

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

In the Matter of)	
)	
Word of God Fellowship, Inc.)	File No. BPCDT-20080530AGB
)	Facility ID No. 84277
Cancellation of the License for Television Station)	
DKCUBU, Price, Utah)	

MEMORANDUM OPINION AND ORDER

Adopted: October 17, 2014

Released: October 21, 2014

By the Commission:

1. The Commission has before it for consideration an Application for Review¹ filed by Word of God Fellowship, Inc. (WOGF), seeking review of a letter decision from the Media Bureau (Bureau) staff denying its petition for reconsideration of the staff's cancellation of the license of DKCUBU, Price, Utah (the Station).² For the following reasons, we affirm the Bureau's action and dismiss and otherwise deny the AFR.

2. **BACKGROUND.** As part of the broadcast transition to digital television, the previous licensee of DKCUBU, Price Broadcasting, Inc. (PBI), constructed and operated the Station in analog on channel 3.³ PBI subsequently selected channel 11 as its post-transition digital channel and on June 2, 2008, the Commission granted it a construction permit with an expiration date of June 12, 2009, the statutory deadline of the digital transition.⁴ PBI sought and received a six-month extension of the permit's initial expiration date until December 12, 2009, based on PBI's representation that its parent and its parent's licensee subsidiaries, including PBI, had filed for chapter 11 bankruptcy protection and needed the additional time to either sell their stations or arrange for financing to construct the digital facilities.⁵ On May 1, 2009, PBI, as debtor-in-possession, and WOGF filed an application to assign the Station to WOGF.⁶ PBI terminated the Station's channel 3 analog operation on June 12, 2009, pursuant to that statutory deadline for the cessation of analog operations by full-power television stations.⁷ The parties consummated the sale of the Station to WOGF on July 31, 2009.

¹ Word of God Fellowship, Inc., Application for Review (filed Jan. 19, 2011) (the AFR).

² Letter from Chief, Video Division, Media Bureau, FCC to Word of God Fellowship, Inc., 1800E3-JLB (Dec. 21, 2010) (*Reconsideration Decision*). Copies of the unpublished letter decision are available in the Commission's public reference room.

³ FCC File No. BLCT-20030313ATA.

⁴ FCC File No. BPCDT-20080530AGB.

⁵ FCC File No. BEPCDT-20081215ADY, Ex. 1.

⁶ FCC File No. BALCDT-20090501AAT (granted June 12, 2009).

⁷ FCC File No. BLSTA-20090623ACB. See DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009) (DTV Delay Act); 47 U.S.C § 309 note 3002(b).

3. On October 26, 2009, nearing the December 12 extended construction deadline, WOGF filed a request for Special Temporary Authorization (STA) to construct and operate a temporary digital facility on channel 11 at reduced power. In its STA Request, WOGF explained that it sought temporary relief to put channel 11 back on the air despite the limited suitability of the Station equipment. WOGF also stated that, in light of the filing of an informal objection to PCI's pending 2008 modification application to change the Station's transmitter site,⁸ and "problems with high-band VHF DTV stations recently being discovered," it was "looking for an alternative UHF channel" and intended to file an application for such a channel within 30 days of the STA Request.⁹ WOGF did not explain nor address in any way its failure to build out by the December 12, 2009 deadline.¹⁰

4. In a letter order dated July 6, 2010, the Bureau cancelled the license for the Station and deleted the call sign for two independent reasons.¹¹ First, the *Staff Letter* explained that DKCUB ceased its analog operations on June 12, 2009, and that the license expired automatically pursuant to section 312(g) of the Communications Act because the Station did not operate for twelve consecutive months thereafter.¹² Second, the *Staff Letter* concluded that cancellation was also warranted because WOGF had not constructed its digital station by the December 12, 2009 construction permit expiration date, and that an application for a license to cover was never filed, resulting in the expiration of the Station authorization on that date.¹³

5. WOGF petitioned for reconsideration of the DKCUB license cancellation on August 3, 2010, asserting that the Station had not been dark for twelve consecutive months, but, in fact, began transmitting digital programming on channel 11 on May 16, 2010 with the facilities specified in the pending STA Request.¹⁴ WOGF represented that it had interpreted the Bureau's lack of action on its STA Request to confer to it authority to operate. The Petition did not address either WOGF's failure to have timely constructed and commenced digital operation prior to the December 12, 2009 construction permit expiration date. On December 21, 2010, the Bureau issued the *Reconsideration Decision*, which concluded that no basis existed to reconsider the *Staff Letter* and therefore denied the Petition.¹⁵ The *Reconsideration Decision* explained that the Station's digital construction permit expired on December 12, 2009, and that WOGF never asked for the construction permit to be tolled. With regard to the construction and operation of the Station in May 2010, the staff also found that, consistent with precedent,

⁸ FCC File No. BMPCDT-20080620AAQ.

⁹ FCC File No. BDSTA-20091026ADK (STA Request), Ex. 21. WOGF never filed such an application.

¹⁰ *Implementation of DTV Delay Act*, Second Report and Order and Notice of Proposed Rulemaking, 24 FCC Rcd 2526, 2540-41, paras. 35-36 (2009) (*DTV Delay Act Second Report and Order*) ("Accordingly, these stations must complete construction of their digital facility no later than June 12, 2009. . . . We take this opportunity to remind stations that if their construction deadline is extended beyond June 12, 2009, the tolling standard applies to the extended construction deadline, and stations may use only the tolling criteria as a basis for failing to complete construction.").

¹¹ Letter from Associate Chief, Video Division, Media Bureau, FCC to Word of God Fellowship, Inc., 1800E3-JLB (Jul. 6, 2010) (*Staff Letter*).

¹² "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 . . ." 47 U.S.C. § 312(g).

¹³ Section 73.3598(b) of the Commission's rules allows licensees to seek tolling of that deadline. 47 C.F.R. § 73.3598(b).

¹⁴ Word of God Fellowship, Inc. Petition for Reconsideration (filed Aug. 3, 2010) (the Petition).

¹⁵ *Reconsideration Decision* at 2-3.

licensees cannot avoid the consequences of non-operation for 12 consecutive months imposed by section 312(g) through the intervening operation of unauthorized facilities.¹⁶ The *Reconsideration Decision* also rejected WOGF's request for reinstatement of its license under section 312(g)'s "equity and fairness" provision, noting that the Commission has previously exercised discretion in cases limited to natural disasters or other compelling circumstances outside the licensee's control, and that WOGF had asserted no such basis in its submissions.¹⁷

6. In its AFR, WOGF again fails to acknowledge that the Station's post-transition digital construction permit had expired months before it first constructed and operated the Station. Instead, the AFR maintains that the *Reconsideration Decision* "brushed aside" WOGF's argument that the Station had been on the air pursuant to STA (albeit mistakenly assumed to have been granted), and that the *Reconsideration Decision* erroneously refused to exercise section 312(g) discretion to reinstate the license.¹⁸ WOGF seeks to cast the blame for its problems on the Bureau, maintaining that the staff failed to act in a timely manner on the STA,¹⁹ and that the staff interpreted section 312(g)'s discretionary "equity and fairness" clause too narrowly in rejecting the request to reinstate the DKCUB authorization where it did not take into account the fact that WOGF did successfully place on the air six other full-power stations that it bought out of bankruptcy.²⁰

7. **DISCUSSION.** On review of the record before us and as explained below, we find that the Bureau's denial of the Petition was consistent with Commission precedent and policy and fully warranted by the facts. The DTV Delay Act directed the Commission to terminate all analog full-power television licenses as of June 13, 2009.²¹ The Commission implemented this Act through the adoption of several orders.²² WOGF ceased operation of the Station as of that June 13 date, seeking and obtaining an extension of its digital construction permit until December 12, 2009, to build out its digital facilities. When the digital facility was not constructed and operating by that date the license authorization expired.

8. As a separate and independent basis for our affirming the Bureau here, we reject WOGF's arguments concerning its construction and operation of the Station and its request that the authorization be reinstated. First, we give no weight to the alleged good-faith belief of WOGF's employees and contractors that the lack of an FCC objection to the STA Request somehow constituted approval of the STA.²³ As the Bureau correctly observed, WOGF's construction and operation of the

¹⁶ *Reconsideration Decision* at 3 (citing *Letter to Erwin G. Krasnow, Esq.*, 25 FCC Rcd 1842 (MB Aud. Div. 2010)). The *Reconsideration Decision* indicated that the STA Request was never acted on because it was not reached for processing until after the Station's digital construction permit expired in December 2009 and the Station no longer had any underlying operational authorization, and it also was not acceptable for filing because it did not propose a facility that met the minimum power requirements for full-power television stations. *Reconsideration Decision* at 2.

¹⁷ *Reconsideration Decision* at 3 n.14 (citing *Letter to ETC Communications, Inc.*, 25 FCC Rcd 10686 (MB Vid. Div. 2010)). Section 312(g) states that "the Commission may extend or reinstate such station license . . . for any other reason to promote equity and fairness." 47 U.S.C. § 312(g).

¹⁸ Application at 1.

¹⁹ *Id.* at 3.

²⁰ *Id.* at 4-5.

²¹ 47 U.S.C. § 309 note 3002(b).

²² See, e.g., *Implementation of DTV Delay Act*, Second Report and Order and Notice of Proposed Rulemaking, 24 FCC Rcd 2526 (2009).

²³ STA Request, Att. B.

Station in May 2010 was unauthorized, not only because the underlying Station permit had expired the previous December, but also because approval of the operation of the facilities specified in the STA request was never granted. The Commission has consistently ruled that misinterpretation of the law does not excuse the violation,²⁴ and that an unauthorized transmission is insufficient to avoid the consequences of Section 312(g)'s automatic expiration.²⁵ As to WOGF's alternative request that the station authorization be reinstated under the "equity and fairness" criterion of that Section of the Act, as the staff noted in the underlying proceeding, the Commission has previously exercised such discretion where natural disasters or other compelling circumstances outside of the licensee's control prevented station operations, factors not present here.²⁶

9. **ACCORDINGLY, IT IS ORDERED** That, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and sections 1.115(c) and (g) of the Commission's rules, 47 C.F.R. § 1.115 (c),(g), the Application for Review IS DISMISSED for the reasons discussed in footnote 25 above and otherwise IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁴ See, e.g., *Dover Radio Page, Inc.*, Memorandum Opinion and Order and Further Notice of Apparent Liability, 4 FCC Rcd 4107, para. 5 (CCB 1989) ("As a general rule, we will not excuse a violation based on a licensee's misinterpretation of the Rules in the absence of other mitigating factors.")

²⁵ See *A-O Broadcasting*, Memorandum Opinion and Order, 23 FCC Rcd 603, 608, para. 10 (2008).

²⁶ We also reject WOGF's contentions that its problems were the result of Bureau inaction on its filings. Thus, although it maintains at page 2 of its AFR that it filed its STA Request "to establish the digital signal in Price, Utah while awaiting action on the [2008] modification application (which never came)," as noted in paragraph 3 above, in that Request, it represented that it intended within 30 days to file a further modification application changing the digital channel for the Station. It never filed the application. Similarly, WOGF's contentions that Section 73.1635(a)(1) of the rules "strongly implies" that the Bureau act on STA requests "within a matter of days, not months," that the Bureau "misinterpreted the purpose of STA" and should have granted it one, notwithstanding the minimal facilities proposed, and that the staff's interpretation of section 312(g) of the Act's "equity and fairness" language was "too narrow" (AFR at 3-5) are new arguments upon which the Bureau has been afforded no opportunity to pass. To the extent that it contains these contentions, we dismiss the AFR pursuant to Section 1.115(c) of the Rules.