

FCC MAIL SECTION

SEP 12 9 11 AM '96
Before the
FEDERAL COMMUNICATIONS COMMISSION DA 96-1509
Washington, D.C. 20554

In the Matter of)	MM Docket No. 96-192
)	
Bluestone Broadcasters, Inc.)	File No. BR-950531ZF
)	
)	
For Renewal of License)	
for Station WMTD(AM))	
Hinton, West Virginia)	

HEARING DESIGNATION ORDER

Adopted: August 28, 1996

Released: September 10, 1996

By the Assistant Chief, Audio Services Division:

1. The Assistant Chief, Audio Services Division, Mass Media Bureau has before him for consideration: (a) the captioned application for renewal of license filed by Bluestone Broadcasters, Inc. ("Bluestone"), licensee of AM Station WMTD, Hinton, West Virginia, and (b) the results of an investigation into the station's silent status.¹

2. WMTD(AM) suspended operations on January 27, 1993 when the owner of the station's transmitting antenna site ordered the licensee to remove its facilities from the property. The most recent special temporary authorization permitting the station to remain silent expired February 24, 1996. On February 21, 1996, Bluestone filed a further request for extension of this temporary authorization representing that it needed additional time to locate a suitable site. Our review of the past records for this station reveals that Bluestone's attempts to secure an acceptable site to relocate the facility have not been successful. Further, Bluestone offers no evidence that such efforts will succeed in the near future and that the station can expeditiously resume operations. The station has been silent for a protracted period of time and the licensee has failed to demonstrate that causes beyond its control warrant the station's continued silence. Bluestone's request does not provide good cause for the continued extension of its special temporary authority. Consequently, Bluestone is in

¹ The Mass Media Bureau has been delegated authority to designate for hearing the renewal of license applications of silent broadcast stations. See Moenkopi Communications, Inc., 8 FCC Rccd 3990 (1993).

apparent violation of Sections 73.1740² and 73.1750³ of the Commission's Rules.

3. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the renewal of license application of WMTD(AM), Hinton, West Virginia, IS DESIGNATED FOR HEARING at a time and location to be specified in a subsequent Order, upon the following issues:

- (1) To determine whether Bluestone Broadcasters, Inc. has the capability and intent to expeditiously resume the broadcast operations of WMTD(AM), consistent with the Commission's Rules.
- (2) To determine whether Bluestone Broadcasters, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.
- (3) To determine in light of the evidence adduced pursuant to the preceding issues, whether grant of the subject renewal of license application would serve the public interest, convenience and necessity.

² Section 73.1740(a)(4) provides:

"In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating; the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control the licensee make it impossible to comply with the allowed period, an informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary."

³ Section 73.1750 provides:

"The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation."

4. IT IS FURTHER ORDERED, That, in the event it is determined that grant of the renewal of license application would serve the public interest, convenience and necessity, the grant will be conditioned on the expeditious resumption of operation, the precise period of time to be established in the hearing. Failure to resume operations within the time specified in the condition will result in the cancellation of the license and the deletion of the station's call letters.

5. IT IS FURTHER ORDERED, That, to inform Bluestone Broadcasters, Inc. of the issues specified against it, a copy of this Order will be mailed by certified mail/return receipt requested to:

Bluestone Broadcasters, Inc.
95 Pleasant Street
Hinton, West Virginia 25951

6. IT IS FURTHER ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, both the BURDEN OF PROCEEDING with the introduction of evidence and the BURDEN OF PROOF with respect to the issues specified above shall be upon the LICENSEE, Bluestone Broadcasters, Inc.

7. IT IS FURTHER ORDERED, That, to avail itself of the opportunity to be heard, the licensee, pursuant to Section 1.221(c) of the Commission's Rules, SHALL FILE with the Commission, in person or by attorney, within twenty (20) days of the receipt of this Order a WRITTEN APPEARANCE stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

8. IT IS FURTHER ORDERED, That the licensee herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rules, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the rules.

FEDERAL COMMUNICATIONS COMMISSION

Stuart B. Bedell
Assistant Chief, Audio Services Division
Mass Media Bureau