



Federal Communications Commission
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DA 22-633

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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: W270CS, Gulfport, MS
Facility ID No. 142760
File Nos. BLSTA-20211123AAJ,
BNPFT-20150518AFL,
0000153439

Dear Licensee:

The Media Bureau (Bureau) has before it the Application of Powell Meredith Communications Co. (PMC) seeking authority for its FM Translator, W270CS, Gulfport, MS (Station) to remain silent,¹ and PMC's Response² to a related letter of inquiry (LOI).³ We find that PMC neither built the Station as authorized nor satisfied a condition on its license. Accordingly, we rescind the license grant, find that the underlying permit to construct the Station was forfeited, and dismiss the Application as moot.

Background. PMC filed the License Application on July 20, 2021, asserting that it had completed construction at the location authorized in the construction permit, and referencing the antenna structure registration number and coordinates of a tower owned by Pinnacle, LLC (Pinnacle).⁴ The Bureau granted the Station's License on September 1, 2021. The License included a standard condition

¹ See Application File No. BLSTA-20211123AAJ (rec. Nov. 23, 2021) (Application).

² Email from Amy Meredith, amymeredithradiolane@gmail.com, to Irene Bleiweiss, Irene.Bleiweiss@fcc.gov (Mar. 16, 2022, 11:09 PM) (Response).

³ Letter to Amy Meredith, Powell Meredith Comm. Co. from Albert Shuldiner, Chief, Audio Division (Feb. 17, 2022).

⁴ 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 terms, conditions, and obligations set forth in the underlying construction permit and that no circumstance has arisen since grant of the underlying construction permit which would result in any statement therein to now be incorrect. See *id.*, Legal Certifications, Obligations. PMC filed the License Application prior to the August 4, 2021, expiration of its underlying construction permit.

requiring continuous operation for the first year⁵ and establishing a rebuttable presumption that station silence within that period evidenced unlicensable, temporary construction.⁶ Less than three months later, on November 23, 2021, *i.e.*, within the Station's first year, PMC requested special temporary authority (STA) to remain silent, thereby triggering the rebuttable presumption of temporary construction. PMC stated that the reason for the Station's silence was "technical" without providing details, dates, or any explanation that would rebut the presumption that it had engaged in temporary construction.⁷ In January Correspondence, responding to an informal staff request for more information,⁸ PMC expounded that flooding from Hurricane Ida damaged the transmitter on August 30, 2021, 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.⁹ That explanation was insufficient, however, to establish whether the Station's post-licensure silence actually stemmed from the hurricane or from other causes. In particular, the hurricane occurred while the License Application was still pending, PMC did not timely notify the Bureau of any initial or continuing effects of the hurricane,¹⁰ and the January Correspondence indicated that the Station restored operations within a few days of the hurricane. The nature of any subsequent technical problems was vague. Accordingly, the Bureau issued the LOI on February 17, 2022.

⁵ The condition stated: "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).

⁶ The Bureau has placed this condition on all new radio broadcast licenses since June 2015 in response to prior abusive practices in the industry. 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). Such limited construction was especially prevalent in the FM translator service, where licensees attempted to accomplish "major" long distance moves through a series of small temporary "hops" that would qualify as "minor," but would not provide any longstanding service to the public at the locations along the way. *See, e.g., Radio Power, Inc.*, Inquiry Letter, 27 FCC Rcd 1465 (MB 2012).

⁷ *See* Application, Station Status Question.

⁸ Email from Keith Coburn, Keith.Coburn@fcc.gov to Amy Meredith, amymeredithradiolane@gmail.com, (Jan 31, 2022, 12:55 PM).

⁹ *See* Email from Amy Meredith, amymeredithradiolane@gmail.com, to Keith Coburn, Keith.Coburn@fcc.gov (Jan. 31, 2022, 5:22 PM) ("engineer was able to fix the problem within days but on Nov[ember 8,] 2021 we had another problem and by Nov[ember 23,] 2021 we were completely off air due to technical problems") (January Correspondence).

¹⁰ *See* 47 CFR § 1.65; *Lazer Licenses, LLC.*, Memorandum Opinion and Order, 30 FCC Rcd 6357 (MB 2015) (prompt notification required if a station is dismantled or taken off the air while seeking a covering license).

PMC's Response raises several procedural challenges to the LOI and License Condition. First, PMC argues that the Bureau has singled it out for disparate treatment by issuing an LOI. Second, PMC contends that only courts of equity may use rebuttable presumptions and that the Bureau thus had no authority to place such a presumption on the License. Finally, PMC argues that presumptions are outdated, speculative, draconian, and contrary to the concept of "innocent until proven guilty."

In the Response, PMC also addresses the LOI's questions about the Station's construction. PMC acknowledges for the first time that it did not construct in accordance with its construction permit or at the site listed in its license. Rather, PMC admits that it did not use the authorized transmission tower owned by Pinnacle but built, instead, approximately 30 yards away on an amateur (ham) radio tower in a nearby recreational vehicle (RV) park (RV Site). PMC attempts to show that the construction was not temporary by stating that the ham tower was mounted on a shed that was affixed to the ground, and received power through a permanent electric outlet shared with an RV. PMC explains 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.¹¹ PMC does not purport to have filed any application with the Commission for authority to construct at the RV Site or to move to another site.

PMC reports that the Station operated from the RV Site between July 19, 2021 and August 30, 2021 while its License Application was pending but went silent on August 30, 2021, *i.e.*, before grant of the License Application, because Hurricane Ida damaged its transmitter, the ham tower, and the RV. PMC could not, as requested in the LOI, provide any photographs, documents, or invoices associated with the construction. It states that the RV and its owner have moved away and that the engineer who constructed did not accept payment because he was acting only "as a friend."¹² PMC does, however, support its claim to have operated during the pendency of the License Application by providing internet links to two short July 2021 videos showing a car stereo receiving music while tuned to the Station's frequency.

The Response also clarifies that the Station did not return to the air in the Fall of 2021 as previously stated in the January Correspondence. Rather, the Station ceased broadcasting on August 30, 2021, and did not broadcast thereafter except to conduct a six-hour test on March 4, 2022 using an antenna mounted on a pole at an unidentified location (2022 Location). PMC contends it had no intent to deceive the Bureau by providing the incorrect report of Fall 2021 operations in the January Correspondence and attributes the error to its principal's confusion after illness with the coronavirus. PMC further states 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,¹³ and that the Station therefore remains off air.¹⁴

¹¹ In contrast, PMC reports that use of the authorized site would have cost \$1,700 per month with a 5 year commitment. There does not appear to have been a written lease for the RV Site. PMC states that it obtained, but has misplaced, a handwritten receipt for the \$300 payment.

¹² See Response, Affidavit at 4(B).

¹³ PMC has uploaded a portion of the sound from the March 2022 test, including interference, to the Internet.

¹⁴ The Response also discusses several matters not responsive to the LOI including disputes over Station ownership, related litigation, and financial and legal problems while its construction permit was pending. Among PMC's allegations are that: (1) PMC cannot get a fair review because the Bureau engages in "racial profiling" and dislikes PMC's sole principal because she is a minority; (2) a "third party permit trafficker" forged the principal's name on modification applications and provided bad engineering, resulting in poor Station technical performance, interference, and involvement of the permit in bankruptcy proceedings; (3) court proceedings between PMC and the

Discussion. We reject each of PMC’s procedural challenges. There is nothing about the License Condition or LOI that is disparate, discriminatory, or beyond the Bureau’s authority.¹⁵ The Bureau places the same standard License Condition on all broadcast licenses consistent with the Bureau’s delegated authority to act on broadcast applications and, thus, did not single out PMC or exceed its authority.¹⁶ Under the Commission’s rules, PMC’s deadline for seeking to reject the License Condition was 30 days after the grant of the License.¹⁷ The Bureau issued the LOI simply because PMC stopped broadcasting within the first year of operation and the Bureau was giving PMC the opportunity to rebut the presumption of temporary construction. PMC cites no precedent for its argument that government agencies cannot use rebuttable presumptions. The Commission has long used such presumptions.¹⁸

Based on PMC’s Response to the LOI’s substantive questions, we conclude that the constructed facilities were not licensable because PMC provided false information in the License Application by stating that it had completed construction at the authorized location. As PMC now admits, its construction at the RV Site differed from the location authorized in its permit. Because the false information obscured the fact that the permit had automatically expired and was material to our grant of the License, we hereby rescind the grant. Although PMC emphasizes that the RV Site was only 30 yards from the authorized site, the Commission’s rules require Bureau approval prior to making any changes in an FM translator’s location, with limited exceptions not applicable in the instant case, *i.e.*, except for moves within the same building or upon the same pole or tower.¹⁹ Based on PMC’s unauthorized construction alone, the facilities were not licensable. Construction permits expire automatically and are forfeited if the facilities authorized therein are not completed by the established deadline; use of an alternate site or construction of temporary facilities does not prevent such forfeiture.²⁰ Had PMC timely

“trafficker” were purportedly resolved in PMC’s favor; (4) the Bureau provided allegedly incorrect status information about the Station in response to an inquiry from PMC’s member of Congress; and (5) the LOI’s requirement that PMC support the Response with an affidavit under penalty of perjury arguably violates the 5th and 13th Amendments to the U.S. Constitution. We need not discuss these matters because they are beyond the scope of the inquiry. We note briefly that the allegation of racial profiling is unsupported by any showing and that PMC has not connected its Constitutional concerns to the facts of this case.

¹⁵ PMC’s argument that the License Condition is inconsistent with the principle of “innocent until proven guilty” is inapposite because that concept arises in the field of criminal law, which has no bearing here.

¹⁶ See generally 47 CFR §§ 0.61, 0.283. The Commission must provide an adequate explanation before it treats similarly situated applicants differently, but PMC has not shown that it was treated differently than similarly situated parties. See *Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965).

¹⁷ 47 CFR § 1.110 (“Where the Commission without a hearing grants any application . . . with any privileges, terms, or conditions other than those requested . . . the action of the Commission shall be considered as a grant of such application unless the applicant shall, within 30 days . . . file with the Commission a written request rejecting the grant as made.”). PMC made no such request. As for the agency’s authority to impose the License Condition, we note that Section 301 of the Communications Act of 1934, as amended, provides that radio communications licenses shall specify the pertinent “terms, conditions, and periods” of the license. 47 U.S.C. § 301.

¹⁸ See, e.g., *Southern Co. Services, Inc. v. FCC*, 13 F.3d 574, 581 (D.C. Cir. 2002) (FCC use of rebuttable presumptions to count pole attachments not inherently unlawful or facially unreasonable); *Northern Broad., Inc. v. FCC*, 400 F.2d 749 (D.C. Cir. 1968) (affirming FCC’s finding that broadcast applicant rebutted presumption that applicant’s intent was to serve large city rather than smaller population of suburban community).

¹⁹ 47 CFR § 74.1251; *Tango*, 30 FCC Red at 10568, para. 7 (roadside tower 100 feet from authorized site).

²⁰ See *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 miscertified to completion of authorized construction but had only built temporarily at authorized site and more permanently at an unauthorized location).

disclosed its use of the RV Site in its License Application, the Bureau would have dismissed that application.²¹ For those same reasons, we find that the Bureau's grant of the License Application was based on misinformation therein and that the License must be rescinded.²²

As a separate factor in our action here, we note that PMC failed to rebut the presumption (and, in fact, confirmed) that the facilities were of a temporary nature. PMC used facilities associated with an RV. RV's are inherently mobile and, indeed, PMC indicates that the RV and its associated connections are no longer at the original location. We acknowledge PMC's statement that there were, during the RV owner's occupancy, a shed attached to the ground and an electric hook-up rather than a generator. However, without photographs as requested, there is no basis to conclude that these facilities, which were in any event unauthorized, were durable and non-movable. The temporary nature of the construction is also reflected in the absence of a written lease with the RV owner, the short three-month duration of the oral agreement, lack of any indication of how long the RV owner was entitled to remain at the property, and absence of any agreement with the landowner of the RV park. The temporary nature of the facilities is, thus, a separate and independent basis for action that would be the functional equivalent to rescission of the License, namely forfeiture of the License based on PMC's failure to satisfy the License Condition.

Accordingly IT IS ORDERED that grant of the license for W270CS, Gulfport, MS, File No. 0000153439, IS RESCINDED.

IT IS FURTHER ORDERED that associated construction permit for W270CS, Gulfport, MS, File No. BNPFT-20150518AFL, IS FORFEITED for failure to construct permanent facilities at an authorized location prior to expiration.

IT IS FURTHER ORDERED that the application for special temporary authority to remain silent, File No. BLSTA-20211123AAJ, IS DISMISSED AS MOOT.

IT IS FURTHER ORDERED that call sign W270CS IS DELETED.

Sincerely,

Albert Shuldiner

Albert Shuldiner
Chief, Audio Division
Media Bureau

²¹ *Id.* All broadcast permittees must by the construction deadline: (1) build in accordance with all terms of the construction permit, and (2) file a license application demonstrating proper construction. 47 CFR § 73.3598(e). It is now clear that PMC did neither. Unauthorized construction cannot prevent permit forfeiture for failure to meet the section 73.3598(e) deadline. *See 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*). The July and August 2021 operations from the RV Site and the March 2022 test at the unspecified 2022 Site were impermissible because each location was unauthorized. Those operations, thus, did not qualify as program tests. 47 CFR § 74.14.

²² *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 Act where licensee falsely claimed to have resumed operations at an approved site and stated that it was "merely confused").