

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

In the Matter of)	
)	
Kingdom of God, Inc.)	Facility ID No. 34894
Former Licensee of Deleted Class A Television)	
Station DWKOG-LP, Indianapolis, IN)	

ORDER ON RECONSIDERATION

Adopted: January 31, 2017

Released: January 31, 2017

By the Commission:

I. INTRODUCTION

1. In this *Order on Reconsideration* we deny a Petition for Reconsideration (Petition) filed by Kingdom of God, Inc. (KOG),¹ the former licensee of deleted Class A television station DWKOG-LP, Indianapolis, Indiana (Station). KOG seeks reconsideration of the Commission’s *Memorandum Opinion and Order*² (*KOG MO&O*) dismissing KOG’s Application for Review (KOG AFR) seeking reinstatement of the Station’s license.³ KOG contends that newly established U.S. Supreme Court precedent in *McDonnell v. United States*⁴ requires that the *KOG MO&O* be rescinded and vacated, and the Station’s license be reinstated. For the reasons below, we deny the Petition.

II. BACKGROUND

2. On March 8, 2016, KOG filed the KOG AFR seeking review of the Video Division of the Media Bureau’s (Division’s) cancellation of the Station’s license and digital construction permit, deletion of its call-sign, and dismissal of all related pending applications.⁵ In the *KOG MO&O* the Commission dismissed KOG’s AFR. The Commission found that the KOG AFR could not be granted on the basis of the arguments presented because KOG never posed those arguments in the original proceeding before the Division.⁶ As an independent basis for its decision, the Commission also concluded that KOG failed to demonstrate that the Division erred in its decision.⁷

3. On July 27, 2016, KOG filed the instant Petition seeking review of the *KOG MO&O*. KOG maintains that the Commission must rescind and vacate its decision in the *KOG MO&O* and reinstate the Station’s license as the result of new legal precedent established by the U.S. Supreme Court

¹ Petition for Reconsideration of Kingdom of God, Inc. (filed Jul. 27, 2016) (Petition).

² *Kingdom of God, Inc., former Licensee of Deleted Class A Television Station DWKOG-LP, Indianapolis, IN*, Memorandum Opinion and Order, 31 FCC Rcd 7522 (2016) (*KOG MO&O*).

³ Application for Review of Kingdom of God, Inc. (Mar. 8, 2016) (AFR).

⁴ *McDonnell v. U.S.*, 136 S.Ct. 2355, Case No. 15-474 (2016) (*McDonnell*).

⁵ See Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Kingdom of God, Inc. (Aug. 10, 2015); Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Kingdom of God, Inc. (Nov. 6, 2015).

⁶ *KOG MO&O*, 31 FCC Rcd at 7524, para. 5; see 47 C.F.R. § 1.115(c) (“[n]o application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass.”).

⁷ *KOG MO&O*, 31 FCC Rcd at 7524, para. 5.

in *McDonnell*.⁸ Because *McDonnell* was decided on the same day that the *MO&O* was issued, KOG contends that under Section 405(a)(2) of the Communications Act of 1934, as amended (Act), it is entitled to reconsideration because its request “relies on questions of fact or law upon which the Commission...has been afforded no opportunity to pass.”⁹ KOG also argues that reinstatement of the license is warranted under the equity and fairness provision of Section 312(g) of the Act.¹⁰

III. DISCUSSION

4. As described below, we deny the Petition. We find that the *McDonnell* case is not relevant and offers no basis to reconsider the *KOG MO&O*. We also find that the other arguments presented in KOG’s Petition previously have been properly rejected by the Commission.

5. Section 1.106(b)(2) of the Commission’s Rules specifies limited circumstances under which a party may seek reconsideration of a Commission denial of an Application for Review. A Petition for Reconsideration will be entertained only if the petition (i) “relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission,” and/or (ii) “relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity.”¹¹

6. KOG’s Petition asserts that the Supreme Court’s decision in *McDonnell*, which was issued after the *KOG MO&O* was released, overruled precedent regarding the Commission’s interpretation of Section 312(g), namely that a Station must transmit an “authorized” broadcast signal within any consecutive 12-month period in order to avoid automatic expiration of its license.¹² KOG thus contends that the Commission’s reading of Section 312(g) does not comport with the explicit language of the provision and that the Supreme Court’s ruling in *McDonnell* “requires the Commission to narrowly and cautiously interpret and apply statutes which allow for draconian penalties such as license revocation or forfeiture.”¹³

7. Upon review, we find that the Supreme Court’s holding in *McDonnell* has no relevance to the case before us. The Court’s holding in *McDonnell* addressed both the trial court and federal government’s interpretation of criminal federal corruption laws, specifically what constitutes an “official act” by an elected official under such statutes.¹⁴ The holding has no bearing on the interpretation of Section 312(g) of the Act. KOG maintains that, because Section 312(g) of the Act only calls for the automatic expiration of a broadcast license that “fails to transmit broadcast signals for any consecutive 12-month period,” under *McDonnell*, the Commission’s subsequent clarification that such transmissions

⁸ Petition at 3-6.

⁹ Petition at 2 quoting 47 U.S.C. § 405(a)(2).

¹⁰ Petition at 6-8. Under Section 312(g), the Commission can 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).

¹¹ 47 C.F.R. § 1.106(b)(2).

¹² The Commission and the D.C. Circuit on appeal have both held that the unauthorized transmission of a broadcast signal does not exempt a licensee from the automatic expiration provision of Section 312(g) of the Act. See, e.g., *A-O Broad. Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603 (2008); *Eagle Broadcasting Group, Ltd. v. FCC*, 563 F.3d 543 (D.C. Cir. 2009); and *Great Lakes Community Broadcasting, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 8239 (Aud. Div. 2009).

¹³ Petition at 6.

¹⁴ *McDonnell*, 136 S.Ct. at 2367-68 (“Taking into account the text of the statute, the precedent of this Court, and the constitutional concerns raised by Governor McDonnell, we reject the Government’s reading of § 201(a)(3) and adopt a more bounded interpretation of “official act.”).

must be as authorized for the station is “strained and unconstitutional.”¹⁵ Thus, it contends that, because “all licensees of the FCC are entitled to fair and explicit notice of what is required of them,”¹⁶ under *McDonnell*, the Station license must be reinstated.

8. In fact, licensees such as KOG have been provided clear notice of the Commission’s interpretation of Section 312(g) that the transmission of a broadcast signal must be “authorized” and the Commission’s interpretation has been upheld by the D.C. Circuit as reasonable and consistent with the Act.¹⁷ To interpret Section 312(g) as KOG suggests would be in direct conflict with established precedent and would undermine the Commission’s licensing processes.¹⁸ Moreover, there is utterly no support for KOG’s suggestions that the D.C. Circuit’s decision affirming the Commission’s interpretation was overruled by the *McDonnell* decision or that the Commission lacks the authority to interpret Section 312(g) of the Act. We accordingly reject KOG’s contention that the *McDonnell* opinion is relevant to this case and conclude that neither Section 405(a)(2) of the Act nor Section 1.106(b)(2) of the Commission’s Rules require us to reconsider our prior decision.¹⁹

9. KOG also continues to maintain that reinstatement of the license is warranted as a matter of equity and fairness.²⁰ In the *KOG MO&O*, the Commission dismissed these same arguments on both procedural and substantive grounds. The Commission rejected the arguments as a procedural matter because KOG never raised them with the Division and thus the Division had no opportunity to pass upon them.²¹ As an alternative and independent basis for its action, the Commission also noted that its discretion to reinstate a license under the equity and fairness provision of Section 312(g) is severely limited and such discretion has only been exercised for compelling reasons beyond the licensee’s control.²² In the *KOG MO&O*, the Commission found that no such extraordinary circumstances had been presented where KOG had only sporadically operated the Station, and had operated from an unauthorized site and at technical parameters at variance with its authorization, for at least six years.²³ Now relying on its fresh contention that, under *McDonnell*, it failed to receive fair and explicit notice that its illegal operation of the station did not constitute service under Section 312(g), KOG maintains that such reinstatement is required.²⁴ For the reasons discussed above, that decision has no impact on the appropriateness of the cancellation of its license. The Petition does not raise any new facts or arguments that warrant our reconsideration of this argument under Section 1.106(b)(2) of the Rules. Therefore, we again reject KOG’s equity and fairness arguments.

¹⁵ Petition at 5.

¹⁶ Petition at 6.

¹⁷ Section 301 of the Act requires that in order for a person or entity to transmit a broadcast signal it must obtain and hold a valid authorization from the Commission. 47 U.S.C. § 301. The D.C. Circuit has held that reading Section 312(g) in conjunction with Section 301 is reasonable, and that “Section 312(g) creates no exception to Section 301.” *Eagle Broadcasting Group*, 563 F.3d at 552 (“transmissions cannot occur except as authorized by a FCC license. Indeed, a license to broadcast is the ‘central requirement’ of the Act.”(citations omitted)). KOG’s interpretation of Section 312(g) would actually encourage unauthorized operation.

¹⁸ *Id.* at 553 (“Under the statute, unauthorized and unlicensed transmissions are no better than silence.”).

¹⁹ The clarity of this notice to KOG is evidenced by KOG’s contention that the Bureau had, in fact, authorized it to operate at variance with its Station authorization. *KOG MO&O*, 31 FCC Rcd 7523-24, para. 4. We rejected this argument, concluding that the Bureau had never provided it such authority. *Id.* at 7525-26, paras. 7-8.

²⁰ Petition at 6-8; AFR at 6-7.

²¹ *KOG MO&O*, 31 FCC Rcd at 7527, para. 11.

²² *Id.*

²³ *Id.* at 7525, para. 6

²⁴ Petition at 7.

IV. ORDERING CLAUSE

10. ACCORDINGLY, IT IS ORDERED, That, pursuant to Section 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 405(a), and Section 1.106(b)(2) of the Commission's rules, 47 C.F.R. § 1.106(b)(2), the Petition for Reconsideration filed by Kingdom of God, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary