



Federal Communications Commission
Washington, D.C. 20554

October 29, 2020

DTV America Corporation
HC2 LPTV Holding, Inc.
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(via electronic mail)

Re: Requests for Extension of
Silent Authority and
Extension/Reinstatement of License
Under Section 312(g)

Dear Licensee:

This concerns five requests for extension of silent authority and reinstatement and extension of license, as amended, filed by DTV America Corporation (DTV America) and HC2 LPTV Holding, Inc. (HC2) (referred to collectively as DTV America/HC2), licensees of low power television stations (LPTV) listed in the Appendix.¹ For reasons set forth below, we deny DTV America/HC2's Requests. Pursuant to section 312(g) of the Communications Act of 1934, as amended (Act)² the Stations' licenses have been automatically cancelled and their call signs deleted.

Background

Section 312(g) of the Act provides that "[i]f a broadcasting station fails to transmit broadcast signals 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...for any reason to promote equity and fairness."³ As discussed in greater detail below, the Commission has exercised its discretion under section 312(g) to extend or reinstate a station's expired license "to promote equity and fairness" only in limited circumstances where a station's failure to transmit a broadcast signals for 12 consecutive months is due to compelling circumstances that were beyond the licensee's control.⁴ For example, the Commission has granted section 312(g) relief to stations whose facilities were destroyed

¹ A list of the five stations (referred to herein collectively as "Stations") and the corresponding Licensing and Management System (LMS) file numbers of their requests for extension of silent authority (referred to herein collectively as "Requests") are contained in the Appendix to this letter.

² 47 U.S.C. § 312(g).

³ *Id.* See also 47 CFR § 74.15(f).

⁴ See *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617, para. 27 (2008) (*A-O Broadcasting*) ("This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited").

by natural disasters such as hurricanes;⁵ where silence was necessary in furtherance of public safety;⁶ where reinstatement of the station's license was necessitated by court order;⁷ where stations were actually displaced by the Incentive Auction and repacking process;⁸ or where station silence was the result of governmental closure.⁹ The Commission has declined to exercise its section 312(g) discretion when a station's silence is the result of a licensee's own action or inaction, finances, and/or business judgment.¹⁰

Here, the five Stations were silent for greater than 12 consecutive months.¹¹ Four of the Stations – KYAN-LD, Los Angeles, California (KYAN-LD); KVTU-LD, Agoura Hills, California (KVTU-LD);

⁵ *V.I. Stereo*, 21 FCC Rcd at 14262 (reinstating license where silence due to destruction of towers in hurricanes).

⁶ *Community Bible Church*, Letter Order, 23 FCC Rcd 15012, 15014 (MB 2008) (*Community Bible*) (reinstatement warranted where licensee took all steps needed to return to air, but remained off air to promote air safety after discovering and reporting that FCC and FAA records contained incorrect tower information).

⁷ *Mark Chapman, Court-Appointed Agent*, Letter Order, 22 FCC Rcd 6578, 6580 (MB 2007) (*Mark Chapman*) (reinstating license where silence necessitated by licensee's compliance with court order).

⁸ See, e.g., *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd 858, 873-74, para. 49 (IATF/MB 2017) (displaced LPTV station that remains silent for more than one year may request an extension or reinstatement of license where station can demonstrate that its silence is the result of compelling reasons beyond the station's control including facts that relate to the post-auction transition process); *The Incentive Auction Task Force and Media Bureau Announce Procedures for Low Power Television, Television Translator and Replacement Translator Stations During the Post-Incentive Auction Transition*, Public Notice, 32 FCC Rcd 3860, 3865-66, para. 12 (IATF/MB 2017) (displaced LPTV station receiving conditional grant of its displacement construction permit that results in station remaining silent for more than one year may request extension or reinstatement of license pursuant to section 312(g)).

⁹ *Universal Broadcasting*, 34 FCC Rcd at 10319 (station unable to file STA to resume service due to a federal government shutdown).

¹⁰ See, e.g., *New Visalia Broadcasting, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9744 (2014)(record did not show that health problems prevented the principals from resuming operations); *A-O Broadcasting*, 23 FCC Rcd 603(transmission from unauthorized location not sufficient to avoid the consequences of section 312(g)); *Eagle Broadcasting Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, 589-90 (2008)(operation from unauthorized site insufficient to avoid the consequences of section 312(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 for six years); *Zacarias Serrato*, Letter Order, 20 FCC Rcd 17232 (MB 2005)(station taken off the air due to a business decision); *Kingdom of God*, Letter Order, 29 FCC Rcd 11589 (MB 2014) (station's numerous periods of extended silence were a direct result of licensee's own business decisions); *Christian Broadcasting*, 30 FCC Rcd at 13976 (2015)(licensee provided no evidence that station's silence was beyond its control).

¹¹ In October 2017, the Media Bureau and DTV America/HC2 entered into a Consent Decree concerning the Media Bureau's investigation into potential violations of the Commission's rules by DTV America related to the construction, licensing and serial relocation of numerous LPTV facilities. See *DTV America Corporation et. al.*, Order & Consent Decree, 32 FCC Rcd 9129 (MB 2017) (*Consent Decree*). All of the Stations listed in the Appendix except KYAN-LD, Los Angeles, CA, were subject to the investigation resolved by *Consent Decree*. We note that cancellation of the Stations' licenses as part of this proceeding involve matters that were outside of the scope of the "Investigation" as defined in the Consent Decree because this proceeding involves Stations' recent operations that constitute new violations. *Id.* at 9132, para. 2(l). Therefore, the actions taken herein are consistent with the terms of the *Consent Decree*, notably paragraph 17 which states, in relevant part: "The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed, in whole or in part, from the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion any new proceeding, formal or informal, concerning the matters that were the subject of the Investigation." *Id.* at 9136, para. 17.

W21DA-D, Dublin, Georgia (W21DA-D); and WBKH-LD, Port Charlotte, Florida (WBKH-LD) resumed operations, between 13 days and 3 and 1/2 months after their section 312(g) deadlines.¹² The remaining station - KFJK-LD, Santa Fe, New Mexico (KFJK-LD) is silent and has been so for almost two years.

Original Requests. In the largely-identical original versions of the Requests, filed between February and May 2019, DTV America/HC2 provided general statements as why the Stations went silent including a description of the impact of the ongoing post-Incentive Auction transition. Specifically, DTV America/HC2 alleges that this transition caused a lack of resources available to build the Stations' modified facilities and the possibility that the Stations could be displaced as part of the post-Incentive Auction repacking process and would need to build a second facility to operate on a new channel.¹³ DTV America/HC2 request authority to remain silent for an additional six months and for the Commission to reinstate and extend the Stations' licenses pursuant to the "equity and fairness" provision of section 312(g) of the Act.¹⁴ In each case, DTV America/HC2 contend that it "has been working diligently to resume operations" by the Stations' section 312(g) deadlines, but was prevented from doing so because of station-specific construction and equipment delivery delays.¹⁵

Amendments. Between August 13, 2019, and November 12, 2019, DTV America/HC2 subsequently amended the Requests for each station, in each case just prior to the Stations' section 312(g) deadline, adding additional general and station-specific arguments to support reinstatement and extension of the Stations' licenses.¹⁶ In the Amendments, DTV America/HC2 provide generally applicable arguments that the circumstances supporting reinstatement of its five licenses "are beyond the control of the licensee" and are the result of the Commission's Incentive Auction and repacking process.¹⁷ In deciding whether to exercise discretion in these cases to promote equity and fairness, DTV America/HC2 maintain that the Commission should consider how the Incentive Auction and repacking "placed unprecedented strains on the every part of the television station construction process"¹⁸ DTV America/HC2 allege that, "as full power and Class A stations have absorbed the majority of industry resources and have received priority with respect to their construction needs, low power stations have borne the brunt of the resulting scarcities."¹⁹

DTV America/HC2 go on to contend that the Media Bureau is justified in granting relief in this case in light of the "irretrievable investments" it has made in constructing the Stations.²⁰ DTV America/HC2 also argue that extension/reinstatement under the "equity and fairness" provision of section

¹² The applications for license to cover for these stations were erroneously granted. However, because we find that the Stations' licenses automatically expired by the express terms of section 312(g), we conclude that the grant of license applications had no legal effect.

¹³ See Requests, STA Narrative at 1.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ The amendments are collectively referred to as "Amendments."

¹⁷ Amendments at 1.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

312(g) will advance the public interest by “preserving service to viewers” in the Stations’ communities.²¹ DTV America/HC2 assert that “it is unlikely that the Commission intends to open a window for new low power television licenses and allotments in the foreseeable future.”²² Consequently, DTV America/HC2 maintain, “a failure to extend the Station’s 312(g) deadline would result in an unused television allotment for the communities served by the Station, and a loss of valuable service to viewers, contrary to the public interest.”²³

Supplements. In April 2020, DTV America/HC2 supplemented the Requests to provide additional arguments in support of their requests for relief.²⁴ DTV America/HC2 continued to point to construction delays caused by that Incentive Auction repack and surmises that “the consequences of those delays in this unique situation were not ones that could be avoided by stations, and they should be regarded as factors outside of the licensees’ control.”²⁵ DTV America/HC2 argue that these series of unanticipated construction delays were beyond their control and are analogous to the circumstances in *V.I. Stereo*, where the Commission found that a station being unable to resume operations due to impact from a series of hurricanes supported a section 312(g) “equity and fairness” finding.²⁶ DTV America/HC2 also cite to the decision in *Universal Broadcasting*, where a station was unable to resume operations because it could not file for an engineering STA due to a Federal government shutdown.²⁷

Finally, DTV America/HC2 state that reinstating or extending the Stations’ licenses would serve the public interest by bringing ATSC 3.0 benefits to their communities of license, including but not limited to advanced emergency alerts, better accessibility features, localized content, and interactive educational children’s content.²⁸ Furthermore, DTV America/HC2 maintain that it has made an internal commitment for its Stations to participate in the transition to ATSC 3.0.²⁹

Station-Specific Arguments. In addition to the legal and policy arguments described above, DTV America/HC2 provide station-specific arguments to support a finding of “equity and fairness” for each of the Stations.

KYAN-LD and KVTU-LD. KYAN-LD initially began operations on January 26, 2017³⁰ and five months later, on June 30, 2017, filed a request for silent authority stating “[t]he station is silent due to termination of operations at the licensed site in anticipation of moving to a new transmitter site.”³¹ KYAN-LD then filed a series of requests to remain silent and notices of resumption of service

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ The supplements are collectively referred to as “Supplements.”

²⁵ *Id.*

²⁶ *Id.* at 3 citing *V.I. Stereo Communications*, 21 FCC Rcd 14259, 14262 (2006) (*V.I. Stereo*).

²⁷ Supplements at 3, citing *Universal Broadcasting of New York, Inc.*, Letter Order, 34 FCC Rcd 10319 (MB 2019) (*University Broadcasting*).

²⁸ *Id.*

²⁹ *Id.* at 4.

³⁰ LMS File No. 0000021579.

³¹ LMS File No. 0000025483.

immediately followed by another request for silent authority from June 2017 through November 2018. Most recently, KYAN-LD went silent on November 12, 2018,³² and sought an extension of its silent authority on May 10, 2019, in the Request that is the subject of this proceeding.³³ KYAN-LD resumed operations and filed an application for license to cover on November 25, 2019, 13 days after its license had expired pursuant to section 312(g) and is operational today.³⁴

KVTU-LD initially began operations on April 21, 2004. Starting on June 1, 2006,³⁵ through November 2018, KVTU-LD filed a series of requests to remain silent and notices of resumption of operations immediately followed by another request to remain silent. KVTU-LD was silent for a range of reasons over this period of time, including displacement, efforts to convert to digital operations, and because the site from which the station had been operating was no longer available and it had to find a new transmission site.³⁶ Most recently, KVTU-LD went silent on November 12, 2018,³⁷ and sought an extension of that silent authority on May 10, 2019, in the Request that is the subject of this proceeding.³⁸ KVTU-LD resumed operations and filed an application for license to cover on January 14, 2020, just over two months after its license had expired pursuant to section 312(g), and based on information in LMS is operational today.³⁹

In the original Requests for both KYAN-LD and KVTU-LD, DTV America/HC2 state that “all efforts are underway to meet required FCC deadlines, and that both stations fully expect to be on the air prior to the station’s 312(g) deadline of November 12, 2019.”⁴⁰ DTV America/HC2 alleged further that each of the stations “will receive its transmitter and filter on September 25, 2019 and it expects to complete construction by October 29, 2019.”⁴¹

In amendments filed in November 2019, just prior to the stations’ section 312(g) deadline of November 12, 2019, DTV America/HC2 alleges that for both stations that “all of the engineering, equipment and deliveries necessary to resume operation of the Station have been received and/or completed, other than installation of the antenna.”⁴² DTV America/HC2 represented that “[t]he antenna is on-site and riggers are scheduled to begin installation on or about November 19, as they could not be scheduled prior to this date.”⁴³

³² LMS File No. 0000063581.

³³ LMS File Nos. 0000072592.

³⁴ LMS File No. 0000090975.

³⁵ See e.g., BLSTA - 20061106ABI.

³⁶ See *Consent Decree*. 32 FCC Rcd at 9134 paras. 7-8 (noting that most stations were constructed using temporary facilities that would be removed and were often located in empty fields, parking lots, or the base of an existing tower).

³⁷ LMS File No. 0000063587.

³⁸ LMS File No. 0000072586.

³⁹ LMS File No. 0000094153.

⁴⁰ LMS File Nos. 0000072586 and 0000072592, STA Narrative at 1.

⁴¹ *Id.*

⁴² LMS File Nos. 0000072586 and 0000072592, Amendment at 1.

⁴³ *Id.*

In supplements filed in April 2020, DTV America/HC2 reported that they were unable to complete construction of both stations' modified facilities primarily due to the lack of available antenna riggers.⁴⁴ DTV America/HC2 represent that they began seeking commitments from riggers two months prior to the stations' section 312(g) deadline, "but the domino effect of delays in other jobs, which the licensee presumes were repack-related resulting from the . . . Incentive Auction," resulted in the rigger arriving after the section 312(g) deadline.⁴⁵ In addition, KVTU-LD discovered a last-minute problem with its transmitter filter that further delayed completion of construction of its modified facility.⁴⁶

W21DA-D. W21DA-D initially began operations on September 2, 2015⁴⁷ and four months later, on January 12, 2016, filed a request for silent authority stating that it was "in the midst of raising capital for the long-term operation of this station"⁴⁸ W21DA-D then filed a series of requests to remain silent, and notices of resumption of service immediately followed by another request for silent authority from January 2016 through August 2018. Most recently, after a short period of operation, the station went silent again on August 13, 2018,⁴⁹ and sought an extension of its silent authority on February 12, 2019, the Request that is the subject of this proceeding.⁵⁰ W21DA-D resumed operations and filed an application for license to cover on August 27, 2019, two weeks after its license had expired pursuant to section 312(g), and is operational today.⁵¹

In an amendment to its original Request, filed in August 2019 shortly before the expiration of W21DA-D's section 312(g) deadline, DTV America/HC2 stated that "all of the engineering, equipment and deliveries necessary to resume operation of the Station have been received and/or completed, other than installation of the transmitter."⁵² DTV America/HC2 reported that delivery of the station's transmitter had been delayed and failed to arrive as scheduled, and that it was looking for an alternative source for a transmitter.⁵³

In a supplement filed in April 2020, DTV America/HC2 represents that it was unable to complete construction prior to W21DA-D's section 312(g) deadline of August 13, 2019, because it was unable to secure a transmitter due to orders resulting from the Incentive Auction repacking process that caused the manufacturer to push back the delivery date.⁵⁴

WBKH-LD. WBKH-LD initially began operations on August 7, 2014 and two months later, on October 1, 2014, filed a request for silent authority "while negotiations are made for a permanent tower

⁴⁴ LMS File Nos. 0000072586 and 0000072592, Supplement at 1.

⁴⁵ *Id.*

⁴⁶ LMS File No. 000072586, Supplement at 1.

⁴⁷ LMS File No. 0000004984.

⁴⁸ LMS File No. 0000007767.

⁴⁹ LMS File No. 0000058971.

⁵⁰ LMS File No. 0000067868.

⁵¹ LMS File No. 0000080614.

⁵² LMS File No. 0000067868, Amendment at 1.

⁵³ *Id.*

⁵⁴ LMS File No. 0000067868, Supplement at 1.

location from which to broadcast and permanent equipment purchases are made.”⁵⁵ WBKH-LD subsequently filed a series of requests to remain silent and notices of resumption of operations immediately followed by another request for silent authority from October 2014 to October 2018. Most recently WBKH-LD went silent on October 7, 2018, and sought to extend its silent authority on April 5, 2019,⁵⁶ the Request that is the subject of this proceeding.⁵⁷ WBKH-LD resumed operations and filed an application for license to cover on January 30, 2020, three and a half months after its license had expired pursuant to section 312(g), and is operational today.⁵⁸

In its original Request for WBKH-LD, DTV America/HC2 stated that it “made progress thoroughly preparing site summaries and sketches, completing the engineering design process, and determining the Station’s tower needs such as electricity capability, shelter for its transmitter, and Internet availability.”⁵⁹ DTV America/HC2 went on to assert that “the Station has been in contact with transmitter and antenna manufacturers and is currently collecting quotes from vendors to complete construction.”⁶⁰

In an amendment to its Request, filed shortly before WBKH-LD’s section 312(g) deadline of October 7, 2019, DTV America/HC2 states that “all of the engineering, equipment and deliveries necessary to resume operation of the Station had been received and/or completed.”⁶¹ However, DTV America/HC2 reported that the tower owner recently decided to abandon this site and tear down the tower . . . due to the discovery of certain endangered turtles at the site while working on the tower.”⁶² DTV America/HC2 stated that the tower owner was moving all tenants from the tower and that DTV America/HC2 had filed a minor modification request for a new site.⁶³

In a supplement filed in April 2020, DTV America/HC2 maintains that the tower move was “extremely complex, ultimately resulting in ten radio stations and thirteen television stations having to coordinate occupancy.”⁶⁴ DTV America/HC2 states that, following the grant of its modified construction permit, it sought to quickly build on the new tower, “but construction was delayed because other full power stations that were repacked and in phase 7 in the post-auction transition, were given priority by the tower owner.”⁶⁵

KFJK-LD. KFJK-LD initially began operations on April 12, 2016⁶⁶ and just four months later, on August 4, 2016, went silent because the tower site for the facility was “no longer valid [and]

⁵⁵ BLSTA-20141113AGC.

⁵⁶ LMS File No. 0000062797.

⁵⁷ LMS File No. 0000069756.

⁵⁸ LMS File No. 0000102927

⁵⁹ LMS File No. 0000069756, STA Narrative at 1.

⁶⁰ *Id.*

⁶¹ LMS File No. 0000069756, Amendment at 1.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ LMS File No. 0000069756, Supplement at 1.

⁶⁵ *Id.*

⁶⁶ LMS File No. 0000010472.

[a]pplicant is requesting a silent STA while identifying a new location to facilitate operations.”⁶⁷ KFJK-LD subsequently filed a series of requests to remain silent and notices of resumption of operations immediately followed by another request for silent authority. KFJK-LD most recently went silent on November 11, 2018, and sought to extend that authority on May 10, 2019,⁶⁸ in the Request that is the subject of this proceeding.⁶⁹ Pursuant to section 312(g), KFJK-LD’s license expired on November 11, 2019, and it remains silent today.⁷⁰

In an amendment to its Request, DTV America states that “all of the engineering, equipment and deliveries necessary to resume operation of the Station had been received and/or completed.”⁷¹ All that remains for KFJK-LD to resume operations is for it to receive the necessary authorizations from the United States Forest Service (USFS).⁷² DTV America/HC2 states that on June 4, 2019, it filed for the necessary USFS authorizations and “was given the expectation that the [a]uthorizations would be issued in early July.”⁷³ On July 15, 2019 DTV America was asked by USFS to submit supplemental information, which it states it submitted to USFS the same day.⁷⁴

In a supplement filed in April 2020, DTV America goes on to note that in August 2019 it was informed by the tower owner that there was an “internal mix-up” and the tower owner “never sent certain notifications as required by the USFS.”⁷⁵ As a result, the date that the tower owner anticipated receiving the authorizations from USFS was pushed back to September 30, 2019.⁷⁶ DTV America represents that all of the equipment needed to resume operations at the authorized tower site were ordered, delivered, and installed before KFJK-LD’s section 312(g) deadline.⁷⁷ According to DTV America, it still has not received the necessary authorizations from USFS to commence operations.⁷⁸

Discussion

Upon review of the facts and circumstances presented, we find that DTV America/HC2’s Requests fail to satisfy the requirements of section 312(g). Based on its showings, we find the Stations’ extended silence were a direct result of DTV America/HC2’s own inaction and business judgments. DTV America/HC2 has failed to adequately demonstrate that the Stations’ failures to return to the air before

⁶⁷ LMS File No. 0000013458.

⁶⁸ LMS File No. 0000063583.

⁶⁹ LMS File No. 0000072575.

⁷⁰ We note that DTV America/HC2 appears to mistakenly state in its request that the section 312(g) deadline for this station was August 18, 2019. LMS File No. 0000072575, Amendment at 1 (“The licensee has been working diligently to resume operations by the Station’s 312(g) deadline of August 18, 2019.”).

⁷¹ LMS File No. 0000072575, Amendment at 1.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ LMS File No. 0000072575, Supplement at 1.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* DTV America has provided no additional updates on the status of USFS permit approval or construction since its April 2020 supplement.

their section 312(g) deadline was due to compelling circumstances beyond the licensee's control and that reinstatement or extension is warranted under the "equity and fairness" provision of section 312(g).

Commission Precedent. The cases cited by DTV America/HC2 in support of their Requests are inapposite and distinguishable from Commission precedent where reinstatement or extension was warranted. In *Universal Broadcasting*, the licensee was unable to file an engineering STA to resume operations because of the Federal government shutdown and the Media Bureau concluded that it was "appropriate to treat the shutdown as a compelling factor beyond Universal's control because the STA application clearly would have been approved in time to resume operations within the section 312(g) 12-month deadline if not for the shutdown."⁷⁹ In *V.I. Stereo*, the station's facilities were destroyed by a hurricane and the Commission found that, "under such circumstances, the station's extended silence is understandable."⁸⁰ The Media Bureau granted section 312(g) relief in *Community Bible Church* because the station voluntarily went silent to promote air safety after it was discovered that there was incorrect tower information in the Commission's and Federal Aviation Administration's records.⁸¹ Finally, in *Mark Chapman*, the station was required to remain silent to comply with a court order and the Media Bureau found that granting Section 312(g) relief was in keeping with the Commission's long-standing policy to accommodate court decrees.⁸² All of these cases involved compelling circumstances beyond the licensee's control that prevented timely resumption of service. Based on those unique circumstances, the Commission was able to find equity and fairness to reinstate a station's license.

In the cases at hand, we find no similar compelling circumstances beyond the Stations' control that prevented a timely resumption of service. The alleged delays that prevented the Stations from resuming operations were equipment delivery and construction delays that could have been foreseen in light of the repack and are common construction issues that arise in the industry, including access to available antenna riggers (KYAN-LD and KTVU-LD), last minute equipment problems (KTVU-LD), delays in manufacturing equipment and equipment delivery (W21DA-D), the loss of access to a tower site and need to relocate to a new site (WBKH-LD); and delays in obtaining governmental authorizations (KFJK-LD). These are delays that DTV America/HC2 should have factored into their schedule, consistent with the requirements of 312(g), to construct, relocate, or rebuild the facilities of the hundreds of stations it acquired in November 2017 and the numerous stations that were subsequently acquired by DTV America/HC2. These delays were neither compelling nor outside of the Stations' control. Here, the Stations' continued silence stemmed from DTV America/HC2's voluntary business decision to modify the Stations' facilities despite knowing time was limited and that the Incentive Auction repacking may place strains on resources, including both equipment and labor, and in the case of KFJK-LD, that USFS approvals would need to be obtained and planned accordingly or found an alternate location for the station's facilities that would not require such approvals. DTV America/HC2 made the business decision to take the Stations off the air instead of remaining on the air at their licensed site while completing construction of their modified facilities. Their ambitious business plan proved successful for many of the other stations acquired in and following November 2017; however, it fell short with respect to these five Stations.

Equipment Delivery Delays/Uncertainty Potentially Caused by the Incentive Auction Repack. We are unsympathetic to the fact that DTV America/HC2 ran out of time to construct these Stations' modified

⁷⁹ *Universal Broadcasting*, 34 FCC Rcd at 10323.

⁸⁰ *V.I. Stereo Communications*, 21 FCC Rcd at 14262.

⁸¹ *Community Bible Church*, 23 FCC Rcd at 15014.

⁸² *Mark Chapman*, 22 FCC Rcd at 6581 citing *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 132 (1945).

facilities or the fact that some of the Stations resumed operations after their section 312(g) deadlines due to activities related to the Incentive Auction repack. The Commission issued the *Closing and Channel Reassignment Public Notice* in April 2017.⁸³ At the time DTV America/HC2 acquired the Stations on November 9, 2017, it knew that the post-incentive auction transition was underway. Prior to acquiring the Stations, DTV America/HC2 could have determined whether these Stations had been displaced by the Incentive Auction repacking process and knew that their ability to keep the Stations silent while they undertook modifications would be limited by section 312(g). Therefore, the modifications at issue here are not a result of the Commission-mandated repack, but independent business decisions by DTV America/HC2 to relocate the Stations' facilities during the Incentive Auction repack, as none of the Stations were actually displaced by the repack.⁸⁴ While DTV America/HC2 argue that their inability to return to the air prior to the section 312(g) deadline was due to equipment and labor shortages beyond their control, in reality, the cause of their inability to be on the air stems from their voluntary business decisions. That is in conjunction with negotiating the *Consent Decree*, DTV America/HC2 had to make a business decision as to which stations of the more than 170 licensed and silent facilities would require modification to return to licensed operation and which they may need to forego pursuing and turn in their licenses. In this process, DTV America/HC2 had a responsibility to examine the feasibility of its plans given its subsequent acquisition of even more stations after November 2017. Prior to making commitments concerning facility modifications, DTV America/HC2 should have factored information related to the repack, including equipment and resource availability and the condition of the Stations existing facilities, into their plans in order to ensure that Stations would remain in compliance with Commission rules and the Act. Thus, we find that, to the extent that DTV America/HC2 overcommitted itself and was unable to meet what may now seem as overly ambitious goals was a result of their own voluntary business decisions.

Public Interest Considerations. DTV America/HC2 contend that exercise of Commission discretion in these cases will also advance the public interest by preserving service to viewers and ensuring a diversity of free, over-the-air viewing options, and bringing the benefits of ATSC 3.0 to the station's communities of license. As an initial matter, we are reluctant to recognize the Stations' alleged service to the public because Commission records demonstrate that the Stations have been silent for the vast majority of their history. Even to the extent that four of the Stations at issue have resumed operation, we find that the public interest would not be served by reinstating and extending the license of a station that has "continuously failed to provide its community with reliable, consistent, authorized service."⁸⁵ Even if viewers in the Stations' markets could potentially benefit from the Stations returning to operation, that does not change our analysis that there is no legal basis for reinstating the license pursuant to section 312(g).

⁸³ See *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*).

⁸⁴ We note that nine months prior to the release of the *Consent Decree*, the Media Bureau released its Public Notice outlining its plans for scheduling of the post-incentive auction transition. See *Incentive Auction Task Force and Media Bureau Adopt Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 32 FCC Rcd 890 (MB 2017) (*Transition Scheduling PN*). Throughout the *Transition Scheduling PN*, the Media Bureau detailed many of the possible equipment and labor shortages that industry expected could occur during the post-auction transition. Accordingly, these shortages should not have been a surprise to DTV America/HC2.

⁸⁵ *In the Matter of Roy E. Henderson*, Memorandum Opinion and Order, 33 FCC Rcd 3385, 3388 (2018) (finding no basis to reinstate the license where the station failed to operate with authorized facilities for over four years); see also *G.I.G. of North Dakota, LLC, et. al*, Letter Order, 35 FCC Rcd 5373 (MB 2020).

Further, we place little weight on any pledge of future ATSC 3.0 service to the public as such plans are not mandated by the Commission's rules and DTV America/HC2's internal business plans could change at any time. To the extent that DTV America/HC2 chose to devote capital and resources to proceed with resuming operations for these stations despite their licenses having been automatically canceled pursuant to section 312(g), this a risk voluntarily undertaken by DTV America/HC2. We also note that, as of the date of this letter, one station remains silent and we fail to see how this purported public interest argument raised by DTV America/HC2 applies to that station in particular.

Conclusion. DTV America/HC2's inability to resume operations within the one-year statutory time period was due simply to a combination of inaction and independent business decisions. DTV America/HC2 assumed the risk upon acquisition of the Stations that it would be able to complete construction within the 312(g) one year mandate, to the extent the facilities required relocation.⁸⁶ At the time of acquisition, the potential resource constraints that may have been related to the post-incentive auction transition were well documented. DTV America/HC2 made the business decision to take the Stations' at issue silent instead of taking other actions that could have preserved their operations, such as operating the stations from their licensed site while their modified facility was constructed. Given the totality of the circumstances, we find that DTV America/HC2 have failed to demonstrate that compelling circumstances warrant a finding of equity and fairness to justify reinstatement and extension of the Stations' licenses pursuant to section 312(g).

Accordingly, the requests to reinstate and extend licenses filed by DTV America Corporation and HC2 LPTV Holding, Inc. **ARE DENIED** and the requests for extension of silent authority **ARE DISMISSED**. Further, the licenses of the low power television stations set forth in the Appendix **ARE CANCELLED** and their call signs **DELETED**. All authority to operate these facilities **IS TERMINATED** and any operation of these facilities **MUST CEASE IMMEDIATELY**.⁸⁷

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Rebecca Hanson, Esq.

⁸⁶ Again, we note that none of these stations were displaced as a result of the Incentive Auction repack. To the extent any stations facilities required relocation this was a result of other circumstances independent of the repack.

⁸⁷ We remind DTV America Corporation and HC2 LPTV Holding, Inc., that, pursuant to section 73.1740(a)(4) of the rules, they must continue to adhere to the requirements in the Stations' authorizations pertaining to lighting of antenna structures. *See* 47 CFR § 73.1740(a)(4).

APPENDIX

REQUESTS FOR REINSTATEMENT AND EXTENSION OF LICENSE AND SILENT AUTHORITY UNDER SECTION 312(G)

| Licensee | Call Sign | Community of License | Fac Id | STA File No. | License File No. |
|-------------|-----------|----------------------|--------|--------------|------------------|
| HC2 | KYAN-LD | Los Angeles, CA | 128585 | 0000072592 | 0000090975 |
| DTV America | KVTU-LD | Agoura Hills, CA | 130176 | 0000072586 | 0000094153 |
| HC2 | W21DA-D | Dublin, GA | 181477 | 0000067868 | 0000080614 |
| HC2 | WBKH-LD | Tampa, FL | 191138 | 0000069756 | 0000102927 |
| DTV America | KFJK-LD | Santa Fe, NM | 183555 | 0000072575 | 0000013406 |