



Federal Communications Commission
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In Reply Refer to:

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James McCluskey, Ph.D.
Great Lakes Community Broadcasting, Inc.
Great Lakes Broadcast Academy, Inc.
P.O. Box 334
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Re: DWJKQ(FM), Jackson, MI
Facility ID No. 93649
FCC File Nos. BRED-20120529AGL
and BALED-20120222AAA

DWAQQ(FM), Onsted, MI
Facility ID No. 93742
FCC File No. BRED-20120530AJS

Dear Dr. McCluskey:

We have before us the referenced applications by Great Lakes Community Broadcasting, Inc. ("Great Lakes"), licensee of noncommercial educational ("NCE") FM stations DWJKQ(FM), Jackson, Michigan (the "Jackson Station") and DWAQQ(FM), Onsted, Michigan (the "Onsted Station"). The applications seek the renewal of licenses of the Jackson Station (the "Jackson Renewal Application") and the Onsted Station (the "Onsted Renewal Application"), and consent to the proposed assignment of the license for the Jackson Station to Jackson Lansing Catholic Radio (the "Jackson Assignment Application").

We also have before us license renewal applications for FM translator stations licensed to Great Lakes and Great Lakes Broadcast Academy, Inc., which is under common control with Great Lakes. Those translator stations are: (a) DW206AZ, Fremont, Michigan (Facility ID No. 92895); (b) DW206BF, Rogers Heights, Michigan (Facility ID No. 94048); and (c) DW220CW, Rogers Heights, Michigan (Facility ID No. 94049) (collectively, the "Translators").

For the reasons set forth below, we conclude that the licenses for the Jackson Station, the Onsted Station and the Translators have expired pursuant to Section 312(g) of the Communications Act of 1934, as amended (the "Act"). Accordingly, we dismiss all pending applications for those stations, including the Jackson Renewal Application, the Jackson Assignment Application, the Onsted Renewal Application, and the license renewal applications for the Translators.¹

¹ The applications being dismissed also include a construction permit application for the Jackson Station and a

Background. In *Great Lakes Community Broadcasting, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 8239 (MB 2009) (“*Great Lakes Order*”), we detailed an extensive history of violations of the Act and the Commission’s Rules (the “Rules”) by Great Lakes. In multiple instances, Great Lakes falsely claimed to have constructed NCE stations or FM translator stations in accordance with FCC construction permits, when in reality it either had failed to construct the station at all or had constructed the station at variance from the construction permit. The *Great Lakes Order* cancelled four NCE construction permits, two FM translator construction permits and three FM translator licenses, while repeatedly noting that the character issues presented by the false certifications and misrepresentations by Great Lakes, Dr. McCluskey and consulting engineer David Schaberg would be addressed subsequently.²

Great Lakes filed an untimely petition for reconsideration of the *Great Lakes Order*. In seeking reconsideration, Great Lakes did not claim any factual or legal error in the decision. Instead, Great Lakes argued that the public interest was not served by the cancellation of its authorizations and that Great Lakes should be allowed to assign its authorizations to another entity.

We dismissed the petition for reconsideration on October 30, 2009.³ The *Great Lakes Order* accordingly became a final order on December 10, 2009. With the filing of the license renewal applications for the Jackson Station, the Onsted Station and the Translators, we must analyze the status of those licenses under Section 312(g) of the Act based on the information contained in those applications and the findings made in the *Great Lakes Order*.⁴

The Jackson Station. Great Lakes filed the Jackson Assignment Application on February 22, 2012, and then filed the Jackson Renewal Application on May 29, 2012. In each application, Great Lakes answered “No” to the certification that neither the licensee nor any party to the application held any interest in a broadcast application in a proceeding where character issues were left unresolved. Great Lakes submitted an exhibit to each application citing the *Great Lakes Order*, and specifically the paragraphs involving the Jackson Station.⁵ Paragraph 28 of the *Great Lakes Order* summarized our findings with respect to the Jackson Station as follows:

Based on our investigation, we find that: (a) WJKQ never operated from the transmitter site authorized in its construction permit or its license; (b) [Great Lakes] falsely certified in its license application for WJKQ that the station had been constructed in accordance with the terms and conditions of the construction permit; (c) the grant of the WJKQ license had become a final order prior to the filing of [an] informal objection and complaint, which alleged operation of WJKQ from an

license application for the Onsted Station. See FCC file nos. BPED-20060913AAC and BLED-20040427AAA. There is also a pending informal objection to the Jackson Assignment Application that will be dismissed as moot. With respect to the Translators, the applications being dismissed are: (a) DW206AZ – file no. BRFT-20120601AEP (license renewal application); (b) DW206BF – file nos. BLFT-20070124AJO (license application) and BRFT-20120601AFB (license renewal application); and (c) DW220CW – (license renewal application filed as part of the Onsted Renewal Application).

² *Great Lakes Order*, 24 FCC Rcd at 8243 (¶ 12), 8245 (¶ 20), 8247 (¶ 29), 8248 (¶ 34), 8253 (¶ 49), 8254 (¶ 55), 8256 (¶ 60), 8257 (¶ 66), and 8259 (¶ 78).

³ See *Great Lakes Broadcasting, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 13487 (MB 2009).

⁴ See FCC Form 303-S, Section III, Question 5 and Instructions at 9-10.

⁵ See FCC file no. BALED-20120222AAA, Section II, Question 5 and Ex. 7; FCC file no. BRED-20120529AGL, Section II, Question 4 and Ex. 3. In Ex. 5 to the latter application, Great Lakes claimed that “to the best of our knowledge and understanding [the *Great Lakes Order*] is not a final order,” but it provided no information to support that claim.

unauthorized site; (d) after receiving the WJKQ license, [Great Lakes] moved the station's transmitter site without prior approval; (e) [Great Lakes] committed multiple Rule violations in its operation of the station, as shown in the Enforcement Bureau's report; and (f) WJKQ may have been off the air without Commission approval for more than a year.⁶

Based on the *Great Lakes Order*, we conclude that the Jackson Station has never operated from its licensed transmitter site since being licensed on February 5, 2004.

In the Jackson Renewal Application, covering the 2004-12 license term, Great Lakes certified that the Jackson Station had not been silent for any consecutive 12-month period and that the station had not been silent (or operating for less than its prescribed minimum operating hours) for any period of more than 30 days.⁷ The latter certification is inconsistent with information provided by Great Lakes that is quoted in the *Great Lakes Order* concerning the Jackson Station's operation from the unauthorized transmitter site discovered in an Enforcement Bureau inspection on July 14, 2006:

The station operated very intermittently after that [referring to tornado damage] (spring of 2006) and not at all after [Dr. McCluskey] left for Texas in July of 2007. . . . WJKQ has been on the air continuously since May 19, 2008.⁸

The Onsted Station. In the Onsted Renewal Application, Great Lakes answered "No" to the certifications in Section III, Questions 5 and 6. Question 5 asks the renewal applicant to certify that the station has not been silent (or operating for less than its prescribed minimum operating hours) for any period of more than 30 days. Question 6 asks the renewal applicant to certify that during the preceding license term, the station has not been silent for any consecutive 12-month period. In Exhibits 13 and 14, Great Lakes explained that the station had been silent "pending location of new transmitter site."⁹

The Translators. The *Great Lakes Order* finds that DW220CW was constructed at variance from its construction permit and has never operated in accordance with the license issued on April 5, 2004.¹⁰ Similarly, that order finds that DW206BF was constructed at variance from its construction permit and has never operated in accordance with the license issued on September 25, 2000.¹¹ The order likewise finds that DW206AZ was constructed at variance from its construction permit and has never operated in accordance with the license issued on June 25, 2003.¹²

Discussion. Section 301 of the Act prohibits any person from transmitting signals by radio "except under and in accordance with this chapter and with a license . . . granted under the provisions of this chapter."¹³ Additionally, Section 312(g) of the Act provides that "if a broadcasting station fails to transmit broadcast signals for any consecutive twelve-month period," the station's license expires as a

⁶ *Great Lakes Order*, 24 FCC Rcd at 8247 (¶ 28) (footnote omitted).

⁷ FCC file no. BRED-20120529AGL, Section III, Questions 5 and 6.

⁸ 24 FCC Rcd at 8246.

⁹ See FCC file no. BRED-20120530AJS, Section III, Questions 5 and 6 and Exs. 13-14. The Onsted Renewal Application failed to disclose the character issues presented in the *Great Lakes Order*, instead certifying that the licensee and parties to the application had not had any interest in or connection with any broadcast application in any proceeding where character issues were left unresolved. *Id.* at Section II, Question 2.

¹⁰ 24 FCC Rcd at 8253-54 (¶¶ 50-54).

¹¹ *Id.* at 8255-56 (¶¶ 56-60).

¹² *Id.* at 8257-58 (¶¶ 72-78).

¹³ 47 U.S.C. § 301.

matter of law “notwithstanding any provision, term, or condition of the license to the contrary,” and the license is automatically forfeited.¹⁴ Reading those two provisions in context together, the Court of Appeals for the D.C. Circuit has held that “unauthorized and unlicensed transmissions are no better than silence” and that, in assessing a licensee’s rights under Section 312(g), “an unauthorized transmission counts for nothing.”¹⁵ Thus, a station is subject to Section 312(g)’s license forfeiture provision if (a) the station fails to operate for twelve consecutive months or longer, (b) the station operates with unauthorized facilities for such a period, or (c) a combination of the prior two situations occurs for such a period.¹⁶

In this case, the Jackson Station has operated from unauthorized transmitter sites since it was licensed more than eight years ago. Accordingly, the station’s license has expired as of February 5, 2005, unless we were to exercise our discretion to extend or reinstate the license pursuant to Section 312(g). We find that the exercise of such discretion is not warranted here, given the extensive history of violations of the Act and our Rules by Great Lakes.¹⁷ Accordingly, we will dismiss all pending applications for the Jackson Station, including the Jackson Renewal Application and the Jackson Assignment Application.

Great Lakes certified in the Onsted Renewal Application that the Onsted Station has been off the air for more than twelve consecutive months as of May 30, 2012. Accordingly, the station’s license has expired as of that date unless we were to exercise our discretion to extend or reinstate the license pursuant to Section 312(g). We find that the exercise of such discretion is not warranted here, for the same reason cited in the prior paragraph. Accordingly, we will dismiss all pending applications for the Onsted Station, including the Onsted Renewal Application.

With respect to the Translators, in each case the *Great Lakes Order* shows that those stations have never operated in accordance with their licenses. Accordingly, we find that the license for DW220CW expired as of April 5, 2005, the license for DW206BF expired as of September 25, 2001, and the license for DW206AZ expired as of June 25, 2004. As with the Jackson Station and the Onsted Station, we decline to exercise our discretion to extend or reinstate the Translator licenses due to the extensive history of violations of the Act and our Rules described above and in the *Great Lakes Order*. Accordingly, we will dismiss all pending applications for the Translators.

As described above, the Jackson Renewal Application contains a certification that is inconsistent with information provided by Great Lakes that is quoted in the *Great Lakes Order*. Because we are dismissing the Jackson Renewal Application, this apparently false certification can be addressed in a subsequent proceeding concerning the character qualifications of Great Lakes, Dr. McCluskey and Mr. Schaberg. Likewise, the Onsted Renewal Application contains a false certification that neither the applicant nor any party to the application has had any interest in, or connection with, any broadcast application in any proceeding where character issues were left unresolved. Because we are dismissing the Onsted Renewal Application, this certification similarly can be addressed in a subsequent proceeding concerning the character qualifications of Great Lakes, Dr. McCluskey and Mr. Schaberg.

¹⁴ 47 U.S.C. § 312(g)(1996). See *Aerco Broadcasting Corp. v. FCC*, 51 Fed. Appx. 23 (D.C. Cir. 2002) (*per curiam*) (the effect of Section 312(g) is license forfeiture). See also 47 C.F.R. § 73.1740(c). Subsequently, Congress amended Section 312(g) by adding language giving the Commission the discretion to extend or reinstate a license in order to, *inter alia*, “promote equity and fairness.” 47 U.S.C. § 312(g) (2004) (amended by Consolidated Appropriations Act, 2005, Pub.L. No. 108-447, 118 Stat. 2809 (2004)).

¹⁵ *Eagle Broadcasting Group, Ltd. v. FCC*, 563 F.3d 543, 553 (D.C. Cir. 2009).

¹⁶ See *Morradio, Inc.*, Letter, DA 12-464 (MB rel. Mar. 26, 2012); see also *CWH Broadcasting, Inc.*, DA 12-463 (MB rel. Mar. 26, 2012).

¹⁷ See *Great Lakes Order*; see also *Letter to Erwin G. Krasnow, Esq. (KRAM(AM), West Klamath, Oregon)*, 25 FCC Rcd 1842, 1844 (MB 2010) (exercise of discretion under Section 312(g) not warranted “where for nearly four years the Station was either silent or engaging in unauthorized operation”).

Conclusion/Actions. Accordingly, for the reasons set forth above, we find that the license¹⁸ of DWJKQ(FM), Jackson, Michigan (Facility ID No. 93649), HAS EXPIRED as of 12:01 a.m. on June 5, 2005. Accordingly, the Commission's public and internal databases will be modified to reflect that expiration. All authority to operate this facility IS TERMINATED and any operation of the facility must cease immediately.

We also find that the license¹⁹ of DWAQQ(FM), Onsted, Michigan (Facility ID No. 93742), HAS EXPIRED as of 12:01 a.m. on May 30, 2012. Accordingly, the Commission's public and internal databases will be modified to reflect that expiration. All authority to operate this facility IS TERMINATED and any operation of the facility must cease immediately.

We also find that the license²⁰ of DW220CW, Rogers Heights, Michigan (Facility ID No. 94049), HAS EXPIRED as of 12:01 a.m. on April 5, 2005. Accordingly, the Commission's public and internal databases will be modified to reflect that expiration. All authority to operate this facility IS TERMINATED and any operation of the facility must cease immediately.

We also find that the license²¹ of DW206BF, Rogers Heights, Michigan (Facility ID No. 94048), HAS EXPIRED as of 12:01 a.m. on September 25, 2001. Accordingly, the Commission's public and internal databases will be modified to reflect that expiration. All authority to operate this facility IS TERMINATED and any operation of the facility must cease immediately.

We also find that the license²² of DW206AZ, Fremont, Michigan (Facility ID No. 92895), HAS EXPIRED as of 12:01 a.m. on June 25, 2004. Accordingly, the Commission's public and internal databases will be modified to reflect that expiration. All authority to operate this facility IS TERMINATED and any operation of the facility must cease immediately.

Additionally, IT IS ORDERED that the applications of Great Lakes Community Broadcasting, Inc. filed with respect to DWJKQ(FM), Jackson, Michigan, for construction permit (file no. BPED-20060913AAC), for consent to assignment of license (file no. BALED-20120222AAA), and for renewal of license (file no. BRED-20120529AGL), ARE DISMISSED, and all petitions to deny or informal objections to those applications are dismissed as moot.

Additionally, IT IS ORDERED that the applications of Great Lakes Community Broadcasting, Inc. filed with respect to DWAQQ(FM), Onsted, Michigan, for license (file no. BLED-20040427AAA) and for license renewal (file no. BRED-20120530AJS), ARE DISMISSED, and all petitions to deny or informal objections to those applications are dismissed as moot.

Additionally, IT IS ORDERED that the application of Great Lakes Community Broadcasting, Inc. filed with respect to DW220CW, Rogers Heights, Michigan, for license renewal (filed as part of file no. BRED-20120530AJS), IS DISMISSED, and all petitions to deny or informal objections to that application are dismissed as moot.

Additionally, IT IS ORDERED that the applications of Great Lakes Broadcast Academy, Inc. filed with respect to DW206BF, Rogers Heights, Michigan, for license (file no. BLFT-20070124AJO) and for license renewal (file no. BRFT-20120601AFB), ARE DISMISSED, and all petitions to deny or informal objections to those applications are dismissed as moot.

¹⁸ BLED-20030520AAA, as most recently renewed by BRED-20040520ABM.

¹⁹ BLED-20010809AAA, as most recently renewed by BRED-20040521AAA.

²⁰ BLFT-20040217ABX.

²¹ BLFT-20000626AEQ, as most recently renewed by BRFT-20040525AAA.

²² BLFT-20030508ABN.

Additionally, IT IS ORDERED that the application of Great Lakes Community Broadcasting, Inc. filed with respect to DW206AZ, Fremont, Michigan, for license renewal (file no. BRFT-20120601AEP), IS DISMISSED, and all petitions to deny or informal objections to that application are dismissed as moot.

Finally, it is imperative to the safety of air navigation that any prescribed painting and illumination of the towers for the Jackson Station, the Onsted Station and the Translators by maintained until the towers are dismantled. Accordingly, the owner(s) of those towers where those transmitting antennas are located is required, pursuant to Section 303(q)²³ of the Act, to maintain each tower in the manner prescribed by our Rules and the terms of each cancelled license.²⁴

FEDERAL COMMUNICATIONS COMMISSION



Peter H. Doyle
Chief, Audio Division
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cc: Jackson Lansing Catholic Radio
Dennis Kelly, Esq.
Mr. Edward Czelada

²³ 47 U.S.C. § 303(q).

²⁴ See 47 C.F.R. §§ 17.1 *et seq.* and 73.1213. See also *Streamlining the Commission's Antenna Structure Clearance Procedure*, Report and Order, 11 FCC Rcd 4272 (1995).