



Federal Communications Commission
Washington, D.C. 20554

October 17, 2008

DA 08-2308

In Reply Refer to:

1800B3-JWR

Released: October 17, 2008

Harry C. Martin, Esq.
Fletcher, Heald & Hildreth PLC
1300 N. 17TH Street, 11th Floor
Arlington, Virginia 22209

Re: W230BH(FX), Montauk, NY
Facility ID No. 139393

File No. BLSTA-20070702AZF
Request for Special Temporary
Authority

File No. BLFT-20080616AEH
Application for License

Dear Mr. Martin:

This concerns the above-referenced application (the "Application") for license to cover construction permit filed June 16, 2008, by Community Bible Church ("CBC"), permittee of FM translator station W230BH (FX), Montauk, New York ("Station"). Accompanying the license application is CBC's Request for Waiver of Section 73.1740(c) of the Commission's Rules ("Request"),¹ as amended on September 23, 2008, requesting that the Commission not declare that the Station's license had expired as a matter of law because the Station did not operate for a consecutive 12-month period. For the reasons stated below, we grant both the waiver request and the Application.

Background. The initial construction permit for W230BH was granted to Bridgelight, LLC ("Bridgelight") on April 7, 2004, with an expiration date of April 4, 2007.² The originally authorized tower site, which is owned by Pinnacle Towers LLC a/k/a Crown Castle ("Pinnacle"), could not be utilized because a required building permit had not been obtained prior to construction. Because Bridgelight anticipated that it would take approximately a year to obtain the building permit, on March 14, 2007, it filed a modification application to relocate to a new site where construction could be timely completed before the April 4, 2007, expiration date.³ The staff granted this application two days later, on March 16, 2007.

¹ 47 C.F.R. §73.1740, "Minimum Operating Schedule."

² File No. BNPFT-20030812ACH.

³ File No. BMPFT-20070314ACF.

On March 20, 2007, Bridgelight commenced Station operations from the new site and filed a covering license application, which was granted on April 18, 2007.⁴

CBC acquired the Station from Bridgelight on April 24, 2007.⁵ On May 4, 2007, CBC filed a Notification of Suspension of Operations/Request for Silent STA, stating that the station had been silent since April 3, 2007.⁶ On May 14, 2007, CBC filed a modification application proposing to relocate to the originally authorized Pinnacle tower site, which was granted on May 17, 2007.⁷ On July 2, 2007, CBC filed a request to extend its authority to remain silent, which remains pending.⁸ On June 16, 2008, CBC filed the subject application for license,⁹ which includes a request to waive Section 73.1740(c) of the rules, because the Station had been silent for more than 12 consecutive months and as a consequence, pursuant to the Rule, its license had expired as a matter of law.

Request for Waiver. In support of its Request, CBC states that, within a few weeks after commencing operations, the owner of the site unexpectedly evicted the station. CBC indicates that the station's facilities were inconsistent with zoning in a residential area and had to be dismantled. On May 4, 2007, CBC filed the Silent STA Request, stating that the Station had been silent since April 3, 2007, and on May 14, 2007, CBC filed the May 2007 Modification Application. CBC and Pinnacle then jointly applied to the Town of East Hampton's Planning Board for permission to place the Station at the Pinnacle site. The Planning Board approved the plan on November 28, 2007, and it ultimately issued a building permit on April 22, 2008.

CBC states that during the first week of April 2008, when it was expecting the issuance of the building permit "any day,"¹⁰ it discovered a discrepancy in the antenna structure registration number ("ASR") data applicable to the Pinnacle tower.¹¹ Specifically, CBC states that its construction permit specified an ASR number of 1229148, and that unknown to CBC, the tower Pinnacle wanted CBC to use, which is at the same coordinates, has an ASR of 1224868. In preparing for construction, however, CBC

⁴ File No. BLFT-20070320ANE.

⁵ See File No. BAPFT-20070215AAI, granted April 2, 2007.

⁶ File No. BLSTA-20070504ACU (the "Silent STA Request"). The staff approved the request for authority to remain silent on May 8, 2007. CBC indicated in this request that it had received permission to locate W230BH at its preferred site, a tower owned by Crown Castle.

⁷ File No. BPFT-20070514AGN (the "May 2007 Modification Application").

⁸ File No. BLSTA-20070702AZF.

⁹ File No. BLFT-20080616AEH.

¹⁰ See September 23, 2008 amendment, "Request for Waiver of Section 73.1740(c) of the Rules, at ¶ 5. CBC indicates that the Fire Marshall had signed off on the permit on March 28, 2008.

¹¹ An ASR number is issued by the Commission during the registration process to identify an antenna structure. Once obtained, this number must be used in all filings related to this structure. 47 C.F.R. § 17.2(d). The Commission's Antenna Structure Registration program was revised in 1996, resulting in a streamlined filing process and greater public access to ASR information. The Commission has expanded the public's ability to research existing records on the Internet, and began providing expanded database, daily transaction and Federal Aviation Administration files for downloading. ASR procedures also allows an electronic filer to determine, at the time of filing, whether its application will be granted, reducing delay and transactional costs associated with the registration of antenna structures. See *Section 257 Report to Congress*, Report, 15 FCC Rcd 15376 (2000).

learned that the Commission's records for ASR No. 1224868 contained incorrect information and were otherwise inconsistent with CBC's construction permit. CBC states that it promptly notified Pinnacle of the discrepancies, and that, based on its own study, Pinnacle determined that both the Commission's and the Federal Aviation Administration's ("FAA") records for the proposed tower were incorrect. Thereupon, Pinnacle filed for a new no-hazard determination from the FAA and, subsequently, for a modified ASR for the tower.¹²

While the administrative proceedings resolving the ASR discrepancies were pending before the Commission and FAA, CBC states that it was told by Pinnacle that CBC could use the tower, but at its own risk, until the records for the tower were corrected by the FAA and the Commission. On May 1, 2008, Pinnacle presented CBC with a letter containing a release designed to protect Pinnacle from any liability should CBC proceed before FCC approval and Commission tower registration had been obtained. CBC states that it declined to sign the release because it was unwilling to violate the Commission's rules. Pinnacle and CBC subsequently executed a site lease on June 13, 2008. CBC indicates that it completed construction immediately thereafter, filing the Application on June 16, 2008.

CBC states that it was ready and willing to construct the authorized facilities on the Pinnacle tower well before the April 18, 2008, silence deadline, but, due to the discrepancy in the ASR data, which it brought to Pinnacle's attention, and the consequent "additional and unanticipated administrative resolution," the resulting delays were beyond CBC's control.

Discussion. Section 73.1740(c) of the Rules, which implements Section 312(g) of the Communications Act of 1934, as amended (the "Act"),¹³ provides that the license of any broadcasting 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 had suspended operation for 12 consecutive months, beginning on April 3, 2007. Although Section 312(g) provides for the forfeiture of a broadcast license under such circumstances, it also allows the Commission the discretion, where appropriate, to extend or reinstate a forfeited license, notwithstanding more than 12 months of station silence. Specifically, in pertinent part, Section 312(g) provides, ". . . the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any reason to promote equity and fairness."¹⁴

Although the Station ceased broadcasting and remained off the air for more than 12 consecutive months, we find that CBC diligently pursued the proper building permit from the local authorities and was prevented from constructing by administrative resolution of the ASR discrepancies, for which it was not responsible and which it dutifully reported to the tower owner. In particular, we believe it would be unduly harsh to penalize CBC for conscientiously initiating actions which directly promoted the integrity of the ASR system and advanced air safety goals.¹⁵ Therefore, we find this case warrants the exercise of our discretion under Section 312(g) of the Act.

¹² The new Tower Registration was completed on May 8, 2008. See Tower Registration No. 1224868.

¹³ 47 U.S.C. § 312(g).

¹⁴ *Id.*

¹⁵ See Section 257 Report to Congress, *supra*.

Action. Accordingly, IT IS ORDERED, that the Request of Community Bible Church for waiver of Section 73.1740(c) of the Commission's Rules IS GRANTED

IT IS FURTHER ORDERED, that the application for license (File No. BLFT-20080616AEH) IS HEREBY GRANTED, and the request for Special Temporary Authorization to remain silent (File No. BLSTA-20070702AZF) IS DISMISSED AS MOOT.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Community Bible Church