

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

In the Matter of	)	
	)	
RON ABBOUD	)	
	)	
Licensee of Multichannel Multipoint Distribution Service Station WLW992, Omaha, Nebraska	)	File No. 50226-CM-P-89
	)	
Application for License and Renewal of Multichannel Multipoint Distribution Service Station WLW992, Omaha, Nebraska	)	File Nos. BLMD-9151617, BRMD-9157909
	)	
Licensee of Experimental Radio Station KI2XAD in the 2500 – 2690 MHz Band, Omaha, Nebraska	)	File No. 2016-EX-PL-1991
	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: November 10, 2003**

**Released: November 13, 2003**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order*, we address two informal requests seeking the cessation of operation of Ron Abboud’s (Abboud) Multichannel Multipoint Distribution Service (MMDS) Station WLW992, Omaha, Nebraska, and Experimental Radio Station KI2XAD in Omaha, Nebraska.<sup>1</sup> For the reasons stated below, we find that Abboud’s license for MMDS Station WLW992 is forfeited

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<sup>1</sup> Request to Compel Cessation of Service and Order to Show Cause filed by Wireless Entertainment Network, Inc. (WEN) and Line of Site (LOS) (filed Jul. 30, 1993) (WLW992 Request); Request to Compel Cessation of Service and Order to Show Cause filed by Libmot Communications Partnership (Libmot), Young Communications (Young), and Gould Communications (Gould), WEN, and LOS (filed July 30, 1993) (KI2XAD Request). During the period July 30, 1993 through June 1994, Petitioners and Abboud filed a series of pleadings and motions with the Commission related to the above captioned matters. On September 8, 1994, the Ad Hoc Committee for Wireless Development Partners I (the Committee) filed four virtually identical pleadings styled “Petition to Cancel or Revoke License” each respectively against the following four Omaha licensees: LOS for MMDS Station WHT777 (E-Group Channels), Young for Multipoint Distribution Station (MDS) Station WNTF452 (Channel H1), Libmot for MDS Station WNTG 452 (Channel H2) and Gould for MDS Station WNTF307 (Channel H3), all stations Omaha, Nebraska. On October 21, 1994, the Omaha Licensees filed a Consolidated Opposition to Petitions to Cancel or Revoke License. The Committee’s Petitions to Cancel or Revoke were dismissed for failure to respond to the December 18, 2002, Public Notice released by the Wireless Telecommunications Bureau. See Wireless Telecommunications Bureau Seeks to Verify ITFS, MDS, and MMDS Pending Legal Matters, *Public Notice*, DA 02-2752, 67 Fed. Reg. 69529-04 (rel. Oct. 18, 2002) (*October Public Notice*).

pursuant to Section 21.44(a)(1) of the Commission's Rules.<sup>2</sup> The pleadings with respect to Experimental Radio Station KI2XAD are moot because Abboud's license for Station KI2XAD expired on February 1, 1995.<sup>3</sup>

## II. BACKGROUND

2. LOS is the MMDS licensee of Station WHT777 in Omaha, Nebraska.<sup>4</sup> LOS applied to operate on the MMDS E Group channels at Omaha, Nebraska on September 9, 1983, specifying a transmit site at geographic coordinates 41° 15' 28" N, 95° 56' 19" W.<sup>5</sup> On March 11, 1992, the Commission conditionally granted LOS a license for Station WHT777 and established a construction deadline of March 12, 1993. On March 16, 1993, LOS certified that it had completed construction of Station WHT777.<sup>6</sup>

3. Libmot is the Multipoint Distribution Service (MDS) licensee of Station WNTG452. Young is the MDS licensee of Station WNTF452. Gould is the MDS licensee of Station WNTF307.<sup>7</sup> WEN, a wireless cable system operator in the Omaha, Nebraska Metropolitan Statistical Area<sup>8</sup> provides service to its subscribers via LOS' Station WHT777, Libmot's Station WNTG452, Young's Station WNTF452, and Gould's Station WNTF307.<sup>9</sup>

4. Abboud applied to operate a station on the MMDS F Group channels at Omaha, Nebraska on July 19, 1989, specifying a transmit site of 41° 12' 39" N, 96° 05' 14" W and a horizontal antenna polarization.<sup>10</sup> On November 16, 1989, the Commission granted Abboud a conditional license for Station WLW992. On November 16, 1990, Abboud certified that he had completed construction of Station WLW992 by November 15, 1990.<sup>11</sup>

5. Abboud also requested special temporary authority (STA) on May 16, 1991, to construct and operate an experimental low power, multichannel fixed transmitter from the top of the Omaha Inn at 108<sup>th</sup> and M Street in Omaha, Nebraska.<sup>12</sup> Abboud's STA request acknowledges that his current licensed

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<sup>2</sup> 47 C.F.R. § 21.44(a)(1) (1994).

<sup>3</sup> See Radio Station Construction Permit and License for Experimental Radio Station KI2XAD, File No. 2016-EX-RL-1992, authorization effective Feb. 1, 1993 and expired Feb. 1, 1995.

<sup>4</sup> LOS operates its station on the E Group channels.

<sup>5</sup> *Id.*

<sup>6</sup> See Conditional License (File No. 7172-CM-P-83) and Certification of Completion of Construction (File No. 7172-CM-P-83)

<sup>7</sup> Libmot, Young and Gould operate their stations on the H Group channels.

<sup>8</sup> ATL holds the MDS authorizations for the Omaha (BTA 332) and Lincoln, Nebraska (BTA 256) Basic Trading Areas and operates wireless cable systems in both communities. On May 31, 1994, WEN assigned its interest in its Omaha, Nebraska wireless cable system to ATL. See *infra* note 1. ATL either holds the authorizations or leases capacity from third parties for almost all of the licensed MDS and ITFS channels in Lincoln and Omaha. See Letter from William D. Freedman, Attorney for ATL to John J. Schauble, Chief, Policy and Rules Branch, Public Safety Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, File No. 50226-CM-P-89 (filed Aug. 14, 2002) (ATL Letter of August 14, 2002).

<sup>9</sup> See Petitioners' Request at 2 – 4.

<sup>10</sup> The horizontal polarization is indicated on the Conditional License by the code "HMD 16HO-F." See Conditional License WLW992 (File No. 50226-CM-P-89) (granted Nov. 16, 1989).

<sup>11</sup> See Certification of Completion of Construction WLW992 (filed Nov. 16, 1990).

<sup>12</sup> See Abboud Letter of Aug. 12, 1996 at exhibit Letter from James H. Yancey, Jr., Consultant for Ron Abboud to Experimental Radio Service, Federal Communications Commission (filed May 16, 1991) (STA Letter).

site for Station WLW992 is located at a different, but very close, site from his experimental site.<sup>13</sup> Furthermore, he requested authority to operate at this temporary location to test its effectiveness as a “primary cell” for his experimental operations.<sup>14</sup> The Commission granted Abboud’s request by authorizing Experimental Station KI2XAD for service on November 15, 1991. The Office of Engineering and Technology extended the authorization for Station KI2XAD on February 1, 1993.<sup>15</sup>

6. On July 30, 1993, WEN and LOS requested that the former Common Carrier Bureau order Abboud to cease transmitting and require Abboud to show cause why the Commission should not revoke his authorization.<sup>16</sup> Concurrently with the WLW992 Request, WEN, LOS, Libmot, Young, and Gould requested that the Office of Engineering and Technology order Abboud to cease transmitting and require Abboud to show cause why the Commission should not revoke his authorization for Experimental Radio Station KI2XAD.<sup>17</sup> On March 21, 1994, WEN and LOS supplemented its WLW992 Request by alleging that Abboud was not operating in compliance with his authorization.<sup>18</sup>

7. On May 15 and July 22, 1996, the former Mass Media Bureau, Video Services Division sent letters of inquiry to Abboud in an effort to clarify the status of the operations of MMDS Station WLW992 in Omaha, Nebraska.<sup>19</sup> Abboud filed sworn declarations to these letters on May 28, 1996, June 17, 1996, and August 12, 1996.<sup>20</sup> Abboud stated in his declarations that:

Station WLW992 is [now] operating from the Omaha Inn, 108<sup>th</sup> and L St., Omaha, Nebraska, at coordinates, ... 41 12 42 N and 96 04 54 W.<sup>21</sup>

<sup>13</sup> STA Letter at 2.

<sup>14</sup> *Id.* at 2 *citing* 47 C.F.R. § 5.65 (1991).

<sup>15</sup> *See* Radio Station Construction Permit and License for Experimental Radio Station KI2XAD, File No. 2016-EX-RL-1992, authorization effective Nov. 15, 1991, and expired Feb. 1, 1993; *see also* Radio Station Construction Permit and License for Experimental Radio Station KI2XAD, File No. 2016-EX-RL-1992, authorization effective February 1, 1993 and expired February 1, 1995.

<sup>16</sup> WLW992 Request. On August 19, 1993, Abboud filed a Motion to Strike. Motion to Strike (Aug. 19, 1993). *See Also* Supplement to Motion to Strike (Aug. 20, 1993) Opposition to Motion to Strike (Sept. 1, 1993); Supplement to Opposition to Motion to Strike (Sept. 2, 1993); Answer to Complaint (Sept. 2, 1993).

<sup>17</sup> KI2XAD Request. On August 19, 1993, Abboud filed a Motion to Strike. Motion to Strike (Aug. 19, 1993). *See Also*, Opposition to Motion to Strike (Sept. 1, 1993); Supplement to Opposition to Motion to Strike (Sept. 2, 1993); Answer to Complaint (Sept. 2, 1993); Reply to Opposition to Motion to Strike (Sept. 10, 1993); Reply (Sept. 15, 1993); Supplement to Reply (Sept. 22, 1993).

<sup>18</sup> Supplement to Request to Compel Cessation of Service and Petition for Order to Show Cause (Mar. 21, 1994) (WLW992 Supplemental Request); *See also*, Opposition to Supplement to Compel Cessation of Service and Petition for Order to Show Cause (Apr. 29, 1994); Supplement to Opposition (May 6, 1994); Request for Extension of Time to Reply to Opposition (May 11, 1994); Reply to Opposition to Supplement to Compel Cessation of Service and Petition for Order to Show Cause (Jun. 1, 1994); Motion to Strike (June 16, 1994); Opposition to Motion to Strike (June 22, 1994).

<sup>19</sup> *See* Letters from Daniel R. Ball, Attorney, Video Services Division, Mass Media Bureau, Federal Communications Commission to Ron Abboud, File No. 50226-CM-P-89 (filed respectively May 15 and August 12, 1996) (VSD Letter of May 15, 1996) and (VSD Letter of August 12, 1996). Abboud filed responses to these letters on May 28, 1996, June 17, 1996, and Aug. 12, 1996. *See* Letters from Stephen Yelverton, Attorney for Ron Abboud to Daniel R. Ball, Attorney, Video Services Division, Mass Media Bureau, Federal Communications, File No. 50226-CM-P-89 (filed respectively May 28, June 17, and Aug. 12, 1996) (Abboud Letter of May 28, 1996), (Abboud Letter of June 17, 1996), and (Abboud Letter of Aug. 12, 1996).

<sup>20</sup> *See* Abboud Letter of May 28, 1996, Abboud Letter of June 17, 1996, and Abboud Letter of August 12, 1996.

<sup>21</sup> Abboud Letter of June 17, 1996 at Question 1, and Abboud Letter of August 12, 1996 at Question 4.

Station WLW992 was originally constructed on November 15, 1990, at 11111 M St. It is authorized to operate on the F-Group channels.<sup>22</sup>

Operations at the Omaha Inn location have used vertical polarization since about July 31, 1992. The experimental authorization, KI2XAD, did not specify or require horizontal polarization.<sup>23</sup>

### III. DISCUSSION

#### A. Station WLW992

8. WEN and LOS raise a number of concerns with respect to Abboud's initial application to operate Station WLW992.<sup>24</sup> As we cannot review alleged deficiencies in that application at this late date, because the grant thereof is a final action, we decline to address these matters here.<sup>25</sup> However, WEN and LOS also assert that Abboud failed to comply with his conditional license.<sup>26</sup> Despite the passage of time this remains a relevant matter because it impacts the current status of the authorization. Accordingly, we will address whether Abboud constructed his facilities at a transmit site and with polarization inconsistent with his conditional license.<sup>27</sup> We find, for the reasons discussed below, that Abboud's Station WLW992 is not constructed and operating as authorized. Thus, it appears that Abboud's previous certification of completion of construction was violative of Section 21.43(b) of the Commission's Rules.<sup>28</sup>

9. WEN and LOS assert that Abboud constructed his facilities at a transmit site and with polarization inconsistent with his conditional license.<sup>29</sup> Abboud's conditional license specifies a transmit site of geographic coordinates of 41° 12' 39" N, 96° 05' 14" W and a street address of 11111 M Street in Omaha.<sup>30</sup> Abboud's conditional license specifies a horizontal antenna polarization for Station

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at Question 2, and Abboud Letter of August 12, 1996 at Question 4.

<sup>24</sup> WEN and LOS argue that the LOS station is entitled to protection from harmful adjacent channel interference from Abboud's Station WLW992. WEN and LOS further argue that Abboud is operating Station WLW992 in a manner that causes harmful interference to the operation of LOS's station, which as a result impairs service to WEN's subscribers. Specifically WEN and LOS argue that "[p]ursuant to Section 21.902(e) [of the Commission's Rules] Abboud is required to provide interference protection to stations such as LOS's, which were filed for on September 9, 1983. Section 21.902(a) of the Commission's Rules requires MDS licensees to use 'exceptional efforts to avoid harmful interference to other users and to avoid blocking potential adjacent-channel use in the same city.'" See WLW992 Request at 2, 4-8.

<sup>25</sup> See 47 C.F.R. § 1.113; Steven S. Bosshard D/B/A Bosshard Radio Services, *Memorandum Opinion and Order* 14 FCC Red 20586 (1999).

<sup>26</sup> Supplement to Request to Compel Cessation of Service and Petition for Order to Show Cause filed by WEN and LOS (Mar. 21, 1994) (Supplement).

<sup>27</sup> See Supplement at 2-5.

<sup>28</sup> Section 21.43 of the Commission's Rules provides in relevant part that "upon the completion of construction, each licensee must file with the Commission a certification of completion of construction ..., certifying that the facilities as authorized have been completed." See 47 C.F.R. 21.43(b) (1994).

<sup>29</sup> See Petitioners' Supplement at 1-4.

<sup>30</sup> See Conditional License WLW992 (File No. 50226-CM-P-89) (granted Nov. 16, 1989).

WLW992.<sup>31</sup> Abboud acknowledges that he is not currently operating Station WLW992 from the transmit site listed on his license. However, he avers that the Commission approved his operating Station WLW992 from a different transmit site atop of the Omaha Inn, located at 108<sup>th</sup> and L St., in Omaha, Nebraska, upon the grant of his experimental license for Station KI2XAD.<sup>32</sup>

10. Abboud explains that subsequent to construction of the Station WLW992 facilities, he filed an STA to construct and operate an experimental station.<sup>33</sup> In the STA, Abboud claims that he informed the Commission that during the term of the experimental license, he would operate Station WLW992 in conjunction with and from the same transmit site as the other wireless cable channels in the experiment.<sup>34</sup> Abboud also asserts that the experimental authorization under which he is operating does not specify polarization.<sup>35</sup>

11. Abboud's argument that his experimental authorization for Station KI2XAD also provided him with a STA allowing him to relocate Station WLW992 and operate it from the Omaha Inn with technical parameters different than those specified in his authorization for Station WLW992 is meritless. Former Section 5.65 of the Commission's Rules permitted operations at temporary locations.<sup>36</sup> Such an application had to specify the general geographical area within which the applicant would confine its operation.<sup>37</sup> Nothing in the authorization for Station KI2XAD indicates that Abboud received authorization to relocate Station WLW992 and/or change Station WLW992's polarization from horizontal to vertical.<sup>38</sup> Furthermore, nothing in the STA Letter of May 16, 1991 requests a change of the transmit site and polarization for Station WLW992.<sup>39</sup> Finally, nothing in the grant of the authorization for Station KI2XAD indicates that its authorization modifies the authorization for Station WLW992.<sup>40</sup>

12. We note that an applicant takes a construction authorization subject to compliance with the terms and conditions of authorization set forth in Sections 21.43 and 21.44 of the Commission's Rules.<sup>41</sup> Acceptance of the construction authorization constitutes accession to these conditions.<sup>42</sup> First,

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<sup>31</sup> See Conditional License WLW992 (File No. 50226-CM-P-89) (granted Nov. 16, 1989) specifying a horizontal antenna polarization as indicated by code HMD16HO-F and Certification of Completion of Construction WLW992 (filed Nov. 16, 1990).

<sup>32</sup> See Abboud Opposition to Supplement at 1-3.

<sup>33</sup> Abboud Opposition to Supplement at 3; see also Special Temporary Authorization KI2XAD (File No. S-0217-EX-91) (granted Aug. 15, 1991, expiration Nov. 15, 1991) (KI2XAD STA); see also para 4 *supra*.

<sup>34</sup> See Abboud Opposition to Supplement at 3 and STA Letter of May 16, 1991.

<sup>35</sup> Abboud Opposition to Supplement at 3-4.

<sup>36</sup> See 47 C.F.R. § 5.65(a) (1991).

<sup>37</sup> *Id.*

<sup>38</sup> See Special Temporary Authorization for Experimental Authorization for Station KI2XAD (File No. S-0217-EX-91) (effective August 15, 1991, expired November 15, 1991); see also Experimental Authorization for Station KI2XAD (File No. 2016-EX-PL-91) (granted November 15, 1991, expired February 1, 1993); see also Extension for Experimental Authorization for Station KI2XAD (File No. 2016-EX-R-92) (granted February 1, 1993, expired February 1, 1995).

<sup>39</sup> See STA Letter of May 16, 1991.

<sup>40</sup> See Radio Station Construction Permit and License for Experimental Radio Station KI2XAD, File No. 2016-EX-RL-1992, authorization effective February 1, 1993 and expired February 1, 1995.

<sup>41</sup> 47 C.F.R. § 21.43, and § 21.44 (1994).

<sup>42</sup> *Miami MDS Company and Boston MDS Company*, 7 FCC Rcd 4347, 4349 (1992); cf. *PR Temmer v. FCC*, 743 F.2d 918 (D.C. Cir. 1984).

included on the back page of each conditional license is a description of the authorization's conditions and requirements, which in part states:

“Upon completion of construction of the station in accordance with the terms of this license, the licensee shall demonstrate to the satisfaction of the Commission . . . that all terms, conditions, and obligations set forth in the application and in this license have been fully met, as evidenced by the timely filing of a certification of completion of construction with the Commission certifying that the facilities as authorized have been completed and that the station is now operational and service to the public is ready to be commenced.”<sup>43</sup>

Next, regarding certification of completion of construction, Section 21.43(b) of the Commission's Rules states in relevant part that “each licensee must file with the Commission a certification of completion of construction using FCC Form 494A, certifying that the facilities as authorized [by the parameters contained in the conditional license] have been completed and that the station is now operational and ready to provide service to the public.”<sup>44</sup> Finally, Section 21.44(a)(1) of the Commission's Rules provides for forfeiture of a license where a certification has not been filed pursuant to Section 21.43(b) of the Commission's Rules.<sup>45</sup> The actual operation of a station (location and other parameters) must comply with the station's conditional license as certified to in the Certification of Completion of Construction Form (FCC Form 494A). In the instant case, the FCC Form 494A indicated that Station WLW992 was operating pursuant to the parameters on its conditional license, when in fact this was not the case.

13. The record establishes that Abboud failed to operate Station WLW992 as authorized. Indeed, Abboud was not operating Station WLW992 as authorized because he was operating it at a different location and at a different polarization than he was authorized to do so under Station WLW992's conditional license. Abboud also failed to file a timely application to modify the license for Station WLW992 to reflect the actual operation of the facilities. For the reasons set forth above, Abboud's authorization for Station WLW992 is forfeited pursuant to Section 21.44(a)(1) of the Commission's Rules.<sup>46</sup>

## **B. Station KI2XAD**

14. We find that the KI2XAD Request is not moot because the authorization for Station KI2XAD expired on February 1, 1995. Since that license is no longer in effect, there is no need to address the status of that authorization at this time.

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<sup>43</sup> FCC Form 494A, Certification of Completion of Construction (1994).

<sup>44</sup> 47 C.F.R. § 21.43(b) (1994).

<sup>45</sup> Section 21.44(a)(1) of the Commission's Rules provides “[a] license shall be automatically forfeited in whole or in part without further notice to the licensees upon: (1) The expiration of the construction period specified therein, or after such additional time as may be authorized by the Commission, unless within 5 days after that date certification of completion of construction has been filed with the Commission pursuant to §21.43.” 47 C.F.R. § 21.44(a)(1) (1994).

<sup>46</sup> 47 C.F.R. § 21.44(a)(1) (1994).

#### IV. CONCLUSION AND ORDERING CLAUSES

15. For the reasons stated above, we conclude that Abboud's license for Station WLW992 is forfeited because the record before us indicates that Abboud failed to construct the Station's facilities as authorized by Station WLW992's conditional license or, in the alternative, to file a timely modification of licensee application. Petitioners' request with respect to Experimental Radio Station KI2XAD is moot because Abboud's license for Station KI2XAD expired on February 1, 1995.<sup>47</sup>

16. Accordingly IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 21.44(a)(1) (1994) of the Commission's Rules, 47 C.F.R. § 21.44(a)(1) (1994), the license for Station WLW992 IS DEEMED FORFEITED as of December 16, 1990. Petitioners' Request with respect to Experimental Radio Station KI2XAD (File No. 2016-EX-RL-1992) is DISMISSED AS MOOT.

17. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 21.44(a)(1) of the Commission's Rules, 47 C.F.R. § 21.44(a)(1), that the applications for covering license (File No. BLMD-9151617) and for renewal of license of Station WLW992 (File No. BRMD-9157909) filed by Ron Abboud on November 16, 1990, and March 29, 1991, respectively ARE DISMISSED.<sup>48</sup>

18. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau

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<sup>47</sup> See Radio Station Construction Permit and License for Experimental Radio Station KI2XAD, File No. 2016-EX-RL-1992, authorization effective Feb. 1, 1993 and expired Feb. 1, 1995.

<sup>48</sup> On June 20, 2003, we dismissed Abboud's pending application File No. BLMD-9151617 with respect to Station WLW992 for failure to respond, when in fact Abboud did respond, to the *October Public Notice*. See Wireless Telecommunications Bureau Announces Action on Responses to Public Notice Regarding ITFS, MDS, and MMDS Pending Applications, *Public Notice*, DA 03-2057 at Appendix B (rel. June 20, 2003) (*June Public Notice*). On October 10, 2003, that application was reinstated. See Wireless Telecommunications Bureau Grants Petitions for Reconsideration of ITFS, MDS, and MMDS Applications That Were Dismissed Without Prejudice on June 20, 2003, *Public Notice*, DA 03-3157 (rel. Oct. 10, 2003).