

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

In the Matter of)) Christian Family Network, Inc.)) Application for Reinstatement and Renewal of) License of Station DWOLY(AM), Battle Creek,) Michigan)) and)) Request for Special Temporary Authority to) Operate Station DWOLY(AM), Battle Creek,) Michigan)	File No. BR-20090115AEU Facility ID No. 11032 File No. BLSTA-20090115AEL
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MEMORANDUM OPINION AND ORDER

Adopted: March 30, 2016

Released: March 30, 2016

By the Commission:

1. We have before us Christian Family Network’s (“CFN”) June 26, 2009, Application for Review (“AFR”),¹ contesting the Media Bureau’s (“Bureau”) dismissal of both the captioned application for renewal of license (“Renewal Application”) and request for special temporary authorization to continue station operations (“STA Request”), and its termination of the operating authority of Station DWOLY(AM), Battle Creek, Michigan (“Station”).² Also before us are a July 5, 2009, Spring Arbor University (“SAU”)³ Opposition to the AFR and related pleadings.⁴ We also have before us CFN’s

¹ On July 1, 2009, CFN filed a “corrected version” of the AFR.

² *DWOLY(AM), Battle Creek, MI.*, Letter, 24 FCC Rcd 7170 (MB 2009) (“*Bureau Decision*”). We note that the Bureau, in the *Bureau Decision*, also denied a CFN March 10, 2009, Motion for Stay.

³ SAU is the licensee of WJKN(AM), Jackson, Michigan and KTTG(AM), Okemos, Michigan. On June 27, 2006, and January 24, 2008, respectively, SAU filed minor modification applications for each such station which conflict with the formerly licensed DWOLY(AM) facilities. See File Nos. BP-20060627ACB and BP-20080124ACW (collectively, “SAU Minor Modification Applications”). By Memorandum Opinion and Order released on this date, the Commission dismisses in part and denies in part CFN’s application for review of the grant of the SAU Minor Modification Applications. See *Spring Arbor University*, Memorandum Opinion and Order, FCC 16 -34 (rel. Mar. 30, 2016).

⁴ CFN filed a Reply on July 21, 2009. On September 20, 2010, SAU filed a Motion for Leave to Supplement its Opposition (“Motion”) and a Supplement to Opposition to AFR. On September 28, 2010, CFN filed a Motion for Extension of Time to respond to SAU’s Motion. On October 7, 2010, SAU filed a Supplement to its “Supplement to Opposition to Application for Review.” On October 12, 2010, CFN filed an “Opposition to Motion for Leave to Supplement Opposition to Application for Review.” On October 22, 2010, SAU filed a “Reply to Opposition to Motion for Leave to Supplement Opposition to Application for Review.” All of the pleadings after CFN’s July 21, 2009, Reply are unauthorized pleadings and will be dismissed without consideration. See 47 C.F.R. §§ 1.45(c), 1.115(d); see also *Robert J. Maccini, Receiver, Assignor*, 10 FCC Rcd 9376, 9376 (1995), citing *Llerandi v. FCC*, 863 F.2d 79 (D.C. Cir. 1988).

June 4, 2009, Motion for Stay of the *Bureau Decision* pending consideration of the AFR.⁵ For the reasons set forth below, we deny the AFR and dismiss the Motion for Stay. At issue in this case is the Bureau's treatment of the Renewal Application, which CFN filed more than four and one-half years after it was due⁶ and over two and one-half years after the staff notified it that, due to CFN's failure to have so filed, the Station's license had expired and that any further operation of the Station was unauthorized, and directed CFN to cease operations immediately.⁷ In the *Bureau Decision*, the Bureau stated that its treatment of the Renewal Application as an untimely petition for reconsideration of the *License Expiration Letter*⁸ was consistent with published precedent, and dismissed it as grossly untimely filed.

2. On review, CFN reiterates its arguments below,⁹ viz., that: (1) the *Bureau Decision* conflicts with Commission precedent that did not treat other requests from a radio licensee for reinstatement and renewal of its license as a petition for reconsideration of a Bureau letter cancelling the station's license and deleting its call sign; and (2) the Renewal Application should not have been treated as a petition for reconsideration but rather as a "new request" for reinstatement and renewal of the Station's license *nunc pro tunc* which, if granted, would render moot the *License Expiration Letter*. CFN also argues that, as an unsophisticated licensee that admittedly mishandled the Station's license renewal obligations, it was entitled to waiver of the Commission's electronic filing requirement and that the Bureau failed to consider CFN's request for waiver of those requirements.¹⁰

3. We conclude that CFN has failed to demonstrate that the Bureau erred when it determined that the Renewal Application, treated as a petition for reconsideration, was grossly untimely and procedurally barred and that expiration of the Station's license was final. The Bureau action was

⁵ SAU opposed the Motion for Stay on June 22, 2009. On April 23, 2010, CFN filed a Motion for Leave to Supplement Motion for Stay and Supplement to Motion for Stay, which SAU opposed on May 4, 2010. On May 14, 2010, CFN filed a Reply to SAU's Opposition to the Supplement to Motion for Stay; on May 21, 2010, SAU filed a Response to CFN's Reply. On May 21, 2010, SAU submitted a letter arguing that CFN's May 14, 2010, Reply should not be given any consideration by the Commission; on May 25, 2010, CFN submitted a response to SAU's letter. On May 12, 2011, CFN filed a second Motion for Leave to Supplement Motion for Stay, which SAU opposed on May 25, 2011. On June 7, 2011, CFN filed a Reply to SAU's Opposition to Motion for Leave to Supplement Motion for Stay.

⁶ CFN acknowledges that, because the DWOLY(AM) license was to expire on October 1, 2004, its renewal application was due "not later than the first day of the fourth full calendar month prior" to that expiration date-- by June 1, 2004. See AFR at 3; *Bureau Decision*, 24 FCC Rcd at 7171, citing 47 C.F.R. § 73.3539(a).

⁷ *Christian Family Network, Inc.*, Letter, (MB rel. Jun. 13, 2006) ("*License Expiration Letter*"). See also *Broadcast Actions*, Public Notice, Report No. 46258 (Jun. 16, 2006). The *Bureau Decision* contains a complete description of the facts underlying this case, which is incorporated by reference herein. See *Bureau Decision*, 24 FCC Rcd at 7171-2.

⁸ See *Bureau Decision*, 24 FCC Rcd at 7172.

⁹ CFN also argues for the first time in its AFR that: (1) the Bureau applied a policy -- i.e., treatment of requests for reinstatement and renewal of a license as a petition for reconsideration -- that has never been previously addressed by the Commission, see AFR at 7; (2) the *Bureau Decision* imposes draconian punishment on CFN and far exceeds the bounds of reasonableness under the Communications Act of 1934, as amended ("Act"), public interest standard, pursuant to Section 309(e), see *id.*; and (3) "administrative finality is not an absolute and unyielding concept," and the Commission has the discretion to reinstate the Station's license "to prevent an inequitable or unjust result," citing cases from non-broadcast services in which the Commission or staff reinstated licenses and/or granted license renewal applications filed more than 30 days after the licenses had expired, *Oklahoma Western Telephone Company, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 5306 (2008) and *116 Late-filed Applications for Renewal of Educational Broadband Service Stations*, Memorandum Opinion and Order, 24 FCC Rd 8108 (WTB 2009), see AFR at 8. Section 1.115(c) prohibits parties from raising new arguments on review. See 47 C.F.R. § 1.115(c). Accordingly, we dismiss these new arguments as procedurally barred.

¹⁰ AFR at 13-14.

consistent with Commission precedent.¹¹ For example, we have recently rejected a challenge to the finality of a license expiration letter under a similar factual situation to the present circumstances.¹² Here, the Renewal Application was filed on January 15, 2009, over four and half years after the due date and more than two and one-half years after public notice of the *License Expiration Letter* by which the Bureau declared the Station's license expired, almost a year and a half after the Enforcement Bureau ("EB") issued CFN a Notice of Apparent Liability for unauthorized operation, and six months after EB issued it a Forfeiture Order for unauthorized operation.¹³ CFN does not allege, much less establish, that extraordinary circumstances exist warranting the relief that it seeks. Thus, irrespective of whether the Bureau properly characterized the Renewal Application as a petition for reconsideration of the *License Expiration Letter*, the Bureau properly determined that the dismissals were warranted because the requested relief could not be granted as there was no longer a valid license authorization to be renewed.¹⁴

4. To the extent that CFN contends that the *Bureau Decision* did not explicitly address what CFN claims to be a request for waiver of the electronic filing requirements, we find that CFN's argument is without merit. CFN asserts that, on September 27, 2004, three days prior to the Station's license expiration date and nearly four months after the renewal application filing deadline, CFN President James Elsmann ("Elsmann") submitted a letter ("Letter") to the Commission stating that, due to the incompatibility of his "AOL server" with the Commission's "E System," although he was able to electronically file CFN's Form 396 Annual EEO Report, "I will mail my \$150 to Pittsburgh, and send you the Form 323 and 303-S, by the snail mail."¹⁵ CFN acknowledges that the Letter did not contain the word "waiver" but nevertheless argues that the Letter was, "in effect," a request for waiver of the electronic filing requirements, on which the Bureau should have acted.¹⁶ However, the Commission has

¹¹ See, e.g., *Bill Wright d/b/a Kegg Communications and KXVI Communications*, Memorandum Opinion and Order, 28 FCC Rcd 4856 (2013) (Commission affirms Bureau action dismissing, as untimely, a petition for reconsideration filed more than 30 days after the Media Bureau letter declaring the station license cancelled and the dismissal of a subsequently filed license renewal application as moot).

¹² See *Hill Broadcasting Company, Inc.*, Memorandum Opinion and Order, FCC 15-130 ¶ 7 (rel. Sep. 17, 2015) ("*Hill Broadcasting*"), citing 47 U.S.C. § 405(a), 47 C.F.R. § 1.106(f), and the *Bureau Decision*, 24 FCC Rcd at 7173. In *Hill Broadcasting*, (1) the staff issued a letter announcing the expiration of a station's license; (2) the Bureau issued a public notice of that action; (3) the licensee did not respond within 30 days of the release of the public notice; and (4) the licensee untimely filed a petition for reconsideration, asking that the license be reinstated. The Commission affirmed (i) the Bureau's conclusion that the petition was grossly untimely and thus procedurally barred and (ii) the dismissal of the licensee's renewal application filed after the staff letter declaring its license expired.

¹³ See *Christian Family Network*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200732360001 (EB, Detroit Office, rel. Aug. 16, 2007); *Christian Family Network, Inc.*, Forfeiture Order, 23 FCC Rcd 10898 (EB 2008).

¹⁴ *Hill Broadcasting, supra*, at ¶ 7.

¹⁵ AFR at 3 and Exhibit 3. We note, as did the Bureau below, that the Letter provided in the Exhibit does not contain a date stamp from the Office of the Secretary, and the Commission has no record of receiving the Letter. See *Bureau Decision*, 24 FCC Rcd at 7171 n.7. CFN does not include a copy of any such Form 303-S renewal application filing in any of its pleadings in this proceeding.

¹⁶ AFR at 4. CFN adds that it did nothing more in the Letter than "candidly admitting its inability to comply with the Commission's electronic filing system and requesting, in effect, some relief" from the electronic filing requirement so that it could file the Renewal Application on paper and that the Commission's *Streamlining Order* anticipated such requests. AFR at 13-14, citing *1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes*, Report and Order, 13 FCC Rcd 23056, 23061 (1998) ("*Streamlining Order*") (Commission is sensitive to burden electronic filing will have on some licensees). In the *Streamlining Order*, the Commission noted that it was implementing a six-month phase in period for the new mandatory electronic filing requirements, indicating that, although it would entertain waiver requests, "we do not intend to routinely grant requests for waiver of our mandatory electronic filing requirements following the end of the phase in period." *Streamlining Order*, 13 FCC Rcd at 23061. We note that the Commission so stated and announced its intention to

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no record that CFN ever actually filed a license renewal application for the Station on paper through the Office of the Secretary at any time.

5. Moreover, even if we were to consider CFN's Letter a request for waiver, we would reject it. An applicant requesting a waiver must plead with particularity the facts and circumstances that warrant such action,¹⁷ and waiver of the Commission's policies or rules is appropriate only if both: (i) special circumstances warrant a deviation from the general rule; and (ii) such deviation will serve the public interest.¹⁸ Assuming *arguendo* that the Commission actually received the Letter, CFN did not cite therein any rule or policy for which it allegedly sought a waiver and, as noted, never mentions the word "waiver" but merely states that Elsmar would be submitting a license renewal application for the Station, and ownership report in paper form. Setting aside its after-the-fact characterization of its Letter as a request for waiver, CFN failed to demonstrate "special circumstances" that would warrant waiver of the electronic filing requirements that the Commission had adopted for broadcast licensees over five years earlier.¹⁹

6. Accordingly, IT IS ORDERED, that the following pleadings ARE DISMISSED as unauthorized pursuant to 47 C.F.R. § 1.115(d) and 47 C.F.R. § 1.45(c): SAU's September 20, 2010, Motion for Leave to Supplement its Opposition and Supplement to Opposition to AFR; CFN's September 28, 2010, Motion for Extension of Time and its October 12, 2010, "Opposition to Motion for Leave to Supplement Opposition to Application for Review"; and SAU's October 22, 2010, "Reply to Opposition to Motion for Leave to Supplement Opposition to Application for Review."

7. IT IS FURTHER ORDERED, that the Application for Review IS DISMISSED, pursuant to 47 C.F.R. § 1.115(c), to the extent that it relies on questions of fact or law not previously presented to the Bureau and is otherwise DENIED pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and section 1.115(g) of the Commission's rules, 47 C.F.R. § 1.115(g).

8. IT IS FURTHER ORDERED, that the Motion for Stay filed on June 4, 2009, by Christian Family Network, Inc., IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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switch from paper to mandatory electronic filing for, *inter alia*, broadcast renewal applications *over five years* before the CFN renewal application was due.

¹⁷ See *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987).

¹⁸ See *Network IP, LLC v. F.C.C.*, 548 F.3d 116, 127 (D.C. Cir. 2008) citing *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d at 1166.

¹⁹ CFN was the licensee of the Station when the mandatory electronic filing requirements were adopted, having acquired WOLY(AM) in early 1989 (File No. BAL-19881117EA). See AFR at 2.