

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

)	MB Docket No. 05-95
)	NAL/Acct No. MB 20041810004
In the Matters of)	
)	
KEGG COMMUNICATIONS, INC.)	
(hereafter "KCI"))	
Licensee of Station K216EQ, Daingerfield, Texas)	Facility ID No. 92810
)	
and)	
)	
Application for Construction Permit for a New)	Facility ID No. 94199
Noncommercial Educational FM Station in)	File No. BPED-19990907MG
Daingerfield, Texas)	

ORDER TO SHOW CAUSE
HEARING DESIGNATION ORDER
and
NOTICE OF ~~OPPORTUNITY FOR HEARING~~

Adopted: **March 10, 2005**

Released: **March 15, 2005**

By the Commission:

1. The Commission has under consideration (1) the above-captioned application ("Application") for a new noncommercial educational ("NCE") FM station in Daingerfield, Texas, filed on September 7, 1999, by KEGG Communications, Inc. ("KCI"), and (2) materials relating to KCI's operation of NCE FM translator station K216EQ, Daingerfield, Texas.

2. On May 2, 2002, Millennium Broadcasting ("Millennium") filed a petition to deny ("Petition") the Application. Millennium alleges that KCI originated programming on NCE FM translator station K216EQ.¹ Such operation would violate Commission rules regarding operation of FM translator stations, including section 74.1231, which provides that an FM translator "may be used for the purpose of retransmitting the signals of a primary FM radio broadcast station or another translator station." In its October 15, 2002, Opposition, KCI's sole principal, Mr. Bill Wright ("Wright"), indicated that K216EQ rebroadcasts "Christian programming" from "American Family Radio." In the

¹ By letter dated September 27, 2002, Millennium filed a "Motion to Withdraw Petition to Deny." However, in accordance with longstanding practice, when a petition raises serious allegations, we consider these matters to insure that the public interest will be served by grant of those applications, notwithstanding the fact that the petitioner now seeks to withdraw its petition. See, e.g., *Quincy D. Jones*, 11 FCC Red 2481, 2484 (1995); *Stockholders of CBS Inc.*, 11 FCC Red 3733, 3741 (1995); and *BBC License Subsidiary LP. (WLUK-TV)*, 10 FCC Red 7926 (1995) (all citing *Booth American Company*, 58 F.C.C.2d 553, 554 (1976)).

² 47 C.F.R. § 74.1231(b).

November 15, 2002, supplement to its Opposition, KCI stated that K216EQ did not originate "local" programming. Because KCI's responses did not adequately address Millennium's allegation, by letter dated December 18, 2002, the staff directed KCI to respond to specific inquiries, including:

1. Please confirm the call sign, city, and state of the primary station whose signal is authorized to be rebroadcast on K216EQ. Has station K216EQ ever retransmitted any other station? If so, please identify the station and the date and time of such retransmission.
2. Has KEGG originated any programming on K216EQ? If so, provide the nature of the programming and the date and time it was originated.

3. In its January 13, 2003, response, KCI did not identify a primary station but merely stated that K216EQ "has been broadcasting American Family Radio Network." Wright asserted that "to the best of my knowledge" Station K216EQ had not originated any "local" programming.

4. By letter dated April 28, 2003, the staff advised KCI that its response to our December 18" inquiry letter, and several subsequent pleadings, indicated that KCI did not rebroadcast the programming of a "primary" FM station or FM translator station but rather appeared to broadcast selected satellite programming of the American Family Radio Network. The staff identified this apparent violation of the Commission's rules in the operation of an FM translation station' and noted that this disclosure was inconsistent with KCI's representation to the Commission in its applications for K216EQ that it would rebroadcast Texas A&M University's Station KETR(FM), Commerce, Texas, over its proposed facility and that it had obtained the permission of KETR(FM) to do so.⁴ In addition, the staff stated that KCI's response to the December 18, 2002, inquiry, regarding whether any programming was originated on K216EQ, that "K216EQ has never to the best of [Mr. Wright's] knowledge originated any local programming" was not responsive to the inquiry. Accordingly, the staff requested KCI to provide information and documents responsive to the following inquiries:

1. What are the call sign, city, and state and licensee of each "primary station" whose signal is, or has been, rebroadcast over Station K216EQ?
2. For the licensee of each such primary station, including Texas A&M University, licensee of KETR(FM), on what date did KCI seek permission for such rebroadcast and when and from whom was this permission granted?
3. Did KCI ever rebroadcast the signal of Station KETR(FM) over Station K216EQ, and, if so,

³ The staff specified 47 C.F.R. 55 74.1201(a) and (d); 74.1231(b), (f) and (g); and 74.1284(b). It also enclosed copies of these rules for KCI's convenience.

⁴ See October 21, 1999, amendment to application for construction permit (File No. BPFT-19990224TA) and application for license to cover construction permit (File No. BLFT-19991130ABN). The staff also advised KCI of certain FM translator station operating requirements and restrictions. These include the rules that limit FM translators to retransmitting the signal of an FM radio broadcast station or of another FM translator station without significantly altering the characteristics of that signal (citing 47 C.F.R. §§ 1201(a); 74.1231(b); and 74.1284). Moreover, the licensee of a FM translator station must obtain prior written consent of a primary station before it may rebroadcast the signal of that station, and, upon such consent, may rebroadcast ONLY the signal of that station (citing 47 C.F.R. §§ 1201(d)(defines primary station); 74.1284(b)). Finally, the staff advised Wright that an FM translator station may not originate programming, other than (1) emergency warnings of imminent danger; and (2) announcements seeking or acknowledging financial support for the translator station, provided that such announcements are limited to 30 seconds per hour (citing 47 C.F.R. § 1231(f) and (g)).

state when such rebroadcast commenced and during what period it continued. If KCI did, but no longer, rebroadcast the signal of Station KETR(FM) over station K216EQ, state when and explain why it stopped doing so and who made that decision. If **KCI** never rebroadcast KETR(FM) over K216EQ, explain why it did not do **so**, when it decided not to do **so and** who made that decision, and why it twice represented to the Commission **that it would do so**.

4. ~~Has~~ K216EQ originated programming at any time? By "origination" in this context, we mean has K216EQ aired any programming that is not a retransmission of the primary station signal.

The Bureau sent a courtesy copy of this inquiry letter to American Family Association ("AFA"), the operator of the American Family Radio Network. It did not require AFA to respond.

5. In its May 12, 2003, response to the April 28, 2003, inquiry letter, KCI stated, **among** other things, that KETR(FM), its primary station of record, was "never" rebroadcast over K216EQ because it never received permission to rebroadcast that station, and that the "only station" rebroadcast over K216EQ was KAPI(FM), Ruston, Louisiana, licensed to American Family Association. In this regard, KCI states it requested, but was not granted, permission to rebroadcast **KETR(FM)** and that Wright "decided to carry" KAPI(FM) because of its Christian format. KCI states that it received the KAPI(FM) signal over the air and that the rebroadcast of KAPI(FM) began about December 15, 1999. KCI states that it is "unable" to locate the documentation that should have been sent to the Commission notifying it of the change of "primary station," and reiterates that K216EQ has not originated any "**local**" programming "but only rebroadcast that of KAPI(FM)."

6. **On** May 9, 2003, AFA submitted a response to the courtesy copy of the Bureau's inquiry letter. AFA states that it entered into a radio rebroadcasting agreement with KCI on December 15, 1999. AFA submits a copy of the agreement between AFA and Bill Wright specifying "K216EQ and KEGG-FM" **as** the stations to the agreement. AFA states that it was AFA's understanding that KEGG(FM), the applicant for a new NCE station in Daingerfield, Texas, was a licensed facility that would rebroadcast the AFA satellite signal and that the translator (K216EQ) would carry the KEGG(FM) signal? AFA indicates that at the time it entered into the agreement with KCI it did not authorize translators not licensed to AFA to rebroadcast **the** AFA satellite signal.

7. We **are** concerned with KCI's vague, incomplete, and inconsistent representations concerning the primary station rebroadcast over K216EQ. Specifically, in KCI's October 21, 1999, amendment to its application for construction permit for K216EQ (File No. **BPFT-19990224TA**), and in its November 30, 1999, license application to cover the permit (File No. **BLFT-19991130ABN**), KCI specifies Station KETR(FM) **as** the primary station. Nevertheless, in response to our letter of inquiry, KCI states that Station KAPI(FM), a Class A facility located approximately 126 miles from Daingerfield, is the "**only** station" ever rebroadcast over K216EQ.⁶ On August 27, 2003, KCI filed a letter indicating that low power **FM** Station KXVI-LP, Pittsburg, Texas, is now "the lead station" for K216EQ.

8. Based **on** the foregoing, we conclude that KCI's submissions **raise** a substantial and material question of fact as to whether, in light of KCI's incomplete, inconsistent and vague responses, KCI has violated Sections 74.1231(b), **74.1231(f)**, 74.1231(g) and **74.1284(b)** of the Commission's rules, and

⁵ However, AFA states that KCI may rebroadcast on station K216EQ the broadcast signal of any AFA-licensed station KCI can receive **off** the **air**.

⁶ Based **on our** engineering **staff's** review of the technical facilities of KAPI(FM) and K216EQ, we believe it extremely unlikely that KCI received the station signal **off air**. KCI **has** not disclosed, however, whether it **used** alternative means to receive the KAPI(FM) signal.

whether KCI misrepresented or lacked candor in providing information to the Commission concerning K216EQ's primary station and the related matter of whether K216EQ originated any programming. We conclude that revocation proceedings specifying appropriate character issues are warranted for station K216EQ and that KEGG Communications Inc.'s application for a new noncommercial educational FM station in Daingerfield, Texas, also should be included in those proceedings?

9. Accordingly, IT IS ORDERED, pursuant to Sections 309 and 312(a)(2) of the Communications Act of 1934, as amended, that KEGG Communications, Inc. IS DIRECTED TO SHOW CAUSE why the license for Station K216EQ, Daingerfield, Texas, should not be revoked, and why its application (File No. BPED-19990907MG) for a new noncommercial educational FM station at Daingerfield, Texas, should not be denied? at a hearing to be held at a time and location specified in a subsequent order upon the following issues:

- (1) To determine the extent to which KCI, licensee of noncommercial educational FM translator station K216EQ, complied with the FM Translator provisions specified in Sections 74.1231(b), 74.1231(f), 74.1231(g), and 74.1284(b) of the Commission's rules;
- (2) To determine whether KCI made misrepresentations of fact or was lacking in candor in violation of Section 73.1015 of the Commission's Rules with regard to K216EQ's primary station and/or whether K216EQ originated programming; and
- (3) To determine, based on the evidence adduced pursuant to all the above, whether KCI is qualified to be and remain the licensee of K216EQ.

10. IT IS FURTHER ORDERED that, in accordance with Section 309(e) of the Communications Act, as amended, the burden of proceeding with the introduction of the evidence upon issues (1) and (2) and the burden of proof with respect to issues (1) and (2) shall be upon KCI.

11. IT IS FURTHER ORDERED that, in accordance with Section 312(d) of the Communications Act, as amended, both the burden of proceeding with the introduction of the evidence and the burden of proof with respect to issue (3) shall be upon the Commission.

12. IT IS FURTHER ORDERED that, to avail themselves of the opportunity to be heard, the parties respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, 47 C.F.R. Section 1.221(c), in person or by attorney, file with the Commission, in triplicate, within twenty (20) days of the mailing of this Order, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

13. IT IS FURTHER ORDERED that KCI shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. Section 311(a)(2), and Section 73.3594 of the Commission's Rules, 47 C.F.R. Section 73.3594, give NOTICE of the hearing within the time and in the manner prescribed and shall ADVISE the Commission of the publication of such notice as required by Section 73.3594(g) of the Commission's rules.

⁷ Cf. *Contemporary Media, Inc.*, 10 FCC Red 13685 (1995) (designating for evidentiary hearing all of the licensee's authorizations when the principal's conduct called into his fitness to be licensee of any station).

⁸ On May 3, 2004, KCI filed a request that its construction permit application be dismissed. Because the majority of the evidence in this case arose in the context of processing that application, we have not granted KCI's request. The presiding Administrative Law Judge may do so if and when the Judge believes it appropriate.

14. IT IS FURTHER ORDERED that the Chief, Enforcement Bureau is made a party to the proceeding.

15. IT IS FURTHER ORDERED, that a copy of each document filed in this proceeding subsequent to the date of adoption of this Order **SHALL BE SERVED** on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations and Hearings Division of the Enforcement Bureau at (202) 418-1420. Such service copy **SHALL BE ADDRESSED** to the named counsel of record, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, **445 12th Street, S.W.**, Room 3-B443, Washington, D.C. 20554.

16. IT IS FURTHER ORDERED that irrespective of the resolution of the foregoing issues, it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended: and Section 1.80 of the Commission's rules,¹⁰ whether an ORDER FOR FORFEITURE in an amount not to exceed \$300,000, shall be issued against KCI for the violation of Sections 74.1231(b), 74.1231(f), 74.1231(g), and 74.1284(b) (FM translator provisions) and 73.1015 (submitting truthful statements to the Commission) of the Commission's rules.

17. IT IS FURTHER ORDERED that, in connection with the possible forfeiture liability noted above, this document constitutes notice pursuant to Section 503(b)(3) of the Communications Act of 1934, as amended. The Commission has determined that, in every case designated for hearing involving denial of an application for construction permit for alleged violations which also come within the purview of section 503(b) of the Communications Act of 1934, as amended, it shall, as a matter of course, include this forfeiture notice so as to maintain the fullest possible flexibility of action. Accordingly, we stress that the inclusion of this notice is not to be taken as in any way indicating what the initial or final disposition of this case should be.

18. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** by Certified Mail--Return Receipt Requested one copy of this Order to the following:

KEGG Communications, Inc.
P.O. Box 497931
Garland, Texas 75049

19. IT IS FURTHER ORDERED that the Secretary of the Commission shall cause to have this Order or a summary thereof published in the *Federal Register*.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁹ 47 U.S.C. § 503(b)(3)(A).

¹⁰ 47 C.F.R. § 1.80.