



Federal Communications Commission
Washington, D.C. 20554

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Sent via Certified Mail and Electronic Mail

The Camp Verde TV Club
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Re: Request for Reinstatement and
Extension of License and Silent
Authority and Extension of Construction
Permit
K31LZ, Camp Verde, AZ
Facility ID No. 69920
LMS File Nos. 0000035759 and
0000152248

Dear Licensee:

This concerns requests to extend license and silent authority and application for extension of digital construction permit (Requests) filed by the Camp Verde TV Club, (CVTC) licensee of low power television (LPTV) station K31LZ, Camp Verde, Arizona (K31LZ or Station). For reasons set forth below, we deny CVTC's Requests and, pursuant to section 312(g) of the Act, the Station's license has been automatically cancelled and its call sign deleted. Furthermore, all pending applications are dismissed and its digital construction permit has expired and been forfeited.

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."¹ 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.² For example, the Commission has granted section 312(g) relief to stations whose facilities were destroyed by natural disasters such as hurricanes;³ where silence was necessary in

¹ 47 U.S.C. § 312(g). *See also* 47 CFR § 74.15(f).

² *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").

³ *V.I. Stereo Communications Corp.*, 21 FCC Rcd 14259, 14262, para. 8 (2006) (reinstating license where silence due to destruction of towers in hurricanes).

furtherance of public safety,⁴ where reinstatement of the station's license was necessitated by court order;⁵ where stations were actually displaced by the Incentive Auction and repacking process;⁶ or where station silence was the result of governmental closure.⁷ 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.⁸

An analog low power television station transitioning to digital that experienced delays in completing its digital facilities was permitted to seek one last extension of time of its digital construction permit, of not more than 180 days. Such request was due no later than **March 15, 2021**, which was four months prior to the **July 13, 2021**, digital transition deadline.⁹

Requests. CVTC is the licensee of seven television translators serving areas in central Arizona. K31LZ's analog channel 31 was displaced by the Incentive Auction and repacking process and it filed a digital displacement application requesting a construction permit for channel 9. That application was

⁴ *Community Bible Church*, Letter Order, 23 FCC Rcd 15012, 15014 (MB 2008) (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).

⁵ *Mark Chapman, Court-Appointed Agent*, Letter Order, 22 FCC Rcd 6578, 6580 (MB 2007) (reinstating license where silence necessitated by licensee's compliance with court order).

⁶ *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)).

⁷ *Universal Broadcasting of New York, Inc.*, 34 FCC Rcd 10319, (MB 2019) (finding that station's inability to file an STA to resume service due to a federal government shutdown was a compelling circumstance under section 312(g)).

⁸ *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).

⁹ *See* 47 CFR § 74.788(c)(3). Late-filed applications for extension of time were permitted so long as the applicant included a request for waiver of the March 15, 2021 filing deadline, explained its reason for late-filing and the application was filed no later than July 13, 2021.

granted on August 14, 2018.¹⁰ Because the Station was still analog and had yet to transition to digital, it was assigned a July 13, 2021 expiration construction permit expiration date (Displacement CP).¹¹

In an attachment to its application to extend the Displacement CP, filed July 12, 2021,¹² CVTC states that it is a “small nonprofit entity with a staff of only one part-time volunteer engineer.”¹³ CVTC states further that it has “faced the difficult task of shepherding (its various television translator) stations through the digital transition and the Incentive Auction repack in the midst of the COVID-19 pandemic.”¹⁴ According to CVTC, the pandemic “has had a substantial negative impact on the licensee’s ability to raise funds and to receive timely shipments of equipment.”¹⁵ CVTC represents that it has limited revenues and financial resources to “contend with the build-out of so many stations simultaneously.”¹⁶ Nonetheless, CVTC stated that as of July 2021 it had ordered equipment necessary for the Station’s digital build-out which CVTC states was “in the vendor’s supply chain with delivery expected in the next few weeks.”¹⁷

On September 29, 2021, based on the fact that Commission’s records indicated that the Station had been silent since October 17, 2017, the Video Division (Division) sent CVTC a letter to gather additional information about the operational status of the Station and its extended history of silence.¹⁸ The Division staff reminded CVTC that, pursuant to section 312(g) of the Act, the license of any station that fails to transmit a broadcast signal for any 12-consecutive month period automatically expires by operation of law.¹⁹ The Division provided CVTC with an opportunity to provide evidence that the Commission’s information was incorrect and that, in fact, the station either had not been silent for more than one year or that reinstatement is warranted pursuant to the equity and fairness provision of section 312(g).

In its Response to the Division Letter, CVTC acknowledges that the Station has been silent for more than four years, since October 17, 2017.²⁰ According to CVTC, the Station was hit by lightning and the damage sustained by the Station in that incident was nearly a total loss.²¹ CVTC states that it knew

¹⁰ See LMS File No. 0000054722 as modified by 0000152246.

¹¹ See 47 CFR § 74.788(a); *see also Media Bureau Reminds Low Power Television and Television Translator Stations of July 13, 2021, Digital Transition Date*, Public Notice, 36 FCC Rcd 4771 (MB 2021).

¹² LMS File No. 0000152248 (CP Extension Request)

¹³ CP Extension Request at 1.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Letter to The Camp Verde TV Club from Barbara A. Kreisman, Chief of the Video Division, Sep. 29, 2021 (Division Letter). A copy of this letter is available in LMS under the Station’s facility page.

¹⁹ 47 U.S.C. § 312(g).

²⁰ See Response of The Camp Verde TV Club, November 24, 2021 (Response). A copy of this response is available in LMS under the Station’s facility page. CVTC filed a request for silent authority on October 26, 2017. See LMS File No. 0000034227.

²¹ Response at 1.

then that Station would need to be relocated to another channel as a result of the repack, so it “made the decision at that time that it would be impractical and a waste of resources (which in any event it did not have) to rebuild the station on channel 31 when it would be operating on that channel for only a brief period of time.”²²

CVTC maintains that, to build the Station’s displacement facilities it must rely “heavily” on the funding expected from the Television Broadcasters Relocation Fund (TBRF).²³ CVTC notes that it has been submitting invoices to the TBRF since December 2019 and that, beginning in October 2020, it began ordering equipment to build the Station’s displacement facilities. CVTC states that those orders “cannot be consummated without funding from the (TBRF).”²⁴ CVTC also repeats the statements it made in its CP Extension Request that it has been unable to complete construction of its displacement facilities and resume operations because it is a small nonprofit entity with limited staff and resources.²⁵ CVTC again notes that the COVID-19 pandemic has had a “substantial negative impact” on its ability to order equipment. CVTC restates that despite these hurdles, it has ordered equipment for the Station’s digital build out and that it was expecting delivery “in the next few weeks.”²⁶

Finally, CVTC states that the Station provides service to residents in terrain-shielded areas where “no other over-the-air broadcast television service is available.”²⁷ CVTC maintains that approximately 3,000 people reside in the area served only by its translators and grant of its request would allow it to continue to provide service to viewers that have no other over-the-air service.²⁸ Accordingly, CVTC requests that the Commission exercise the discretion that it has under section 312(g) of the Act to extend the Station’s license. CVTC maintains that the Station “has been silent for reasons beyond its control, and extension of the license would promote fairness and equity.”²⁹

Discussion. Upon review of the facts and circumstances presented, we find that the Station’s license has automatically expired pursuant to section 312(g) of the Act. The Station went silent on October 17, 2017 and its license expired on October 18, 2018. We also find that CVTC has failed to adequately demonstrate that its failure to return the Station to air before its one-year silent deadline was due to compelling circumstances beyond the licensee’s control and that reinstatement is not warranted

²² *Id.* We note that K31LZ could have not only immediately transitioned to its displacement channel following grant of the Displacement CP, but upon filing of its Displacement CP CVTC could have requested an engineering STA to immediately commence operations. *See Incentive Auction Task Force and Media Bureau Set Forth Tools Available to LPTV/Translator Stations Displaced Prior to the Special Displacement Window*, Public Notice, 32 FCC Rcd 4943 (IATF and MB 2017). According to a Video Division staff analysis, no other facility was blocking K31LZ’s ability to immediately commence operation on its displacement channel.

²³ *Id.*

²⁴ *Id.*

²⁵ Response at 2.

²⁶ *Id.* We note CVTC provided copies of equipment quotes, not orders in support of this claim. It is not clear from CVTC’s showing when the equipment was ordered and CVTC provides no supporting documentation from its vendor supporting any equipment manufacturing or delivery delays.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

under the “equity and fairness” provision of section 312(g) as the Station’s extended silence was a direct result of its own voluntary business decision.

We have previously determined that voluntary business judgements do not warrant reinstatement or extension of a station’s license under section 312(g) of the Act.³⁰ We find the Station’s more than four years of silence was a direct result of both CVTC’s voluntary business decision to not rebuild the Station following a lightning strike and inaction after the Station’s Displacement CP was granted. Notably absent from CVTC’s Response is any progress to construct the Station’s digital displacement facilities from the time the Displacement CP was issued in August 2018 until October 2020, the first documented steps to pursue construction. The only explanation provided by CVTC as to why it waited until October 2020, when the Station had already been silent for more than three years, was due a lack of finances and internal resources.³¹ Specifically, CVTC maintains that it was reliant on funds from the TBRF in order to construct the Station’s displacement facilities. The Commission has clearly stated that an Station’s ability to obtain reimbursement funds will not be considered when determining whether to grant requests for additional time or relief such as phase-transition date changes.³² The Commission has also found that a lack of finances and resources is generally not a basis for reinstatement or extension under the equity and fairness provision 312(g).³³

Further, although CVTC generally cites the COVID-19 pandemic, and related equipment shortages and tower crew delays, it did not provide proof how such factors directly impacted the Station’s construction. In order to find that compelling circumstances prevented the Station from resuming operations, CVTC was asked to include documentation demonstrating the specific steps it had taken to complete construction, resume operation, and how COVID-19 had specifically impacted those efforts. For example, CVTC could have provided (i) evidence that equipment was ordered on time but had been

³⁰ See e.g., *Zacarias Serrato*, *supra* note 11 (station taken off the air due to a business decision); *Kingdom of God*, *supra* note 11 (station’s numerous periods of extended silence were a direct result of licensee’s own business decisions); Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Prism Broadcasting Network, Inc., LMS File Nos. 0000081064, 0000144407, 0000081065, 0000082080, and 0000137464 (Dec. 13, 2021).

³¹ CVTC was offered a 30-day opportunity to supplement its Response to provide the following information: (1) since July 2021, a detailed accounting of all steps taken to resume operations including dates for each action and supporting documentation; (2) since July 2021, a detailed accounting of any and all compelling circumstances outside of the station’s control that prevented the resumption of service including dates of each circumstance and supporting documentation and a description of how such circumstance(s) directly impacted the resumption of service; and (3) a detailed accounting of what construction remains and a timeline plan of how and when CVTC expects to complete construction and resume operations. See Email to Roger Doering, from Shaun Maher, Attorney, Video Division (Mar. 29, 2022), a copy of which is available at LMS File No. 0000152248. CVTC never responded.

³² See *Incentive Auction Task Force and Media Bureau Announce the Initial Reimbursement Allocation for Eligible Broadcasters and MVPDs*, Public Notice, 32 FCC Rcd 7556, 7559-60 (IATF/MB 2017); *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd 858, 871-74 (IATF/MB 2017); *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 32 FCC Rcd 890, 912-14 (IATF/MB 2017) (failure to timely initiate a construction project or undertake necessary steps to complete the transition by the phase transition date due to the amount of any allocation will not be weighed favorably as a factor in considering grants of such relief).

³³ See *ETC Communications, Inc.*, Letter, 25 FCC Rcd 10686, 10689 (MB 2010) (reinstatement not warranted where the licensee chose not to operate financially struggling station while offering it for sale); *Kirby Young*, Letter, 23 FCC Rcd 35 (MB 2008) (reinstatement not warranted where the licensee was not financially able to restore operations after transmitter failed).

delayed due to shipment constraints or supply chain issues; (ii) correspondence from its engineers indicating that they were scheduled to install equipment, but could not proceed due to the COVID-19 pandemic; and/or (iii) invoices demonstrating expenditures to further construction and resume operation. CVTC has offered no such evidence.³⁴

Finally, despite CVTC's inferences to the contrary, the Station is not the only source of entertainment, news, and emergency information to those within its service area. CVTC holds licenses for several other TV translator stations from which it can continue to provide programming to its viewers. These licenses cover the same service areas that would have been covered by the cancelled Station. We also note that because the Station has been silent for over four years, we do not find its argument about the public service the station provides to be persuasive. CVTC also has not pointed to any support for its claim that this area is not served by any other over-the-air broadcast service. Research conducted by Division staff indicates that the programming previously aired by the Station was the same programming already available on another licensee's translator station that serves the same area as the Station.

Conclusion. Given the totality of the circumstances, we find that CVTC has failed to demonstrate that compelling circumstances warrant a finding of equity and fairness to justify reinstatement and extension of the Station's license pursuant to section 312(g).

Accordingly, the request to reinstate and extend license filed by The Camp Verde TV Club for K31LZ, Camp Verde, Arizona **IS DENIED** and the request for extension of silent authority **IS DISMISSED**.³⁵ Further, the license of K31LZ, Camp Verde, Arizona **IS CANCELLED**,³⁶ its call sign **DELETED**, and all pending applications, including its application for extension of digital construction permit **ARE DISMISSED**.³⁷ All authority to operate the Station **IS TERMINATED**.³⁸ Finally, pursuant to section 74.788(b) of the Commission's rules, the digital construction permit for the Station has been **AUTOMATICALLY FORFEITED** and all authority to construct digital facilities has been

³⁴ CVTC cites to the impact from the COVID-19 pandemic on the Station's finances and its ability to construct its digital facilities. *See* Response at 2. This does not explain its lack of effort from August 2018, when its Displacement CP was granted, through March 2020, when the United States government and World Health Organization declared COVID-19 a pandemic. *See Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, Presidential Executive Order 9994, March 13, 2020; 85 FR 15337 (March 18, 2020).

³⁵ LMS File No. 0000035759.

³⁶ CDBS File No. BLTTL-20130125AAC.

³⁷ LMS File Nos. 0000152248; 0000035759; 0000035753.

³⁸ We remind CVTC that it must continue to adhere to the requirements in the former station's authorization pertaining to lighting of antenna structures. *See* 47 U.S.C. §303(q); 47 CFR §§17.1 *et seq.*, 73.1213 and 73.1740(a)(4). *See also Streamlining the Commission's Antenna Structure Clearance Procedure*, Report and Order, 11 FCC Rcd 4272, 4293 (1995) (tower owner bears primary responsibility for maintaining tower painting and/or lighting).

TERMINATED.³⁹

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Donald Martin, Esq.

³⁹ See LMS File No. 00000152246.