmail.com, to Keith Coburn, Keith.Coburn@fcc.gov (Jan. 31, 2022, 5:22 PM) (January Correspondence). The January Correspondence incorrectly stated that the Station returned to the air within a few days, but that it stopped broadcasting on November 23, 2021, following additional unspecified technical problems. *Id.* PMC later admitted in response to a Bureau letter of inquiry that it had only operated until August 30, 2021, *i.e.*, prior to license grant, except for a six-hour test in March 2022. *See infra*. PMC stated that it had no intent to deceive when it reported operations through November 23, 2021 but that its principal was merely confused after having been ill with the coronavirus (COVID).

¹⁰ For example, PMC had not established whether the Station's post-licensure silence actually stemmed from the hurricane as claimed. Moreover, the hurricane occurred prior to License grant. If, as PMC later revealed, the constructed facilities were destroyed while the license application was still pending, it would have been incumbent upon PMC to notify the Bureau of this material fact. *See* 47 CFR § 1.65 (applicant responsible for the continuing accuracy and completeness of information in pending application and required to inform Commission when information is no longer substantially accurate).

¹¹ Letter to Amy Meredith, Powell Meredith Comm. Co. from Albert Shuldiner, Chief, Audio Division (Feb. 17, 2022).

nearby recreational vehicle (RV) park (RV Site).¹² PMC argued that the facilities constructed at the RV Site provided equivalent coverage to those authorized at the Pinnacle Site and that it, therefore, did not realize that the Commission needed to approve the substitution. PMC also attempted to show that the RV Site construction was not temporary because the ham tower was attached to a shed affixed to the ground and received power through a permanent electric outlet shared with an RV.¹³ It indicated that the Station stopped operating on August 30, 2021 when Hurricane Ida damaged the RV Site; and that the Station has since remained silent except to conduct a six-hour test from an unidentified location on March 4, 2022 (2022 Location).¹⁴ PMC could not, as requested in the LOI, provide any photographs, documents, or invoices to corroborate its claim of permanent construction. PMC devoted significant portions of its Response to the history of the Station, which the Bureau had not requested in the LOI but which PMC apparently believed mitigated its use of the RV Site. Among this recited history were disputes over Station ownership, financial and legal problems, pre-construction litigation, and the Bureau's response to an inquiry from PMC's Congressional representative.¹⁵

The Bureau, based on the record before it, rescinded the license on two independent grounds. First, the Bureau stated that grant of the License Application was erroneous because it was based on PMC's submission of false information which obscured a material matter, *i.e.*, that the Station was not constructed at the authorized location.¹⁶ Alternatively, the Bureau found that the license was forfeited for failure to satisfy the License Condition because PMC neither operated continuously for twelve months nor rebutted the presumption of temporary construction.¹⁷ PMC now seeks reconsideration of those findings.

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's action or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.¹⁸ PMC has not met this

¹² Email from Amy Meredith, amymeredithradiolane@gmail.com, to Irene Bleiweiss, Irene.Bleiweiss@fcc.gov (Mar. 16, 2022, 11:09 PM) (Response).

¹³ PMC explained that it paid the owner of the RV \$300 to use the location for three months and intended to find another location after hurricane season. In contrast, PMC stated that use of the authorized site would have cost \$1,700 per month with a 5 year commitment. There was no written lease for the RV Site but PMC stated that it had obtained but misplaced a receipt for the \$300 payment.

¹⁴ The Decision stated that the July and August 2021 operations from the RV Site and the March 2022 test at the unspecified 2022 Site did not qualify as program tests because each location was unauthorized. *See* Decision at 5, note 21, citing 47 CFR § 74.14.

¹⁵ A focus of PMC's original arguments, repeated in the Petition, is an allegation that a "third party permit trafficker" forged the signature of PMC's principal on modification applications and provided bad engineering, resulting in poor Station technical performance, interference, and involvement of the permit in bankruptcy proceedings. *See* Petition at 1-4. PMC stated that it determined during the March 2022 test that the Station cannot operate without causing prohibited interference to a co-channel full service station, WLMG(FM), New Orleans, LA.

¹⁶ The Bureau stated that had PMC timely disclosed its use of the RV Site, the Bureau would have dismissed the License Application. Decision at 4-5, citing *Eagle Broad. Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, para. 9 (2008), *aff'd sub nom. Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 545 (D.C. Cir. 2009) (*Eagle*) (unauthorized construction cannot prevent permit forfeiture for failure to meet the section 73.3598(e) construction deadline).

¹⁷ *See id.* at 5.

¹⁸ 47 CFR § 1.106(c)(1); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 397 U.S. 967 (1966); *Davis & Elkins Coll.*, Memorandum and Order, 26 FCC Rcd 15555, 15556, para. 5 (MB 2011).

standard and we, therefore, deny the Petition.

The Bureau rescinded the license grant primarily because the grant was based on misinformation in the License Application that PMC had constructed as authorized. Because PMC never constructed at the authorized site, its permit expired¹⁹ and there was nothing to license.²⁰ PMC addresses this aspect of the Decision only briefly. PMC contends that the Station “was built as required,” repeating its view that the Pinnacle and RV Sites are equivalent because they are only 30 yards apart and purportedly have identical signal coverage.²¹ The Petition demonstrates no error in our earlier rejection of this same argument. As stated in the Decision, the Commission’s rules (Rules) for FM translator stations require prior approval of transmitter site changes and do not provide any applicable exception.²² PMC argues that it was unaware of the need to obtain consent for the purportedly small differences between the two locations, had no intent to deceive, and should be given an opportunity to correct its error. However, ignorance of the law is not a mitigating factor.²³ We further find that PMC’s general statement that it is “not in the best interest of the public to delete a license” provides no basis for reconsideration of the instant Decision.²⁴ The public receives no benefit from construction or operation of unauthorized facilities such as those that PMC built. Return of the spectrum prevents warehousing by those unable to build in accordance with the Rules and makes it possible for others to propose Rule-compliant uses.

PMC also challenges the Decision’s secondary holding that the license forfeited for failure to rebut the License Condition’s presumption of temporary construction. Although we will address this matter in the interest of a complete record, we emphasize that the permanent or temporary nature of the RV Site facilities is immaterial. The License Condition pertains to “the *authorized* facilities”²⁵ but, as discussed above, PMC’s construction at the RV Site was unauthorized. Accordingly, the facilities would not have been licensable even had PMC constructed them in a permanent manner. The Decision addressed the purported permanent nature of PMC’s construction only because the Bureau had requested such information in the LOI, when it was yet unaware that the facilities were not at the authorized location.

PMC’s permanency-related arguments focus on the Bureau’s inability to verify PMC’s claim of permanent construction without photographs, engineering invoices, or other evidence. We reject PMC’s contention that it had no advance notice that such evidence would be required.²⁶ The License Condition

¹⁹ Construction permits are forfeited if the authorized construction is not completed by the established deadline. *See* 47 CFR § 73.3598(e).

²⁰ *See generally Eagle*, 23 FCC Rcd at 601, para. 26 (no exception to automatic forfeiture of silent station’s permit and license pursuant to section 312(g) of the Communications Act of 1934, as amended, where licensee falsely claimed to have resumed operations at an approved site and stated that it was “merely confused”).

²¹ Petition at 2.

²² The Bureau noted limited exceptions not applicable in the instant case, *i.e.*, moves within the same building or upon the same pole or tower. *See* Decision at 4, citing 47 CFR § 74.1251; *Tango*, 30 FCC Rcd at 10568, para. 7 (not permitting roadside tower 100 feet from authorized site).

²³ *See Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992). It is well established that licensees are expected to be familiar with and to comply with Commission requirements. *See KGYL, Inc.*, Memorandum Opinion and Order, 42 FCC 2d 258, 259, para. 5 (1973).

²⁴ *See* Petition at 3.

²⁵ *See supra*, note 7 (emphasis added).

²⁶ *See* Petition at 3.

explicitly references the need to present evidence to rebut the presumption that construction was temporary.²⁷ PMC further repeats that it could not provide a bill for engineering services because the engineer who helped construct the Station did so without pay as a friend of PMC's principal and could not supply a written statement because his services to PMC conflicted with a non-compete agreement with his employer. Even if we were to accept PMC's contention that lack of engineering evidence stemmed from reasons other than non-permanence, that would not be sufficient to rebut the presumption of temporary construction, especially in view of the many other factors the Bureau cited. Specifically: (1) RV's are inherently mobile; (2) the RV and associated connections that hosted the Station's transmitter are no longer at the site; (3) there was no written lease with the RV owner; (4) the oral site agreement was for the short three-month duration; (5) there was no indication of how long the RV owner was entitled to remain at the property; and (6) there was no agreement with the landowner of the RV park.²⁸

We also reject PMC's contention that rescission of its license is a harsh, disparate, and punitive action. PMC alleges that the Bureau treated it disparately because the Station has a "horrendous history" and the Bureau "doesn't want to deal with the entire matter anymore."²⁹ Alternatively, PMC suggests that the Decision "punishes" PMC in retaliation for PMC's contacting its member of Congress for assistance in 2021.³⁰ These accusations are completely speculative and unsupported. First, as we stated in the Decision, the history of the permit is beyond the scope of the matters at hand.³¹ Second, the Congressional inquiry pertained to five other stations, and not the instant Station.³² Third, PMC's claim of disparate treatment relies on inapposite cases.³³ While PMC correctly observes that the violations in each of those cases had consequences less severe than loss of license, they are unlike the instant proceeding because none involved failure to construct at an authorized site or to rebut an explicit license

²⁷ See License Condition ("Evidence of non-temporary construction could include, but is not limited to, station logs, utility bills, lease documents, photographs of the installed antenna/transmitter/studio equipment, and other relevant documentation.").

²⁸ See Decision at 5.

²⁹ Petition at 3.

³⁰ *Id.* at 3-4.

³¹ See Decision at 3-4, note 14. In 2019, the Bureau granted additional construction time due to the bankruptcy proceeding, but that matter is not at issue here. See *Amy Meredith*, Letter Order (MB Aug. 22, 2019).

³² In July 2021 Congressman Van Taylor asked whether the Commission could be of assistance with concerns PMC raised in an attached letter. See File No. CN 21-460 (Jul. 14, 2021). PMC alleged therein that a third-party-trafficker had "stolen" five of its construction permits and that the Commission was not honoring a bankruptcy court order to return the permits. Those permits were for FM translators in California, New Mexico, Utah, Oregon, and Wyoming. The Bureau responded that its records did not reflect PMC as the current licensee of the five stations, but that PMC had permits for two other stations, including the instant Mississippi Station, which had expired on August 4, 2021. See File No. CN 21-460 (Oct. 28, 2021). In a follow-up inquiry, Congressman Taylor again transmitted a letter in which PMC expressed concerns about the other five stations. See File No. CN 21-460 (Jan. 19, 2022). The Bureau responded that the Commission is not a party to the ownership disputes raised therein. It also stated that the agency will generally give deference to court orders concerning the ownership of a Commission-licensed station but that, to date, PMC's principal had not provided a *final court order* directing that any stations be returned to her. See File No. CN 21-460 (May 4, 2022) (emphasis in original).

³³ The Commission must provide an adequate explanation before it treats similarly situated applicants differently, but, as noted in the Decision, PMC has not shown that it was treated differently than similarly situated parties. See Decision at 4, note 16, citing *Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965).

condition providing for rescission.³⁴ In cases with more similar facts, the consequences were similar to those of the instant case.³⁵

Finally, we reject PMC's suggestion that leniency is warranted because PMC honestly disclosed that the Station was no longer on the air (in the STA Request) and had been constructed at the RV Site (in the Response to the LOI). PMC argues that it could have avoided rescission by not requesting STA or by refusing to answer the LOI.³⁶ To the contrary, those requirements are fundamental responsibilities of every Commission licensee and a failure to comply could only have added to PMC's existing violations.³⁷ PMC's belief otherwise is based on its misreading of a case which imposed a forfeiture for failure to respond to an inquiry.³⁸ As specifically stated in the notice of apparent liability that preceded the forfeiture, however, that sanction pertained only to the failure to respond; the matters to which that inquiry pertained remained unresolved and potentially subject to additional consequences.³⁹

Accordingly IT IS ORDERED that the June 29, 2022 Petition for Reconsideration of Powell Meredith Communications Company with respect to W270CS, Gulfport, MS IS DENIED.

IT IS FURTHER ORDERED that the June 14, 2022 Decision rescinding the grant of the license for W270CS, Gulfport, MS, (File No. 0000153439), finding the associated construction permit (File No.

³⁴ See *Centro Cristiano de Vida Eterna*, Memorandum Opinion and Order, DA 22-340 (MB rel. Apr. 5, 2022) (rejecting objector's allegation that FM translator station was never constructed but entering into consent decree with \$9,000 civil penalty for other violations including failure to seek timely STA to remain silent); *Ondas de Vida, Inc.*, Memorandum Opinion and Order, 35 FCC Rcd 8163 (EB 2000) (\$12,000 forfeiture for operating above authorized power levels); *Cochise Broad., LLC*, Order, 32 FCC Rcd 3932 (MB 2017) (renewing licenses for short terms and accepting surrender of other licenses pursuant to consent decree concerning long periods of silence interspersed with brief resumptions). PMC's argument that the Commission has acted disparately by taking no action against the alleged "third party trafficker" is beyond the scope of the matter at hand.

³⁵ See, e.g., Decision at 4, note 20, citing *Found. for a Beautiful Life*, Memorandum Opinion and Order, FCC 21-112 (Oct. 25, 2021) at para. 10, *appeal dismissed sub nom. Found. for a Beautiful Life v. FCC* (D.C. Cir. Feb. 22, 2022 per curiam) (dismissal of license application where permittee mis-certified to completion of authorized construction but had only built temporarily at authorized site and more permanently at an unauthorized location); *Tango*, 30 FCC Rcd at 10567-68, paras. 6-8 (dismissing license application and finding construction permit forfeited because applicant did not disclose construction with temporary facilities at an unauthorized roadside location). See also *Chinese Voice of Golden City*, Memorandum Opinion and Order, 35 FCC Rcd 13638 (2020), *affirmed sub nom. Chinese Voice of Golden City v. FCC*, (per curiam) (D.C. Cir. 2021); *Eagle*, 23 FCC Rcd at 592 (loss of license pursuant to 47 U.S.C. § 312(g) because unauthorized construction is no better than silence).

³⁶ See Petition at 4.

³⁷ See 47 U.S.C. § 308(b) (Commission may require additional information from applicants and licensees); CFR §§ 1.17 (truthful written statements), 73.1015 (truthful written statements and responses to Commission inquiries).

³⁸ See *Donald W. Kaminski, Jr.*, Forfeiture Order, 18 FCC Rcd 26065 (EB 2003).

³⁹ See *Donald W. Kaminski, Jr.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 10707, 10708, para. 6 (EB 2001).

BNPFT-20150518AFL) forfeited, and dismissing an application for special temporary authority to remain silent (File No. BLSTA-20211123AAJ) IS AFFIRMED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau