



Federal Communications Commission
Washington, D.C. 20554

May 8, 2024

DA 24-432
In Reply Refer to:
1800B3-IB
Released May 8, 2024

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In re: KASA(AM), Phoenix, Arizona
Facility ID No. 33451
Application File Nos. 0000240830, 0000243193

K294CW, Phoenix, Arizona
Facility ID No. 148238
Application File No. 0000243593
Pleading File No. 0000233497

**Request for Extension of Expired STA
Waiver Request
Interference Complaint
Informal Objection**

Dear Counsel and Objector:

The Media Bureau (Bureau) has under consideration several related applications and pleadings concerning KASA(AM) (Station) and an associated FM translator station, K294CW (Translator), both serving Phoenix, AZ and licensed to KASA Radio Hogar, Inc. (Licensee). The Translator is authorized to rebroadcast the Station. In December 2023, Entravision Holdings, LLC (Entravision) filed a complaint alleging that the Translator causes prohibited interference to Entravision's full service station,

KDVA(FM) (now KFUE), Buckeye, Arizona (Buckeye Facility).¹ Entravision also filed an informal complaint in early 2024 alleging that the Station had been silent without authority or operating from an unauthorized location for more than a year, and that the Translator originated programming without authority when there was no Station signal to rebroadcast.² The Bureau issued a Letter of Inquiry (LOI) about these matters on February 13, 2024.³ Thereafter, Licensee filed three requests for Special Temporary Authority (STA) and/or waiver.⁴ On April 19, 2024, Licensee responded to the LOI, conceding to some violations but arguing that they could be resolved by Bureau grant of the pending requests for STA and waiver.⁵ On April 24, 2024, Raymie Humbert (Objector), an Arizona resident who does not identify his specific interest in this proceeding, filed an Informal Objection to each of the 2024 STA Requests.⁶

Upon reviewing Licensee's Response to the LOI, the Bureau has determined that the Station failed to operate from an authorized location for more than twelve consecutive months and that its license, therefore, terminated automatically pursuant to section 312(g) of the Communications Act of 1934, as amended (Act).⁷ The Bureau finds that the Translator's authorization terminated as well, pursuant to a license condition which specifies that the Translator's sole authorized purpose, in perpetuity, is to rebroadcast the Station and that any restrictions applicable to the Station are, likewise, applicable to the Translator. Accordingly, we delete the Station and Translator from our database. We further dismiss the pending 2024 STA Requests, Interference Complaint, and Objection as moot.

Background

If a broadcast station needs to operate at variance from its licensed parameters, such as at a different location, it must obtain prior authorization by requesting STA.⁸ STA is also required to limit or discontinue operations for more than 30 days.⁹ Section 312(g) of the Act provides that a broadcast station's license normally expires automatically as a matter of law if it fails to transmit broadcast signals for 12 consecutive months.¹⁰ Transmissions from an unauthorized location are not considered "broadcast

¹ Entravision, Pleading File No. 0000233497 (rec. Dec. 20, 2023) (Interference Complaint).

² See 47 CFR § 74.1263.

³ Letter of Inquiry to Barry Wood, Counsel to KASA Radio Hogar (MB Feb. 13, 2024).

⁴ The first request seeks STA to operate the Station with alternate facilities. File No. 0000240830 (rec. Mar. 13, 2024) (Site Request). The second sought authority for the Station to remain silent. File No. 0000243193 (rec. Apr. 8, 2024) (Silence Request). Third, Licensee sought a waiver of sections 74.1231(a)-(b) and 74.1263 of the Commission's rules (Rules) to allow the Translator to originate programming while the Station was off air. File No. 0000243593 (rec. Apr. 17, 2024) (Waiver Request) (collectively, 2024 STA Requests). Licensee later informed the Bureau that the Station had returned to the air on April 17, 2024 with the facilities specified in the pending Site Request. File No. 0000243677 (rec. Apr. 18, 2024).

⁵ KASA Radio Hogar, Responses to Questions Presented in the LOI (rec. Apr. 19, 2024) (Response).

⁶ Raymie Humbert, Informal Objection, Pleading File No. 0000243901 (rec. Apr. 24, 2024) (Objection).

⁷ 47 U.S.C. § 312(g).

⁸ 47 CFR § 73.1635.

⁹ *Id.* § 73.1740 (requiring notification to the Commission no later than the tenth day and a request of STA if limited or discontinued operations lasts more than 30 days).

¹⁰ 47 U.S.C. § 312(g) ("If 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

signals” and, thus, are treated as equivalent to silence under section 312(g).¹¹

FM translators are stations that operate on a secondary basis to rebroadcast the signal of a primary station on a different frequency. They are not permitted to continue operating if they cause interference to any primary station or preexisting secondary station.¹² Section 74.1263(b) of the Rules prohibits an FM translator station from originating programming, *i.e.*, transmitting while its primary station is off the air, but provides an exception for nighttime transmissions by an FM translator rebroadcasting a Class D (daytimer) AM station that has operated during the daytime in the prior 24 hours (Daytimer Exception).¹³

The Station is a Class D AM station with a Spanish language format that currently operates pursuant to a time brokerage agreement. The Station has been licensed to broadcast from a tower site located at 33° 22' 36.2" N, 112° 05' 27.5" W (Licensed Site) since its initial licensure in 1967,¹⁴ and continued operating from that location after Licensee acquired the Station in 1992.¹⁵ In 2019, however, Licensee reported a sale of a large portion of land on which the Licensed Site was located.¹⁶ The record reflects that a school has since been built at the Licensed Site and that operations from that location, thus, cannot resume. In September 2019, Licensee requested STA to operate at reduced power using a 100-foot long-wire antenna supported by two wooden poles, approximately 25 feet above ground at 33° 22' 33.1" N, 112° 05' 17.3" W (STA Site).¹⁷ Licensee has described the STA Site as located approximately 306 yards southeast of the Licensed Site, on an adjacent parcel.¹⁸ The Commission granted initial STA on September 20, 2019 and extended it five times. The most recent authorization to operate the Station temporarily from the STA Site was granted in June 2022 and expired on December 6, 2022.¹⁹

In 2021, while the Station was operating pursuant to STA, Licensee acquired, through assignment, a license for the Translator, which had been newly authorized to the same party from which Licensee acquired the Station.²⁰ The sale of the Station’s Licensed Site did not affect the Translator

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....”).

¹¹ 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 543, 553 (D.C. Cir. 2009) (*Eagle*); *Absolute Broad., LLC*, Memorandum Opinion and Order, FCC 23-38, n.69 and cases cited therein (rel. May 17, 2023); *Great Lakes Community Broad., Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 8239, 8244-47 (MB 2009).

¹² See 47 CFR § 74.1203.

¹³ 47 CFR § 74.1231(b) (“An FM translator may be used for the purpose of retransmitting the signals of a primary AM or FM radio broadcast station . . . and originating programming to the extent authorized in paragraphs (f), (g), and (h) of this section.”); 47 CFR § 74.1263(b) (“An . . . FM translator station rebroadcasting . . . an AM or FM primary station shall not be permitted to radiate . . . signals of the primary station are not being transmitted,” except for nighttime transmission by a translator rebroadcasting a Class D station that has operated during the daytime in the last 24 hours). There are other limited exceptions related to emergency warnings and acknowledgments of financial support not relevant here. See *id.* § 74.1231(f), (g).

¹⁴ File No. BL-11560 (granted Apr. 12, 1967).

¹⁵ File No. BAL-19920713EF (granted Aug 26, 1992).

¹⁶ File No. BSTA-20190904AAA (rec. Sept. 9, 2019).

¹⁷ *Id.*

¹⁸ *Id.*; Response at 1.

¹⁹ File No. BESTA-20220531AAE (granted June 7, 2022) (2022 STA).

²⁰ File No. 0000129739 (granted Apr. 9, 2021). See also File No. 0009054917 (reporting Apr. 24, 2021 consummation).

because the Station and Translator are not co-located.²¹ The Translator's license contains a special operating condition (License Condition) with four parts, some of which are material to this decision.²² First, the Translator may, in perpetuity, only rebroadcast the Station, except that it may originate nighttime programming pursuant to the Daytimer Exception.²³ Second, if the Station operates with reduced facilities, the Translator may only operate if its coverage contour conforms to limits set forth in section 74.1201(g) as applied to the Station's reduced facilities.²⁴ Third, the Translator's license cannot be assigned except with that of the Station. Fourth, if the Station's license terminates or is subject to an STA to remain silent, the Translator's license must likewise terminate or be subject to the silent STA.

Between the expiration of the 2022 STA and filing of the 2024 STA Requests, Licensee did not seek authority to operate either station at variance from licensed parameters or to keep either off air. Licensee has since acknowledged that it operated the Station from the STA Site after the 2022 STA expired.²⁵ However, it argues that this was merely an inadvertent oversight using facilities identical to those the Bureau had approved under prior STAs.²⁶ It reports periods of Station silence due to equipment failures in July 2022 and March 2023 but states that no authority was needed because it repaired the equipment promptly and the silence lasted for only a few days.²⁷ Licensee notes only one longer period of Station silence from about February 19, 2024 to April 17, 2024, when equipment failed, was sent to Texas for repair, and was damaged in transit.²⁸ Licensee acknowledges that it did not timely seek authority to remain silent during that period, but states that it did not anticipate the damage and expected repairs to be made quickly.²⁹

Licensee also concedes that the Translator continued to broadcast during the periods when the Station was silent, but argues that these operations did not adversely affect the market because the Translator aired the "exact programming" that the Station would have broadcast.³⁰ It further argues that continued operation of the Translator was consistent with the Commission's efforts to revitalize AM

²¹ The Translator is licensed to operate at 33° 35' 39.1" N, 112° 05' 10.5" W.

²² See File No. 0000129146 (granted Dec. 4, 2020) ("(1) this facility may only, in perpetuity, be used to rebroadcast the authorized facilities of the AM primary station set forth in this authorization, except that it may also originate nighttime programming if the AM primary station set forth in this authorization is not authorized regular nighttime service, and then only during periods of the broadcast day when the primary AM station is not regularly authorized to operate; (2) if the AM primary station is operating with reduced facilities, this cross-service FM translator facility may only operate if its coverage contour conforms to the limits set forth in 47 CFR Section 74.1201(g) as applied to the reduced facilities of the AM primary station; (3) the authorization for this facility may not be assigned or transferred except in conjunction with the primary AM station set forth in this authorization; and (4) if the authorization of the AM primary station set forth in this authorization is rescinded, revoked, surrendered, subject to special temporary authorization (STA) to remain silent, or is otherwise suspended from operation, the authorization of this cross-service FM translator station shall likewise be rescinded, revoked, surrendered, silent for the duration of the AM primary station's STA to remain silent, or suspended from operation.").

²³ File No. 0000129146 (granted Dec. 4, 2020).

²⁴ *Id.*; See 47 CFR § 74.1201(g).

²⁵ Site Request at 2; Response at 1, 3.

²⁶ *Id.*

²⁷ Response at 2.

²⁸ *Id.*

²⁹ Silence Request, Exh.

³⁰ Waiver Request at 2.

stations by allowing them to obtain cross-service FM translators.³¹ It also maintains that Translator operations served the public interest because it ensured continuity of programming by “one of very few independent, Hispanic-owned stations in the market providing Spanish-language programming to the market’s minority population.”³² Objector, however, argues that the Translator’s operation not only violated the prohibition against program origination by translators but also caused interference to Entravision’s Buckeye Facility, which likewise provides Spanish language programming. Objector submits nine minutes of recordings taken while driving between Tempe and Chandler, AZ on April 10, 2024, showing such interference. He argues that the Translator, thus, “endangered . . . a source of music and information for Phoenix’s Hispanic community.”³³

Discussion

It is undisputed that the Station operated from a location other than its Licensed Site from December 6, 2022 onward. Upon 12 consecutive months of unauthorized operation, *i.e.*, on December 6, 2023, the Station’s license terminated automatically pursuant to section 312(g) because transmissions from an unauthorized site are no better than silence.³⁴ The Translator’s license terminated simultaneously because the License Condition links the Translator’s authority to that of the Station. We find no merit to the suggestion that the Bureau’s prior approval of the STA Site somehow allowed the Licensee to continue operations from that location after the 2022 STA expired. The Commission issues and renews STAs for periods not to exceed six months because STAs are intended to be temporary for emergency situations, and circumstances may change between one STA request and another.³⁵ Moreover, the prior issuance of an STA to one station does not have a preclusive effect on potential site changes or other engineering changes that may be requested by and approved for other stations. Rather, STA requests are subject to being rejected based on approvals of facility changes by other stations. In the instant case, for example, the Buckeye Facility began to operate on the same channel as the Translator rebroadcasting the Station, a factor which might have affected a Bureau STA decision if it had the opportunity to consider a timely STA request.

Having found that the Station and Translator licenses terminated under section 312(g), we have considered on our own motion any grounds for reinstatement, but find none.³⁶ Section 312(g) affords the Commission limited discretion to reinstate licenses when needed to promote “equity and fairness.”³⁷ The Commission has exercised that discretion only rarely, generally where station operations have been impacted by natural disasters or compelling circumstances of a similar magnitude beyond the licensee’s control.³⁸ The Commission has consistently declined to exercise its Section 312(g) discretion when the

³¹ Waiver Request at 2.

³² *Id.*

³³ Objection at 3-5.

³⁴ *See Eagle*, 23 FCC Rcd at 592, para. 9.

³⁵ 47 CFR §§ 73.1635(a)(4), 74.780. *See also* 47 U.S.C. § 309(f).

³⁶ Given our conclusion that the Station and Translator licenses have terminated and will not be reinstated, we decline to take enforcement action for the Station’s operation from an unauthorized location and the Translator’s program origination and alleged interference.

³⁷ 47 U.S.C. § 312(g). The Commission considers the facts of each case individually in determining whether reinstatement based on equity and fairness would be appropriate.

³⁸ *See, e.g., V.I. Stereo Commc'ns Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006) (reinstatement warranted for station that sustained damage from three hurricanes where original facilities were destroyed and the rebuilt facility also sustained damage). *See also Community Bible Church*, Letter Order, 23 FCC

events leading to license termination are the result of a licensee's own inaction or exercise of business judgment.³⁹

We find that the following arguments in the record do not rise to the level of compelling circumstances that would justify exercise of our limited discretion to reinstate: (1) the purported inadvertent nature of Licensee's failure to request STA for operations after 2022; (2) the stations' minority ownership and programming for the Hispanic community; (3) significant health challenges of Licensee's principal after hospitalization for COVID; and (4) the intended purpose of AM/FM translator combinations to revitalize AM service. The Commission has declined to reinstate licenses of an AM/FM translator combination raising similar arguments.⁴⁰ When a licensee is unable, for health reasons or otherwise, to perform its responsibilities, the Commission expects it to delegate those matters to others.⁴¹ Failure to delegate, whether deliberate or inadvertent, is a business matter within the licensee's control. Licensee's purportedly inadvertent failure to delegate preparation of an STA request in the instant proceeding is, thus, not a basis for reinstatement.⁴² The Commission does not hold stations to different compliance standards based on their program formats or the ethnicity of their owners. The Commission has recognized benefits of programming to minority populations, but has stated that such benefits do not outweigh the Commission's statutory responsibility to prevent unauthorized broadcasts.⁴³ Similarly, the Commission has stated that its efforts to revitalize the AM service are separate from its statutory

Rcd 15012, 15014 (MB 2008) (reinstatement warranted where licensee took all steps needed to return to air, but remained off air to promote air safety after discovering and reporting that FCC and FAA records contained incorrect tower information); *Sumiton Broad. Co., Inc.*, Letter Order, 22 FCC Rcd 6578, 6580 (MB 2007) (reinstating license where silence was necessary to comply with court order); *Universal Broad. of New York, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 10319 (MB 2019) (station's inability to file an STA to resume service due to a federal government shutdown was a compelling circumstance under section 312(g)).

³⁹ *WJBW, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 2301, 2305, para. 9 (2017) and cases cited therein (*WJBW*).

⁴⁰ See *International Aerospace Solutions, Inc.*, Memorandum Opinion and Order, 38 FCC Rcd 1759 (2023) (licenses of AM station and associated FM translator terminated pursuant to section 312(g) following operation from an unauthorized location; reinstatement not warranted based on licensee arguments that (1) its principal's Parkinson's Disease affected his ability to execute certain tasks; (2) licensee would assign any reinstated licenses to a member of a minority group; and (3) the Stations were negatively affected by loss of site, the COVID pandemic, and loss of advertising revenue.

⁴¹ See *New Visalia Broad., Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9744, 9745, para. 3 (2014) (health problems of the licensee's principal not a basis for reinstatement after section 312(g) silence). See also *Stuart Nolan*, Letter Order, 31 FCC Rcd 11716, 11726 (MB 2016), citing *Texas Grace Commc'ns*, Memorandum Opinion and Order, 16 FCC Rcd 19167, 19168, para. 3 (2001) (illness of permittee's principal not a basis for tolling the expiration of construction permit because broadcasters must delegate matters they are unable to carry out themselves).

⁴² The record reflects that Licensee did delegate to its attorney the responsibility for payment of rent for the STA Site and to a time broker the day-to-day operation of the stations. Even if Licensee simply forgot to delegate responsibilities for seeking STAs or a person to whom authority was delegated failed to seek STA, such matters would not provide an equity and fairness basis for reinstatement.

⁴³ *Common Frequency, Inc.*, Letter Order, DA-24-384, 2024 WL 1832204 (MB Apr. 25, 2024) (programming to Native Americans not a basis to reinstate license that terminated under 312(g) for use of unauthorized site), citing *Found. For a Beautiful Life*, Memorandum Opinion and Order, 36 FCC Rcd 15933, 15949, para. 24 (2021) (upholding expiration of construction permit despite permittee's programming for Mandarin speakers); *Omni Broad., LLC*, Letter Order, DA 23-1208, 2023 WL 9021987 (MB rel. Dec. 28, 2023) ("[W]hile the Commission has promoted minority and female ownership, minority status alone does not warrant reinstatement under the equity and fairness provision of section 312(g)"); *Ernest T. Sanchez, Esq.*, Letter Order, 31 FCC Rcd 7087 (MB 2016) ("Neither Vicente's health problems nor his minority status constitute compelling reasons beyond Inca's control.").

obligations under section 312(g).⁴⁴ The goals of AM revitalization, therefore, do not provide any basis for departing from section 312(g) precedent.⁴⁵ Thus, none of these arguments, individually or in combination, provide a basis for license reinstatement.

Conclusion

Accordingly, IT IS ORDERED that the license of KASA(AM), Phoenix, Arizona, Facility ID No. 33451, cancelled automatically pursuant to section 312(g) of the Act, and the station's call sign is deleted from the Commission's database.

IT IS FURTHER ORDERED that the license of FM translator K294CW, Phoenix, Arizona, Facility ID No. 148238, cancelled pursuant to a special condition of its license, File No. 0000129146, which links its authority to that of cancelled, co-owned KASA(AM), Phoenix, Arizona. The translator station's call sign is deleted from the Commission's database.

IT IS FURTHER ORDERED that KASA Radio Hogar shall cease operation of KASA(AM), Phoenix, Arizona and K294CW, Phoenix, Arizona within one day of receipt of this *Letter Order* and notify the Bureau within one day of complying with this requirement. Notification shall be directed to the Commission's Office of the Secretary and a courtesy copy should be sent by email to Irene Bleiweiss, Attorney, Audio Division at Irene.Bleiweiss@fcc.gov.

IT IS FURTHER ORDERED that the owner of the tower or other antenna support structure where a transmitting antenna for KASA(AM) and K294CW is located is required, pursuant to Section 303(q) of the Communications Act of 1934, as amended,⁴⁶ to maintain the structure in the manner prescribed by our rules and the terms of the expired license or expired Special Temporary Authorization for that location until dismantled.

IT IS FURTHER ORDERED that the requests of KASA Radio Hogar for Special Temporary Authority to operate KASA(AM) with alternate facilities, File No. 0000240830, and for authority to remain silent, File No. 0000243193, ARE DISMISSED AS MOOT.

IT IS FURTHER ORDERED that the request of KASA Radio Hogar for a rule waiver to allow FM translator station K294CW, Phoenix, Arizona, Facility ID No. 148238, to originate programming, Pleading File No. 0000243593, IS DISMISSED AS MOOT.

IT IS FURTHER ORDERED that the interference complaint of Entravision Holdings, LLC, Pleading File No. 0000233497, IS DISMISSED AS MOOT.

⁴⁴ See *WJBW*, 32 FCC Rcd at 2304, para. 8 (where AM licensee began to operate FM translator from new location without authority and the translator license expired under section 312(g), the goals of Commission's revitalization efforts did not provide a basis to reinstate).

⁴⁵ Cf. *Revitalization of the AM Radio Service*, First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, 30 FCC Rcd 12145 (2015); *rules adopted*, First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, 32 FCC Rcd 1724 (2017), *recon. denied*, Order on Reconsideration, 33 FCC Rcd 5082 (2018).

⁴⁶ 47 U.S.C. § 303(q).

IT IS FURTHER ORDERED that the Informal Objection of Raymie Humbert, Pleading File No. 0000243901, IS DISMISSED AS MOOT.

Sincerely,

Albert Shuldiner

Albert Shuldiner
Chief, Audio Division
Media Bureau