



Federal Communications Commission
Washington, D.C. 20554

DA 09-576
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1800E3-JLB

ETC Communications, Inc.
c/o Nathaniel J. Hardy, Esq.
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Re: WYLE(TV), Florence, Alabama
File Nos. BLSTA-20070308ABE;
BALCT-20070802ADK; BMPCDT-
20070920ABE; BLSTA-20080207AOM;
BEPCDT-20080818ACX
Facility ID No. 6816

Dear Licensee:

ETC Communications, Inc. ("ETC") is the licensee of WYLE(TV), NTSC channel 20, and permittee of unconstructed WYLE-DT, digital channel 26, Florence, Alabama (the "Station"). Commission records show that the Station was taken off the air on February 8, 2007, due to financial problems experienced by ETC.¹ While the Station was silent, ETC entered into an asset purchase agreement to sell the Station to WYLE TV, LLC ("WTL"). Because WTL is commonly owned with the licensee of WHDF(TV), Florence, Alabama, and there are less than eight independently owned and operating television stations licensed to the Huntsville-Decatur, Alabama DMA, the parties filed a failed station duopoly waiver request.²

On February 7, 2008, ETC filed a Notification of Suspension of License/Request for Silent STA, in which it once again stated that it had taken the Station off the air on February 8, 2007. According to ETC, the Station resumed operations on February 3, 2008, but was again taken off the air the following day. Section 312(g) of the Communications Act³ provides that:

If a broadcasting 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 . . .

¹ See File No. BLSTA-20070308ABE.

² See 47 C.F.R. §73.3555(b) (2002) and File No. BALCT-20070802ADK. Shortly thereafter, ETC filed an application for modification of its digital construction permit to collocate WYLE-DT with WHDF(DT)'s transmission site. See File No. BMPCDT-20070920ABE.

³ 47 U.S.C. § 312(g).

Accordingly, by letter dated May 2, 2008, the Associate Chief, Video Division, Media Bureau requested additional information regarding the Station's resumption of service on February 3, 2008.

By letter dated May 20, 2008, ETC's counsel provided a response to the request for additional information. According to this response:

To comply with Section 312[g] of the Communications Act of 1934, as amended, so that the station is not off the air for more than twelve consecutive months, ETC brought WYLE back on the air on February 3, 2008. After the station was operating for 24 hours, WYLE was taken off the air again on February 4, 2008.

In response to the request for a description of the nature or type, and duration of any programming broadcast by the Station during its brief return to the air, the Station responded that "WYLE was broadcasting a test pattern for the entire 24 hour period."

We conclude that the described resumption of station operations was insufficient to exempt ETC from automatic expiration of the Station's license pursuant to Section 312(g). The Communications Act defines "broadcasting" as "the dissemination of radio communications intended to be received by the public,"⁴ and it is well settled that conducting equipment tests or transmitting an equipment test pattern does not prevent the automatic expiration of a license pursuant to Section 312(g).⁵ It is clear from the foregoing that the Station has been silent for more than a consecutive 12-month period.

Accordingly, we conclude that the license for station WYLE(TV) IS EXPIRED pursuant to Section 312(g) of the Communications Act. Accordingly, the analog license and digital construction permit for the Station ARE HEREBY CANCELLED and the call signs DELETED, and the above-referenced STA requests, and applications for assignment of license, modification of construction permit and extension of time to construct the digital television station ARE DISMISSED as moot.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Mark Prak, Esq.

⁴ 47 U.S.C. § 153(6).

⁵ See *A-O Broadcasting Corporation*, 23 FCC Rcd 603, 609 (2008), citing *Carlos J. Lastra, Trustee*, Memorandum Opinion and Order, 16 FCC Rcd 17268 (2001), *aff'd sub nom. per curiam, Aerco Broadcasting Corp. v. FCC*, 51 Fed. Appx. 23 (D.C. Cir. 2002) (automatic expiration pursuant to Section 312(g) not prevented by transmission of a television test pattern).