

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

In the Matter of)
)
 Southern TV Corporation) Facility ID No. 69447
 DWGSA-CA, Savannah, GA)

MEMORANDUM OPINION AND ORDER

Adopted: January 12, 2016

Released: January 13, 2016

By the Commission:

I. INTRODUCTION

1. By this *Memorandum Opinion and Order*, we deny an Application for Review filed by Southern TV Corporation (“STV”), the former licensee of deleted Class A television station WGSA-CA, Savannah, Georgia (“Station”), challenging a staff decision that denied both a Petition for Relief under Section 312(g) of the Communications Act of 1934, as amended (“Act”), and a Petition for Reconsideration of the Commission’s cancellation of the Station’s license, deletion of its call-sign, and dismissal of its request for Special Temporary Authority (“STA”) to operate the Station at variance from its license.¹

II. BACKGROUND

2. In its Petition for Relief, STV requested that the Commission permit the Station to be silent for more than one year, and “extend” the license for WGSA-CA, which would otherwise automatically expire under Section 312(g) of the Act.² Under that statutory provision, if a broadcast station “fails to transmit broadcast signals for any consecutive 12-month period,” its license expires automatically at the end of that period. Section 312(g) allows for license reinstatement only 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.”³ In its Petition for Reconsideration, STV sought reconsideration of the Video Division’s (“Division”) February 3, 2015 letter decision cancelling the Station’s license, and deleting its call sign due to such lack of transmissions, and dismissing its STA request to operate the Station at variance from its license.⁴ STV requested reinstatement of the Station’s license pursuant to the above-noted “equity and fairness” provision of Section 312(g) and also requested reconsideration of the dismissal of its November 28, 2012 STA request. The Division denied both Petitions, finding that STV had failed to demonstrate that reinstatement of its license was warranted under that provision of Section 312(g).⁵ In particular, the Division determined that the Station’s extended silence was not the result of compelling reasons beyond STV’s control, but rather a result of its own actions, finances, and business judgments—specifically, its admitted financial or other inability to locate a

¹ Application for Review (filed Sept. 30, 2015)(“AFR”).

² Petition for Relief Under Section 312(g) of the Communications Act (filed May 2, 2013) (“Petition for Relief”).

³ 47 U.S.C. § 312(g).

⁴ Petition for Reconsideration (filed Feb. 25, 2015).

⁵ Letter from Barbara A. Kreisman, Chief, Video Division to Peter Tannenwald and Davina Sashkin (Vid. Div. Sept. 1, 2015)(“*Letter Decision*”).

new permanent site from which to commence Station operations in accordance with its authorized technical parameters.⁶

3. In its Application for Review, STV contends that the Station's extended silence was the result of the Division's refusal to grant its STA request as a result of an alleged Division policy "that no STAs were any longer being granted to Class A stations for any reason or purpose...."⁷ STV argues that this policy is discriminatory, runs afoul of both Commission precedent and the Administrative Procedure Act, and is a policy that the Commission must overturn.⁸ According to STV, it stood "ready, willing and able to operate its station," but was unable to do so because of the Division's failure to grant its STA request.⁹ Ultimately, STV argues that its license for WGSA-CA should be reinstated and its STA be granted.

III. DISCUSSION

4. Consistent with the standard set forth in Section 1.115(b)(2) of the Commission's rules, we deny the Application for Review.¹⁰ Based upon the evidence presented in this case, we conclude that STV has not demonstrated that the Division erred in its decision to deny STV's Petition for Relief and Petition for Reconsideration, and we decline to reinstate the Station's license or grant the STA request. In both its Petition for Relief and Petition for Reconsideration, STV attempts to pass blame on to the Division for the Station's failure to transmit a broadcast signal for twelve consecutive months. STV contends the Station's extended silence is a direct result of the Division's application "of an unlawful and discriminatory policy denying operating authority" and that this allegedly improper denial of authority "is not a private business decision." According to STV, it received informal advice from Division staff that the Commission was no longer granting STAs to any Class A station for any purpose.

5. STV's allegation of the existence of such a Division policy is unsubstantiated and irrelevant to the merits of the Division's underlying decision not to grant STV yet another STA to operate the Station with reduced facilities. Section 309(f) of the Act provides the staff with the discretion to act on an STA request "if it finds that there are extraordinary circumstances requiring temporary operations in the public interest and that delay...would seriously prejudice the public interest."¹¹ In fact, in its *Letter*

⁶ *Id.* at 4-5.

⁷ AFR at 1.

⁸ AFR at 2. In addition to the alleged unlawful and discriminatory policy prohibiting the grant of STAs, STV contends that the Division in its decision below demanded that STV "apply for permanent reduced facilities instead of an STA." This is a clear misreading of the Division's decision. Nowhere in its Letter Decision does the Division "demand" anything of the Station, let alone demand that the Station apply for permanent reduced facilities instead of an STA. Rather, in explaining that STV's inability to resume broadcasting was the result of circumstances within its control (i.e., its own actions, finances and/or business judgments), the Division merely provided an example of one such action STV could have taken to prevent expiration of its license pursuant to Section 312(g). Namely, STV could have filed a modification application to specify the new site and operating parameters that were the subject of its STA requests, and then licensed that site, obviating the need for it to continually seek STAs to operate such facilities on a temporary basis. If such a request would have resulted in a violation of the Commission's freeze on facility increases by full power and Class A stations, STV could have requested a waiver under Section 1.3 of the rules. See Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications, Effective Immediately, and Reminds Stations of Spectrum Act Preservation Mandate, Public Notice, 28 FCC Rcd 4364 (2013); 47 C.F.R. § 1.3.

⁹ Petition for Relief at 2.

¹⁰ 47 C.F.R. § 1.115(b)(2) (stating that the Commission may grant an application for review if the petitioner can demonstrate, among other factors, that (1) "[t]he action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy;" (2) "[t]he action involves application of a precedent or policy which should be overturned or revised;" or (3) "[a]n erroneous finding as to an important or material question of fact.").

¹¹ 47 USC § 309(f). See also 47 C.F.R. § 73.1635(a)(4).

Decision, the Division noted the permissive nature of Sections 309(f) of the Act and 73.1635 of the rules. The Division discussed the requirements for requesting an extension to an STA, noting that, pursuant to Section 73.1635(a)(4), a licensee must “demonstrate that any further extensions requested are necessary and that all steps to resume normal operation are being undertaken in an expeditious and timely fashion.”¹² Notwithstanding STV’s claims that the Division’s decision to cancel the Station’s license and dismiss the STA request were the result of the allegedly unlawful and discriminatory policy, the Division acted appropriately due to STV’s failure to make the showing necessary to warrant the issuance of yet another STA to operate at reduced facilities.

6. STV failed to provide any evidence describing the actions it took to resume operation during its most recently authorized period of silence. Moreover, STV’s numerous STA requests that it filed during 2009-2012 demonstrate that its reasons for the Station’s repeated requests for STAs to operate with reduced facilities from a temporary location and then for silence authority were constantly changing and its later statements cast doubt on the validity of its earlier requests. It initially based its STA request on its representation that the owner of its authorized transmitter site had advised it that the owner planned to dismantle the tower and sell the land.¹³ In later requests, it cited the need for it to repair the transmitter at its alternative site for which it had been granted an STA.¹⁴ Thereafter, it noted its lack of financial resources to locate a new site and its general “financial distress.”¹⁵ In its penultimate STA request, again asking to go silent, STV acknowledged that the tower owner’s reported intention to dismantle the tower was not the real reason for its inability to provide service with its authorized facilities in 2009: “Financial pressures from the economic downturn made it necessary to find a tower with lower rent in any event, whether the tower remained standing for a while or not.” With regard to its claimed equipment problems and its intention, stated in its 2010 and 2011 STA requests to make the necessary repairs, it indicated that “The newly imposed deadline for transition to digital operation indicates that investing in repair or replacement of the analog equipment is unwise and that any available resources should be devoted to finding a site and acquiring equipment for digital operation.” Accordingly, it reported that “the station has been taken dark pending further evaluation of its digital future.”¹⁶ In its November 28, 2012 STA request, STV cited its “financial distress,” noting its expectation that the reduced facilities for which it sought the STA were “only temporary,” and that it “hopes to be able to resume full power licensed operation when its economic condition improves,”¹⁷ but neglecting to state precisely when that would occur.

7. The STA request at issue was STV’s ninth request for reduced facilities and/or silent authority filed between 2009 and 2012. An examination of STV’s STAs reveals that, after three years of cycling the Station on and off the air, in its November 28, 2012 request, STV, again claiming “financial distress,” failed to demonstrate what steps it had taken towards resuming normal operation as required by Section 73.1635(a)(4) of the Commission’s rules. Its limited operation of the Station since 2009 – operating for two brief periods with temporary operations and reduced facilities -- appear to have been attempts to evade license expiration under Section 312(g).¹⁸ We agree with the Division that STV failed

¹² 47 C.F.R. § 73.1635(a)(4); *see also* Letter Decision at 5 and fn.40.

¹³ *See* File Nos. BLSTA-20090112AVQ, BLESTA-20090706ABI, each seeking silent authority.

¹⁴ *See* File Nos. BSTA-20100112AEG (seeking reduced facilities), BLSTA-20110204AEZ (silent authority).

¹⁵ *See* File Nos. BLSTA020100610AEI (silent authority), BSTA-20101203ABW, BSTA-20120125AEB (each seeking reduced facilities).

¹⁶ *See* File No. BLSTA-20120529AAL (silent authority).

¹⁷ *See* File No. BSTA-20121128BAK (reduced facilities).

¹⁸ In some of its STA requests, STV cited the need to make the Station operational, albeit with reduced facilities, to avoid license expiration under Section 312(g). *See* File Nos. BLESTA-20090706ABI, BSTA-20101203ABW, BSTA-20120125AEB. As noted in the *Letter Decision*, both times that the Division granted STV such an STA (granting File Nos. BSTA-201001203ABW, BSTA-2010112AEG) STV operated the Station for less than a month before again taking it silent. *Letter Decision* at 2.

to make the requisite showing to warrant grant of yet another STA and that the Station's failure to transmit a broadcast signal for twelve consecutive months was a result of STV's own actions, finances, and/or business judgments and not a result of forces beyond STV's control. Accordingly, we affirm the Division's conclusion that reinstatement of the Station license was not warranted under the "equity and fairness" provision of Section 312(g) of the Act.¹⁹

IV. CONCLUSION

8. Upon consideration of the Application for Review and the entire record, we conclude that STV has not demonstrated that the Division erred. The Division, in its September 1, 2015 *Letter Decision*, properly decided the matters raised, and we uphold its actions for the reasons stated therein.

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 Section 1.115(g) of the Commission's rules, 47 C.F.R. § 1.115(g), the Application for Review filed by Southern TV Corporation **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁹ The Commission will reinstate an expired station license under the "equity and fairness" provision of Section 312(g) if the station's failure to transmit is due to extraordinary circumstances beyond the licensee's control, not where the failure to operate is the result of the licensee's business decision not to provide service due to financial pressures or other reasons. See, e.g., *V.I. Stereo Communications Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006) (reinstatement warranted where station's silence resulted from hurricane destruction); *Community Bible Church*, Letter, 23 FCC 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); *Mark Chapman, Court-Appointed Agent*, Letter, 22 FCC Rcd 6578 (MB 2007) (reinstatement warranted where extended silence resulted from licensee's compliance with a court order). See also, e.g., *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617 (2008) (reinstatement not warranted when site loss was a result of the licensee's rule violations and continued silence was a result of licensee's failure to complete construction at an alternate site); *ETC Communications, Inc.*, Letter, 25 FCC Rcd 10686, 10689 (MB 2010) (reinstatement not warranted where the licensee chose not to operate financially struggling station while offering it for sale); *Kirby Young*, Letter, 23 FCC Rcd 35 (MB 2008)(reinstatement not warranted where the licensee was not financially able to restore operations after transmitter failed).