



Federal Communications Commission
Washington, D.C. 20554

March 20, 2007

DA 07-1358
In Reply Refer to:
1800B3-DT
Released: March 20, 2007

Mr. Evan Doss, Jr.
P.O. Box 653
Port Gibson, MS 39150

In re: Station DWKPG(AM)¹
Port Gibson, MS
Facility ID No. 19865
License Cancelled and
Call Sign Deleted

“Emergency Petition”

Dear Mr. Doss:

This letter refers to your filing received May 10, 2004, styled “Emergency Petition of Public Interest, Convenience, and Necessity to Reconsider Facility ID No. 19865, License Cancelled and Call Sign Deleted” (the “Doss Request”), apparently seeking reconsideration or review of our earlier decision to treat as cancelled the license for Station WKPG(AM), Port Gibson, Mississippi (the “Station”), and to delete the Station’s call sign from the Media Bureau’s database. The Doss Request also contains arguments that were raised and fully considered ten years ago in connection with the granted application for approval of the assignment of the Station’s license from Evan Doss, Jr. Corporation to Eileen S. Bailey, Trustee.² For the reasons set forth below, we dismiss the Doss Request.

Background. According to Commission records, the Station went silent on May 10, 2001, and did not broadcast for a period that exceeded twelve consecutive months. On November 13, 2002, we notified Claiborne County Community Activity Club, Inc. (“Claiborne”), the then-licensee of the Station,³ that, due to this lack of operation, the Station’s license had been cancelled and its call sign deleted pursuant to Section 312(g) of the Communications Act of 1934, as amended (the “Act”).⁴ On December

¹ In the Commission’s database, the call sign is listed as “DWKPG” to indicate that it has been deleted in connection with cancellation of the license, discussed *infra*. In this letter we refer to the Station by its former call sign, “WKPG(AM).”

² See FCC File No. BAL-19970110GY. Mr. Doss’s company, Evan Doss, Jr. Corporation, is a former licensee of WKPG(AM), but Mr. Doss has not had an ownership interest in the Station licensee since March 24, 1997, when the approved assignment of the license to Eileen S. Bailey, Trustee, was consummated.

³ Letter to Jessie Davis, Reference 1800B3-ALM (MB Nov. 13, 2002). Mr. Davis was Vice President of Claiborne, which had acquired WKPG(AM) from Eileen S. Bailey, Trustee pursuant to Commission approval of that transaction on May 7, 1998. See FCC File No. BAL-19980325GK. Claiborne remained the licensee until WKPG(AM)’s license was cancelled.

⁴ 47 U.S.C. § 312(g).

11, 2002, Claiborne submitted a request for reconsideration of that action, but did not contest the staff's finding that the Station had been silent for twelve consecutive months. On December 23, 2002, we denied that request (the "Reconsideration Decision").⁵ At the time of the Reconsideration Decision, Section 312(g) provided that, "[i]f a broadcast 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."⁶ In the Reconsideration Decision, we explained that Station's license expiration under Section 312(g) was automatic as a matter of law, and that the statutory language allowed for no Commission discretion in maintaining the validity of a broadcast license when a station had been silent for twelve consecutive months.⁷ Neither Claiborne nor any other party timely appealed the Reconsideration Decision.

Discussion. It is not clear from the Doss Request whether it is intended as a petition for reconsideration or an application for review. In either case, however, it is grossly untimely filed. Section 405(a) of the Act requires, in pertinent part, that "[a] petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of."⁸ Section 1.115 of the Commission's rules (the "Rules") allows "[a]ny person aggrieved by any action taken pursuant to delegated authority [to] file an application requesting review of that action by the Commission."⁹ Section 1.115(d) specifies that "the application for review and any supplement thereto shall be filed within 30 days of public notice of such action. . . ."¹⁰ Therefore, the deadline for filing either a petition for reconsideration or an application for review with the Commission is thirty days from the date of public notice of the complained-of action.

For documents neither published in the *Federal Register* nor for which a descriptive document entitled "Public Notice" is released, such as the Reconsideration Decision, the "date of public notice" is the date appearing on the document.¹¹ Therefore, the date of public notice of the Reconsideration Decision was December 23, 2002. The filing deadline for either a petition for reconsideration or an application for review of the Reconsideration Decision was January 22, 2003. Because the Commission did not, on its own motion, designate the Reconsideration Decision for review, that action became final, and no longer subject to appeal, on February 3, 2003.¹²

⁵ See *Letter to J.B. Davis*, Reference 1800B3-ALM (MB Dec. 23, 2004).

⁶ 47 U.S.C. § 312(g) (2003). Legislation revising Section 312(g) was enacted and took effect on December 8, 2004, long after cancellation of the WKPG(AM) license became final. See Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 118 Stat. 2809, Title IX, § 213(3) (2004).

⁷ Reconsideration Decision at 2, citing 47 C.F.R. 73.1740(a)(1) and *Silent Station Authorizations*, Order, 11 FCC Rcd 16599, 16600 (1996).

⁸ 47 U.S.C. § 405(a). See also 47 C.F.R. § 1.106(f).

⁹ 47 C.F.R. § 1.115(a).

¹⁰ 47 C.F.R. § 1.115(d).

¹¹ See 47 C.F.R. § 1.4(b)(5).

¹² If the filing deadline falls on a weekend or holiday, the filing deadline is extended to the next business day. See 47 C.F.R. § 1.4(j).

The Doss Request is dated May 3, 2004, and was received at the Commission on May 10, 2004, more than 15 months after the Reconsideration Decision had become a final order. To the extent that the Doss Request also challenges the application for consent to assignment of the Station license to Eileen S. Bailey, Trustee, it was received many years after the grant of that assignment application had similarly become a final order.¹³ The Doss Request does not address the issue of its timeliness. We have no discretion to waive the filing requirements of Section 405(a) of the Act for a petition for reconsideration. Considering the Doss Request in the alternative as an untimely application for review, we do not find any reason to depart from the filing requirements of Section 1.115 of the Rules in this case. Proceedings that have become final will not be reopened unless there has been fraud on the agency's processes, or unless the result is manifestly unconscionable,¹⁴ as state of affairs not raised, much less established here. Accordingly, the Doss Request is untimely under both Section 405(a) of the Act and Section 1.115 of the Rules and is accordingly dismissed.

On the record before us, for the reasons discussed above, the “Emergency Petition of Public Interest, Convenience, and Necessity to Reconsider Facility ID No. 19865, License Cancelled and Call Sign Deleted” regarding Station WKPG(AM), Port Gibson, Mississippi, dated May 3, 2004, and submitted by Evan Doss, Jr., IS DISMISSED.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

¹³ See note 2, *supra*, and accompanying text.

¹⁴ See, e.g., *Radio Para La Raza*, Memorandum Opinion and Order, 40 FCC 2d 1102, 1104 (1973).