



Federal Communications Commission
Washington, D.C. 20554

February 8, 2022

Sent via Certified Mail and Electronic Mail

G.I.G., Inc.
Charles Poppen
P.O. Box 88336
Sioux Falls, SD 57109
cpoppen@kcpo.tv

In re: KCPM-LP, Fargo, ND
Facility ID No. 21187
File Nos. CDBS File No. BRTVL-
20140402AAR, 0000176085, and
0000151969

Operational Status Inquiry

Dear Licensee:

Based on Commission records it appears the station referenced above has been silent for more than one year.¹ Pursuant to section 312(g) of the Communications Act of 1934, as amended (Act),² the license of any station that fails to transmit a broadcast signal for any 12-consecutive month period automatically expires by operation of law.³

This letter provides you 30 days to provide evidence⁴ that our information is incorrect and that, in fact, the station has either not been silent for more than one year or went silent but returned to the air with authorized facilities prior to its one-year silent anniversary. Furthermore, this letter provides you the opportunity to explain why, if the station were to retain a valid license, its license renewal applications

¹ According to Commission records the station went silent on February 7, 2021. LMS File No. 0000135782.

² See 47 U.S.C. §312(g); *Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543 (D.C. Cir. 2009); *A-O Broad. Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603 (2008) (*A-O Broad. Corp.*).

³ Section 312(g) of the Act provides that if a broadcast station fails to transmit broadcast signals with its authorized facilities for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license to promote equity and fairness. 47 U.S.C. §312(g).

⁴ This evidence must indicate the location, effective radiated power and antenna height above ground level for **all periods of operation**. Also include copies of all leases, personnel records (including payroll records appropriately redacted to protect the privacy of individual employees), engineering records, and station records, including EAS logs and program schedules, for all periods. In addition, you must provide copies of all invoices, bills, checks written or received, credit card charges, wire transfers or deposits of funds relating to the Station's operation. If the Station uses accounting software to maintain financial records, provide printouts of the data recorded for this period. You **must also include pictures** of the Station's studio facilities and transmission facilities during this timeframe and provide exact Station coordinates.

should not be designated for hearing based on its significant periods of previous silence.⁵ Please provide the operational status of the station since the date of its last license renewal grant – July 23, 2008.⁶ Has the station been operational during the entire period? If not, please provide the date(s) the station went silent and the date(s) it resumed operations. The written response to this letter must be supported by a declaration by an individual with personal knowledge of the facts and signed under penalty of perjury that the facts and information provided in the response are both true and correct.⁷ In addition to evidence supporting any statements made concerning the station’s operational history, you must also include a detailed plan for completing construction of the station’s digital facility if the construction permit application were to be granted.⁸

We note on February 7, 2022, you filed a notice of resumption of operations stating that on February 5, 2022, the “[s]tation returned to normal broadcast operations pursuant to licensed parameters.”⁹ Such operation, if it occurred, appears to have been unauthorized and did not prevent the station’s license from expiring under section 312(g). After 11:59pm on July 13, 2021, the station was no longer permitted to operate in analog.¹⁰ The station also does not have a digital authorization by which to operate. For purposes of section 312(g), the Commission and the D.C. Circuit have both held that the unauthorized transmission of a broadcast signal does not exempt a licensee from the automatic expiration

⁵ See e.g., *Vandalia Media Partners 2, LLC*, Hearing Designation Order and Notice of Opportunity for Hearing, 36 FCC Rcd 7012 (MB 2021) (designating station for hearing as a result of extended periods of silence in order to determine whether the station’s license renewal can be granted pursuant to section 309(k) of the Act); *Birach Broad. Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 5015 (2001), a appeal dismissed sub nom. *New World Radio, Inc. v. FCC*, 294 F.3d 164 (D.C. Cir. 2002) (warning licensees that a licensee will face a very heavy burden in demonstrating that it has served the public interest where it has remained silent for most or all of the prior license term).

⁶ CDBS File No. BRTVL-20051130AVS.

⁷ See 47 CFR § 1.16.

⁸ As a former analog station, the station was required to complete construction and transition to digital operations by July 13, 2021. Because the station’s digital construction permit remains pending it did not have authority to construct its facility. However, even if the construction permit is granted, it may only be granted with an expiration date of July 13, 2021 and any grant of a construction permit extension would result in its expiration date only being extended through January 10, 2022. See e.g., *Media Bureau Reminds Low Power Television And Television Translator Stations That The July 13, 2021, Digital Transition Date And Other Important Deadlines Are One Week Away*, Public Notice, DA 21-786 (released July 6, 2021). As a result, if the station’s license is reinstated and construction permit granted, the station will need to seek tolling of its construction permit – either for an eligible tolling reason or rare and extraordinary circumstances outside of its control. See 47 CFR § 73.3598(b); *1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17542, para. 42 (1999) (*Streamlining MO&O*) (recognizing that there may be “rare and exceptional circumstances” beyond the control of the licensee that do not fall under the tolling provisions, but “which would warrant the tolling of construction time.” The Commission concluded that in such “limited circumstances,” it would entertain requests for waiver of its “strict tolling provisions”); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown).

⁹ LMS File No. 0000184503.

¹⁰ See 47 CFR § 74.731(m); *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Third Report and Order and Fourth Notice of Proposed Rulemaking, 30 FCC Rcd 14927, 14932-33, para. 9 (2015) (extending the LPTV digital transition date until July 13, 2021 – 12 months following the completion of the 39-month post-Incentive Auction transition period or 51 months from the completion of the Incentive Auction).

provision of section 312(g) of the Act.¹¹ As part of your reply please identify the location from which the station operated on February 5, 2022, as well as all operational parameters, and the authorization under which the station operated.

If you fail to provide such information within 30 days from the date of this letter or provide a showing that reinstatement is warranted pursuant to the equity and fairness provision of section 312(g),¹² the Commission's public and internal databases **WILL BE MODIFIED** to indicate that the broadcast license for the above referenced stations is **EXPIRED**, that the station's license is **CANCELED** as a matter of law, and that the station's call sign is **DELETED**. Furthermore, all pending applications will be **DISMISSED**. As an alternative to a written response explaining the station's operational history, you may request the Commission proceed with the administrative process of cancelling the station's license under section 312(g). Furthermore, because the station does not appear to have a valid authorization by which to operate, it is instructed to **IMMEDIATELY CEASE ALL OPERATIONS**. Failure to do so may result in sanction and/or referral to the Enforcement Bureau.

Documents sent in response to this letter shall be addressed to FCC, Office of the Secretary, 45 L Street, NE, Washington, DC 20554, and emailed to Shaun Maher at the address below.

Please direct any questions concerning the content of this letter to Shaun Maher, 202-418-2324, or email, Shaun.Maher@fcc.gov.

Sincerely,

/s/

Barbara Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Aaron Shainis, Esq.

¹¹ See, e.g., *A-O Broad. Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603 (2008) (*A-O Broadcasting*); *Eagle Broadcasting Group, Ltd. v. FCC*, 563 F.3d 543 (D.C. Cir. 2009); *Great Lakes Community Broadcasting, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 8239 (Aud. Div. 2009). Likewise, unauthorized operation does not warrant reinstatement under the equity and fairness provision of section 312(g). See e.g., *Mt. Rushmore Broadcasting, Inc.*, Letter Order, 32 FCC Rcd 3924, 3927 (MB 2017) (discretion unwarranted when station was either silent or engaging in brief periods of unauthorized operation).

¹² See e.g. *A-O Broad.*, 23 FCC Rcd at 617, para. 27 ("This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited"). The Commission has exercised its authority to reinstate an expired license to "promote equity and fairness" only where the station failed to provide service for 12 consecutive months due to compelling reasons beyond the licensee's control. See, e.g., *V.I. Stereo Communications Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006); *Community Bible Church*, Letter, 23 FCC Rcd 15012, 15014 (MB 2008); *Mark Chapman, Court-Appointed Agent*, Letter, 22 FCC Rcd 6578 (MB 2007). The Commission has declined to reinstate licenses where the failure to transmit a broadcast signal was due to the licensee's own actions, finances, and/or business judgment. See, e.g., *A-O Broadcasting*, 23 FCC Rcd at 617, para. 27; *ETC Communications, Inc.*, Letter, 25 FCC Rcd 10686 (MB 2010); *Kirby Young*, Letter, 23 FCC Rcd 35 (MB 2008).