

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

In the Matter of)	
)	
Christian Broadcasting of East Point, Inc.)	File Nos. BR-20111201ASE and
)	BAL-20130910AAJ
Applications to Renew and Assign the License of)	Facility ID No. 72814
DWTJH(AM), East Point, Georgia)	

MEMORANDUM OPINION AND ORDER

Adopted: November 18, 2015

Released: November 19, 2015

By the Commission:

I. BACKGROUND

1. The Commission has before it two Applications for Review of a November 24, 2014 *Decision* by the Media Bureau (“Bureau”) concerning former broadcast station DWTJH(AM), East Point, Georgia (the “Station”): the first, filed jointly by Christian Broadcasting of East Point, Inc., the former licensee of the Station, with the Estate of Levi E. Willis, Sr., 100% shareholder of that company until his death (“CBEP”), and the second, filed by Praise 95, Inc. (“Praise”), the Station’s proposed assignee (collectively, the “Parties”).¹ The *Decision* dismissed in part and denied in part the Parties’ petitions for reconsideration of a Bureau determination that CBEP’s applications to renew the Station’s license and to assign that license to Praise were moot because the Station’s license had expired as a matter of law in November 2010 pursuant to Section 312(g) of the Communications Act of 1934, as amended (the “Act”) and, therefore, forfeited automatically, upon CBEP’s failure to broadcast for an extended period.² We affirm the Bureau’s *Decision*, as discussed below.

2. The Station ceased operating on November 29, 2009, following its apparent eviction from its licensed site. The Bureau issued a special temporary authorization (“STA”) to allow the Station to remain silent for 180 days and included in the STA a warning that, notwithstanding the grant of the STA, the Station license would automatically expire as a matter of law by operation of Section 312(g) of the Act if the Station’s “broadcast operations do not commence by 12:01 a.m., November 29, 2010,” the one-

¹ See *John C. Trent, Esq.*, Letter, Ref. No. 1800B3-IB (MB Nov. 25, 2014) (“*Decision*”) (denying recon. of *John C. Trent, Esq.*, Letter, Ref. No. 1800B3-MM (MB Jul. 25, 2014) (“*July Letter*”). Praise filed its Application for Review on December 29, 2014. The next day, CBEP filed its Application for Review, attaching Praise’s filing, which it incorporates “in total” in its own two-paragraph submission. We shall refer to CBEP and Praise collectively as the “Parties.”

² Section 312(g) provides that “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). See also *Implementation of Section 403(l) of the Telecommunications Act of 1996*, Order, 11 FCC Rcd 16599 (1996); 47 C.F.R. § 73.1740(c). It is well settled that an attempt to resume operation of a silent station with unauthorized facilities cannot avoid Section 312(g)’s license forfeiture. See *Eagle Broadcasting Group, Ltd. v. FCC*, 563 F.3d 543, 545 (D.C. Cir. 2009); *Great Lakes Community Broadcasting, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 8239, 8244-47 (MB 2009); *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 608-9 (2008).

year anniversary of the commencement of its silence.³ CBEP next contacted the Bureau on November 21, 2011, nearly two years after it had ceased broadcasting, when it stated that the Station was operating with reduced power at an alternate site due to a landlord dispute and requested STA to continue doing so. When CBEP filed its December 1, 2011 application for license renewal, it indicated that the Station was no longer operating.⁴ Following receipt of an informal objection in 2012 alleging that the Station had not operated since November 29, 2009, the Bureau initiated an inquiry. According to CBEP, the Station returned to the air for brief periods while the inquiry was pending. CBEP requested and received an STA to so operate at a time when the Bureau was not yet aware that the license had already expired. On July 25, 2014, the Bureau found that the Station's license had expired automatically pursuant to Section 312(g) on November 29, 2010, upon 12 consecutive months off-air. The Bureau found that the Station's claimed brief operations during the 12-month period did not prevent expiration because, by CBEP's admission, the Station used non-conforming, unauthorized facilities. The Bureau concluded further that equity and fairness would not be served by reinstatement. The Bureau denied reconsideration in the November 24, 2014 *Decision* now before us for review.

II. DISCUSSION

3. Upon consideration of the Applications for Review and the entire record we affirm the Bureau's *Decision* for the reasons stated therein. In particular, we find no merit to the Parties' claims that the *Decision* conflicts with a Commission ruling in the *Southwestern* case, upon which the Parties rely for their argument that it is better to allow willing and able parties to return stations to the air than to let licenses forfeit.⁵ *Southwestern* involved an *ad hoc* processing policy only used during a one-year transition period between Section 312(g)'s enactment in 1996 and the date upon which silent station licenses would first expire for non-operation in 1997. That processing policy expired long ago and has no bearing on CBEP's failure to transmit broadcast signals over the Station with authorized facilities for 12 consecutive months in 2009-10.

4. As Praise notes, we have the discretion under Section 312(g) to reinstate a silent station's expired license "to promote equity and fairness."⁶ The Commission has done so only in rare circumstances where a station was silent as the result of natural disasters or other compelling reasons beyond the licensee's control.⁷ We see no evidence here that the Station's 12 continuous months of silence between November 29, 2009 and November 29, 2010 were beyond the licensee's control. We appreciate the important policy goals, including bringing an additional radio service to the community, discussed by the Parties.⁸ We do not believe, however, that the facts of this case present circumstances in which it is fair or equitable to reinstate the license and enrich a former licensee that failed to provide its

³ See *Letter to Levi Willis, II*, Letter, Ref. 1800B3-KLJ (MB Mar. 4, 2010). The Parties later claimed that the Station operated from an unlicensed site at reduced power for several days between November 2010 and November 2011, and the Bureau rejected claims that those operations were authorized as emergency antennas. See *July Letter* at 1-3; 47 C.F.R. § 73.1680.

⁴ See File No. BR-20111201ASE, Section III, Question 6 and Ex. 13.

⁵ See *Southwestern Broadcasting Corp.*, Order, 11 FCC Rcd 14880, 14881 (1996) ("*Southwestern*").

⁶ 47 U.S.C. § 312(g); Praise Application for Review at 8, 12.

⁷ See *Word of God Fellowship*, Memorandum Opinion and Order, 29 FCC Rcd 13280 (2014) (exercise of discretion to reinstate not warranted where licensee had not shown that a television station's silence was due to a natural disaster or similar compelling circumstances beyond its control). Compare *V.I. Stereo Communications Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006) (silence due to destruction of towers in hurricanes); *Community Bible Church*, Letter, 23 FCC Rcd 15012, 15014 (MB 2008) (silence to promote air safety after discovery that FCC and FAA records contained incorrect tower information for which licensee was not responsible); *Mark Chapman, Court-Appointed Agent*, Letter, 22 FCC Rcd 6578 (MB 2007) (silence from licensee's compliance with court order).

⁸ Praise Application for Review at 8-12.

community with broadcast service. The Parties' contention that East Point would be well served by receiving service from another radio station highlights the basis for the automatic cancellation provision of Section 312(g) of the Act. The statute reflects the will of Congress that, where a broadcast licensee fails to provide such promised service for a period of 12 consecutive months, its authorization will automatically terminate so that it may ultimately become available to others that will, in fact, provide such service. We encourage Praise and any other interested parties to purchase a station or participate in any future auction proceedings that would allow them to serve the community. As noted above and in the Bureau's July Letter and Decision, as a result of CBEP's failure to meet this service obligation, by operation of Section 312(g) of the Act, the Station authorization automatically expired by law as of November 29, 2010. Thus, when the Parties entered into their Asset Purchase Agreement on August 22, 2013,⁹ CBEP had no license to convey.¹⁰ Events subsequent to that expiration, specifically CBEP's sporadic and unauthorized transmission of a signal over the Station¹¹ or its attempted sale to Praise years later, do not warrant the reinstatement of the license.

III. ORDERING CLAUSE

5. ACCORDINGLY, IT IS ORDERED that the Applications for Review of Christian Broadcasting of East Point, Inc. and Praise 95, Inc. ARE DENIED, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and Section 1.115(g) of the Commission's rules, 47 C.F.R. § 1.115(g).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁹ See File No. BAL-20130910AAJ, Att. 5.

¹⁰ Praise disputes the Bureau's conclusion in the *Decision* that certain new arguments raised in its Petition for Reconsideration should have been raised earlier in the proceeding. Praise Application for Review at 2-4. We reject these arguments, which concern matters that occurred after the expiration of the Station license on November 29, 2010, such as CBEP's subsequent brief and sporadic transmissions of a signal over the then-unauthorized facilities during 2011-2013 and the potential resumption of service over the station by Praise geared toward East Point's minority population. *Id.* at 2, 5-12. These matters are not relevant to the question of whether Section 312(g)'s considerations of equity and fairness dictate that the Commission should reinstate the license. As established in the precedents cited in note 7 *supra*, that analysis looks to whether the Station's 12 months of silence were the result of extraordinary factors beyond the control of CBEP, not its operation of the Station after it had lost its license or the claimed broadcast plans of a buyer to which the former licensee tried to sell the Station years later.

¹¹ See *Decision*, n.12.