

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-1132

September Term, 2017

FILED ON: APRIL 10, 2018

KINGDOM OF GOD, INC.,
APPELLANT

v.

FEDERAL COMMUNICATIONS COMMISSION,
APPELLEE

On Appeal of an Order of the
Federal Communications Commission

Before: GRIFFITH, *Circuit Judge*, and EDWARDS and RANDOLPH, *Senior Circuit Judges*.

J U D G M E N T

This appeal from an order of the Federal Communications Commission was considered on the basis of the appendix submitted by the parties and the presentations in the briefs. *See* Fed. R. App. P. 34(a)(2); D.C. Cir. R. 34(j). The court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. Cir. R. 36(d). For the reasons stated below, it is

ORDERED AND ADJUDGED that the decision of the Federal Communications Commission be **AFFIRMED**.

Appellant Kingdom of God, Inc. (“Kingdom”) is a non-profit corporation that operated a television station in Indiana. The Federal Communications Commission (FCC) licensed Kingdom to transmit broadcasts from only one specific location in Indianapolis. However, an FCC field investigation revealed that for several years the organization had transmitted all of its broadcasts from a different location in nearby Beech Grove, Indiana. The FCC cancelled Kingdom’s broadcast license because the station had failed to transmit any broadcasts from its authorized location for a consecutive twelve-month period, as required by the Communications Act. *See* 47 U.S.C. § 312(g). Kingdom appealed, arguing that the FCC acted arbitrarily and capriciously by cancelling Kingdom’s license and likewise abused its discretion by refusing to reinstate the license.

We affirm the FCC's decision.*

First, Kingdom argues the FCC acted arbitrarily and capriciously when it cancelled Kingdom's broadcast license. The undisputed facts reveal otherwise: For at least six years before the cancellation, Kingdom had been transmitting all of its broadcasts from an unauthorized location in Beech Grove. Because Kingdom had not transmitted any broadcasts from its authorized location for a consecutive twelve-month period, its license automatically expired. *See id.* ("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."). And Kingdom's transmissions from its *unauthorized* location in Beech Grove do not constitute "broadcast signals" for purposes of § 312(g). As we said in *Eagle Broadcasting Group v. FCC*, 563 F.3d 543, 552 (D.C. Cir. 2009), "it strains credulity to suggest that the reference to 'broadcast signals' in § 312(g) includes *unauthorized* and *unlicensed* transmissions."

Kingdom argues that the Supreme Court's recent decision in *McDonnell v. United States*, 136 S. Ct. 2355 (2016), requires us to overturn *Eagle Broadcasting*. But *McDonnell* is far afield. In that case, the Supreme Court overturned the conviction of former Virginia Governor Bob McDonnell based on its interpretation of a federal bribery statute, 18 U.S.C. § 201. Kingdom argues that because *McDonnell* narrowly interpreted a part of the bribery statute, we too must narrowly interpret § 312(g)'s twelve-month license-expiration provision. However, the Supreme Court's interpretation of an unrelated criminal statute in *McDonnell* has no direct bearing on § 312(g) of the Communications Act, and Kingdom develops no argument to show otherwise. In addition, Kingdom's cursory argument about its lack of "notice" of the FCC's policy is unpersuasive. The FCC's interpretation of § 312(g) was clearly established when the agency cancelled Kingdom's license.

Second, Kingdom claims in a series of brief arguments that the FCC abused its discretion when it refused to reinstate Kingdom's expired license. None of these arguments have merit. The FCC may reinstate an expired 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." 47 U.S.C. § 312(g). Generally, the "Commission has exercised its authority to reinstate an expired license to 'promote equity and fairness' only where the station failed to provide service for 12 consecutive months due to compelling reasons beyond the licensee's control." *Kingdom of God, Inc.*, 31 FCC Rcd. 7522, 7527 & n.40 (2016) (citing, e.g., *V.I. Stereo Commc'ns Corp.*, 21 FCC Rcd. 14259 (2006) (hurricane damage)). Here, Kingdom did not fail to satisfy its licensing requirements due to "compelling reasons beyond [its] control" but rather because of its own voluntary actions. And Kingdom offers no excuse to explain why it transmitted

* The FCC also determined that Kingdom had been broadcasting at technical parameters that were at variance from those specified in its license; however, we need not address that issue to resolve Kingdom's appeal. Nor need we resolve Kingdom's claim that it timely filed its petition for reconsideration. The FCC did not reject Kingdom's petition on that basis but instead issued a merits determination that the "cancellation of the Station's license pursuant to Section 312(g) of the Act was proper." *Kingdom of God, Inc.*, 31 FCC Rcd. 7522, 7524 n.20 (2016).

broadcasts from an unauthorized location for at least six years. Although it is true Kingdom referenced its “temporary tower site” in an unrelated 2009 filing, that reference is of no help because the agency never authorized the station to broadcast anywhere other than its Indianapolis location. *See id.* at 7525-26.

Kingdom also cites several unrelated FCC decisions to suggest the agency discriminated against Kingdom’s founder and president. However, no evidence in the record supports this suggestion, nor do the unrelated cases cited by Kingdom help its cause.

Finally, Kingdom complains that the FCC failed to act on several of Kingdom’s earlier filings. But those filings are unrelated to the location at which Kingdom was authorized to broadcast, and Kingdom does not explain how the agency’s alleged failure to respond affected this case.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41(a)(1).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk