

**Before the
Federal Communications Commission DA 96-1611
Washington, D.C. 20554**

In the Matter of)	MM Docket No. 96- 200
)	
L.T. Simes and Raymond Simes)	File No. BR-960201BE
)	
)	
For Renewal of License)	
for Station KZOT(AM))	
Marianna, Arkansas)	

HEARING DESIGNATION ORDER

Adopted: September 17, 1996

Released: September 27, 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 L.T. Simes and Raymond Simes ("Simes"), licensee of AM Station KZOT, Marianna, Arkansas, and (b) the results of an investigation into the station's silent status.¹

2. KZOT has been off the air since February 20, 1989 when the previous licensee suspended operations pursuant to a bankruptcy proceeding. On May 22, 1989, the Commission approved the application (File No. BAL-890509EC) for involuntary assignment of KZOT's license to Daniel K. Schieffler, Trustee in Bankruptcy. The station remained silent during the trustee's tenure as interim licensee. On January 28, 1993, the Commission approved the application (File No. BAL-920518EC) for the voluntary assignment of KZOT's license from the trustee to L.T. Simes and Raymond Simes, conditioned upon the resumption of station operations within sixty days of the consummation of the transaction. The trustee and Simes consummated their transaction in March, 1993, but Simes did not resume station operations within the conditioned sixty day period and has not in the three and one-half years since consummation restored KZOT to operating status.

3. In its February 1, 1996 renewal application, the licensee states that it received a letter early in 1993 from the owner of its transmitter site, notifying L.T. Simes and Raymond Simes that they "would have to seek another location for the towers" if they purchased the

¹The 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 Rcd 3990 (1993).

station.² The licensee indicates that it chose "to attempt to negotiate with the present site owners for the use of this facility and simultaneously seek other potential sites." On May 28, 1996, the licensee filed its request to extend the temporary authorization permitting KZOT(AM) to remain silent, noting that it has "not had adequate time to find an alternate tower site."

4. With regard to its pending request to extend its silent authorization, the licensee has failed to provide any evidence that it, in the three years following consummation of the purchase of the station, either pursued negotiations to regain use of the licensed site or engaged in a diligent search for alternate sites. The station has remained silent for over seven years, and Simes' failure to return the station to the air in the three years it has been the Commission's licensee of record raises substantial questions, therefore, as to its capability and intent to resume broadcast operations. In view of these facts, Simes' current request for special temporary authority fails to establish that causes beyond its control have resulted in the facility's continued silence for this protracted period of time. Therefore, Simes is in apparent violation of Sections 73.1740³ and 73.1750⁴ of the Commission's Rules.

A copy of the site owner's letter, dated March 20, 1993, is attached to Simes May 28, 1996 request to extend the temporary authorization permitting the station's silence.

³Section 73.1740(a)(4) provides that:

"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 of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary."

⁴Section 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

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

- (1) To determine whether L.T. Simes and Raymond Simes have the capability and intent to expeditiously resume the broadcast operations of KZOT(AM), consistent with the Commission's Rules.
- (2) To determine whether L.T. Simes and Raymond Simes have 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.

6. 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.

7. IT IS FURTHER ORDERED, That, to inform L.T. Simes and Raymond Simes of the issues specified against them, a copy of this Order will be mailed by certified mail/return receipt requested to:

L.T. Simes and Raymond Simes
Simes & Simes
P.O. Box 2870
West Helena, Arkansas 72390

8. IT IS FURTHER ORDERED, That Simes must submit to the presiding Administrative Law Judge (with a copy to the Chief, Audio Services Division) within 30 days of the release of this Order information assessing whether the resumption of the station's operations will, including exposure of workers or the general public to levels of RF radiation exceeding specific standards, have a significant environmental impact as defined by 47 C.F.R.

license and other instruments of authorization to the FCC, Washington, D.C. for cancellation."

§ 1.1307.⁵ If Simes determines that the resumption of operations would be subject to the environmental processing guidelines set out in § 1.1307, it must submit an environmental assessment containing the information delineated in 47 C.F.R. § 1.1311. In the event the Mass Media Bureau determines that Simes' showing confirms that its operations will not have a significant impact upon the quality of the human environment, it shall so inform the presiding Administrative Law Judge. Failure to provide the required information within the specified period will, pursuant to 47 C.F.R. § 73.3568(b), result in the application's dismissal with prejudice for failure to prosecute.

9. 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, L.T. Simes and Raymond Simes.

10. 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.

11. 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

⁵See License Renewal Forms & Instructions (March 1995 edition), at pages 6-7, for specific information regarding the required showing.