



Federal Communications Commission  
Washington, D.C. 20554

September 10, 2010

**DA 10-1718**

*In Reply Refer to:*

1800B3-MFW

Released: September 10, 2010

John Wells, King, Esq.  
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5<sup>th</sup> Floor, 1000 Potomac Street, N.W.  
Washington, DC 20007

Re: K225AG(FX), Dodge City, KS  
Facility ID No. 33369  
File No. BMPFT-20100312AAC

Minor Modification Application  
Request for Waiver

Dear Mr. King:

This concerns the referenced application (the "Application") for minor modification of construction permit filed on March 12, 2010, by Kanza Society, Inc. ("Kanza"), licensee of expired FM translator station K225AG, Dodge City, Kansas (the "Station"). Included in the Application are Kanza's requests for waiver of the following Commission Rules (the "Rules"): Section 74.1263(e),<sup>1</sup> requesting that the Commission not declare that the Station's license had expired as a matter of law; Section 74.1263(c),<sup>2</sup> asking the Commission to excuse Kanza's failure to notify the Commission of its discontinuance of Station operations on March 5, 2008; and Section 74.1233(a)(1),<sup>3</sup> requesting the Commission to permit the Station to relocate to a non-adjacent channel. For the reasons stated below, we declare the Station license expired, delete the Station's call letters, and dismiss the Application.

**Background.** Kanza commenced operation of the Station in February of 1983.<sup>4</sup> In 2004, the Commission held Auction #37, which included a Class A allotment on Channel 222A for Cimarron, Kansas, some 29 kilometers west of Dodge City. Radioactive, LLC ("Radioactive"), the winning bidder, proposed a one-step upgrade of the allotment to Channel 225C1 in its post-auction construction permit application. The staff granted the Cimarron application in March of 2005.<sup>5</sup> Kanza indicates that it recognized that the Station was likely to cause interference to the new Cimarron station, and it claims that

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<sup>1</sup> 47 C.F.R. § 74.1263(e).

<sup>2</sup> 47 C.F.R. § 74.1263(c).

<sup>3</sup> 47 C.F.R. § 74.1233(a)(1).

<sup>4</sup> See Application No. BLFT-19830222MD, granted on March 15, 1983.

<sup>5</sup> BNPH-20050103ACE, granted on March 5, 2005. That station operates under call sign KMML(FM), Facility ID No. 164238.

its initial engineering review concluded that no adjacent channel was available for relocation of the Station.

Kanza states that, given this situation, it began actively pursuing other options for preserving and securing the public radio service that it had provided to Dodge City for more than twenty years. Those efforts, however, were unavailing. Notwithstanding its prior determination that an adjacent channel facility would not protect the new Cimarron station, Kanza filed an application in December 2007 to change the Station from Channel 225 to 223.<sup>6</sup> The staff granted the December 2007 Modification Application on December 6, 2007.

On January 28, 2008, with slightly more than one month remaining on its construction permit, Radioactive filed a modification application<sup>7</sup> to, among other things, move the new Cimarron transmission facilities to a site 24 kilometers closer to Dodge City. The staff granted the modification application ten days later. In anticipation of the imminent commencement of program tests by KMML(FM), Kanza ceased Station operations on March 5, 2008 on the theory that continued operations would constitute a violation of Section 74.1204 of the Rules. At this time, Kanza failed to notify or request approval from the Commission regarding the cessation of Station operations,<sup>8</sup> in violation of Section 74.1263(c) of the Rules.<sup>9</sup> Kanza indicates that it has continued to investigate options to continue service to Dodge City either through further modification of its existing construction permit or by other arrangements, although its search for a solution was further complicated in December of 2008 when Radioactive was granted a construction permit<sup>10</sup> to increase KMML(FM)'s ERP and HAAT at its authorized site.

Kanza indicates that it was only in February of 2010 that it became aware of the Commission's practice of entertaining requests for waiver of the major change rule for operating FM translator stations seeking to avoid displacement. Kanza states that, had it been aware of this processing policy in late 2007, it would certainly have pursued this route to avoid expiration of the Station license. Accordingly, Kanza now seeks a waiver of Section 74.1233(a)(1) to permit the Station to relocate to Channel 260, and a waiver of Sections 74.1263(c) and (e) for inadvertently failing to notify the Commission of the discontinuance of Station operations and to avoid the expiration of the Station license for remaining silent for a period in excess of twelve months.

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<sup>6</sup> See File No. BPFT-20071205ADF (the "December 2007 Modification Application"). Kanza proposed, correctly, that although the interfering contour proposed in the December 2007 Modification Application was entirely within the protected service contour of third-adjacent channel Station KONQ(FM), Dodge City, the application could be processed pursuant to 47 C.F.R. §74.1204(f) using the "undesired-to-desired" signal strength ratio interference analysis.

<sup>7</sup> See File No. BMPH-20080128AFS.

<sup>8</sup> Kanza acknowledges and accepts "full responsibility" for this violation.

<sup>9</sup> Section 74.1263(c) requires an FM Translator licensee to notify the Commission of its intent to discontinue operations for 30 or more consecutive days. Notification must be made within 10 days of the date on which the station first discontinues operation, and Commission approval is required for such discontinued operation to continue beyond 30 days.

<sup>10</sup> See File No. BPH-20080403ACQ, granted on December 12, 2008. The staff granted a license for these facilities on March 9, 2009. See File No. BLH-20090212ABH.

**Discussion.** *Discontinuance of Operations.* Section 74.1263(e) of the Rules, which implements Section 312(g) of the Communications Act of 1934, as amended (the “Act”),<sup>11</sup> provides that the license of any FM translator station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary. It is undisputed that the Station suspended operations for 12 consecutive months, beginning on March 5, 2008. However, Section 312(g) also authorizes the Commission to extend or reinstate a forfeited license, notwithstanding more than 12 months of station silence, “. . . for any reason to promote equity and fairness.”<sup>12</sup>

As a preliminary matter, Kanza misconstrues a number of basic FM translator licensing rules and policies. Once authorized, Section 74.1204 is irrelevant to the operation of a translator station. Thus, at any time following grant of the December 2007 Modification Application, Kanza was free to construct and commence operations on Channel 223. It would have been required, pursuant to Section 74.1203(a), to cease Station operations only if the Station caused actual interference to the Cimarron station.<sup>13</sup> Dozens of FM translators operate in just this manner, on second-adjacent channels within the 60 dBu contours of nearby full-service stations.

The exercise of the Commission’s Section 312(g) discretion is not warranted here. Station K225AG was voluntarily taken off the air more than two years ago when there was absolutely no requirement that it cease operations, and it has remained silent since that time. We do not discount the prior efforts made by Kanza to maintain Station operations, but its voluntary and avoidable cessation of Station operations does not merit a finding that “equity and fairness” requires that we reinstate the Station license.

*Non-adjacent Channel Modification Application.* Because we declare that the Station’s license has expired, we need not consider Kanza’s request for waiver of Section 74.1233(a)(1) of the Rules Section to permit grant of the Application.<sup>14</sup>

**Actions.** Accordingly, IT IS ORDERED, that the request of Kanza Society, Inc. for waiver of Section 74.1263(e) of the Commission’s Rules IS DENIED, and the Application (File No. BMPFT-20100312AAC) for modification of facilities for Station K225AG IS DISMISSED.

IT IS FURTHER ORDERED, that the Commission's public and internal databases will be modified to indicate that the broadcast license (BLFT-20020119AAK) for the Station K225AG EXPIRED as a matter of law, on or about March 5, 2009, and we HEREBY DELETE the station's call sign K225AG.

IT IS FURTHER ORDERED, that the requests of Kanza Society, Inc. for waiver of Sections 74.1233(a)(1) and 74.1263(c) of the Commission’s Rules ARE DISMISSED.

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<sup>11</sup> 47 U.S.C. § 312(g).

<sup>12</sup> *Id.*

<sup>13</sup> 47 C.F.R. § 74.1203(a) states, in pertinent part, that “[a]n authorized FM translator or booster station will not be permitted to continue to operate if it causes any actual interference to: (1) the transmission of any authorized broadcast station; or . . . the direct reception by the public of the off-the-air signals of any authorized broadcast station . . . .”

<sup>14</sup> As a result of the actions we take herein, we need not consider the Kanza’s request for waiver of 47 C.F.R. § 74.1263(c) for its failure to notify the Commission of the Station’s suspension of operation.

Finally, to the extent relevant here, we note that it is imperative to the safety of air navigation that any prescribed painting and illumination of the station's tower be maintained until the tower is dismantled. Accordingly, the owner of the tower where the referenced station's transmitting antenna is located is required, pursuant to 47 U.S.C. Section 303(q),<sup>15</sup> to maintain the tower in the manner prescribed by our rules and the terms of the cancelled license.

IT IS FURTHER ORDERED, that Kanza Society, Inc., IS ADMONISHED for its violation of Section 73.1263(c) of the Commission's Rules for its failure to notify and seek permission for the Station's prolonged discontinuance of operation.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Kanza Society, Inc.

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<sup>15</sup> 47 U.S.C. § 303(q).