



Federal Communications Commission
Washington, D.C. 20554

July 7, 2022

Sent via Certified Mail and Electronic Mail

Kingdom of God, Inc.
Sister Sue Jenkins
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Re: DW51DU, Lafayette, IN
Facility ID No. 68002

Dear Licensee:

This concerns the former license and digital displacement construction permit (Displacement CP) of low power television (LPTV) station W51DU, Lafayette, Indiana (W51DU or Station), licensed to Kingdom of God, Inc. (KOG). For reasons set forth below, pursuant to section 74.788(b) of the Commission's rules (Rules) the Station's Displacement CP has been forfeited.¹ Furthermore, pursuant to section 312(g) of the Communications Act of 1934, as amended (Act),² the Station's license has been automatically cancelled and its call sign deleted. Additionally, all pending applications are dismissed.

Background. Section 74.788(b) of the Rules states that "any construction permit for which construction has not been completed and for which an application for license or extension of time has not been filed, shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission."³ Additional time to construct LPTV facilities beyond that date are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.⁴ The Commission's tolling provisions provide that a construction permit deadline may be tolled under specific circumstances such as acts of God, delays due to administrative or judicial review, or construction that is delayed by any cause of action pending before a court of competent jurisdiction relating to any necessary local, state, or federal requirement for the construction or operation of the station, including any zoning or environmental requirement.⁵ If a station does not qualify for tolling under these criteria, good cause may exist to waive the Commission's tolling provisions and tolling may still be warranted where the licensee can

¹ 47 CFR §74.788(b).

² 47 U.S.C. § 312(g).

³ 47 CFR §74.788(b).

⁴ See 47 CFR § 73.3598(b).

⁵ *Id.*

demonstrate that “rare and exceptional circumstances” prevented construction by the station’s construction permit expiration date.⁶

Furthermore, 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.”⁷ 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.⁸ For example, the Commission has granted section 312(g) relief to stations whose facilities were destroyed by natural disasters such as hurricanes;⁹ where silence was necessary in furtherance of public safety,¹⁰ where reinstatement of the station’s license was necessitated by court order;¹¹ where stations were actually displaced by the Incentive Auction and repacking process and undertook diligent efforts to complete construction;¹² or where station silence was the result of

⁶ See *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).

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

⁸ See *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617, para. 27 (2008) (*A-O Broad.*) (“This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited”).

⁹ *V.I. Stereo Communications Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259, 14262, para. 8 (2006) (reinstating license where silence due to destruction of towers in hurricanes).

¹⁰ *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).

¹¹ *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).

¹² 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)); Letter from Barbara A Kreisman, Chief Video Division, Media Bureau to Ventana Television, Inc. (Mar. 31, 2022) available at LMS File No. 0000186936 (extending the displaced LPTV station’s license under the equity and fairness provision due to permitting issues outside its control and given its diligent efforts).

governmental closure.¹³ 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.¹⁴

W51DU was licensed to operate on analog channel 51 and was displaced by the Incentive Auction and repacking process. KOG filed the Displacement CP for the Station for channel 29 and that application was granted on August 27, 2018.¹⁵ The Displacement CP was issued with an expiration date of August 27, 2021. To date, KOG has not filed a license to cover application for its Displacement CP and it has not sought tolling.

On September 29, 2021, the Video Division (Division) sent KOG an inquiry letter (Inquiry) seeking information about the Station's operational history.¹⁶ The Division specifically requested that KOG provide specific dates of silence and operation since April 13, 2017, and provide specific evidence of operation for all periods including, but not limited to, copies of all leases, personnel records, engineering records, precise operational parameters, and station records, including EAS logs.¹⁷

On November 19, 2021, KOG responded to the Division's inquiry (Response) providing dates of operation and periods of silence since April 13, 2017.¹⁸ In its Response, KOG contends that between April 13, 2017, and November 19, 2021, the Station has not been silent for any consecutive 12-month

¹³ *Universal Broadcasting of New York, Inc.*, Memorandum Opinion and Order, 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)).

¹⁴ *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).

¹⁵ *See* LMS File No. 0000054375.

¹⁶ Letter to Kingdom of God, Inc. from Barbara A. Kreisman, Chief, Video Division (Sept. 29, 2021) (Inquiry) a copy of which is available on the Station's main facility page, LMS Facility ID No. 68002.

¹⁷ *Id.* at 1 and n.3.

¹⁸ Letter from Donald E. Martin, Counsel for Kingdom of God, Inc. to Office of the Secretary, FCC at 2 (Nov. 19, 2021) (Response) available on the Station's LMS facility page, LMS Facility ID No. 68002.

period.¹⁹ According to the Response and the Commission's records, while the Station last resumed operation on April 8, 2021, it again went silent on April 9, 2021.²⁰ According to KOG, the Station's operations on April 8, 2021 were "with its licensed parameters."²¹ KOG did not provide any evidence to support its claim that it resumed operations on April 8, 2021 and instead stated that: "[t]he licensee does not pay for rent or utilities at the station's transmitter site. The station is operated by volunteers. Therefore, there are no operational financial records to demonstrate the station's on-air status."²² KOG did not explain why it failed to provide the additional information requested by the Division.

Discussion. Upon review of the facts and circumstances presented, we find that the Station's Displacement CP has been forfeited and its license has automatically expired pursuant to section 312(g) of the Act.²³ The Station's Displacement CP has been forfeited because no license to cover application was received nor tolling requested by the Displacement CP expiration date of August 27, 2021. Pursuant to section 74.788(b) of the Rules, any construction permit for which construction is not complete and license to cover not filed will automatically be forfeited upon expiration without any affirmative action by the Commission.²⁴

As to the automatic expiration of the Station's license, contrary to KOG's representations in its Response, it appears the Station has been silent for more than 12 consecutive months. As discussed above, the Station most recently went silent on April 9, 2021. As of the date of this letter, the Commission has not received any notification that the Station has resumed operation.²⁵ As a result, the Station appears to have been silent for approximately 15 months and its license therefore automatically expired pursuant to section 312(g) of the Act on April 10, 2022.²⁶ Furthermore, notwithstanding whether KOG contends the Station has not been silent for any 12 consecutive month period since April 13, 2017,

¹⁹ According to KOG's Response the Station had the following operational history during the period in question: April 13, 2017-October 26, 2017, silent; October 26, 2017-January 20, 2018, operational; January 20, 2018-October 13, 2018, silent; October 13-November 19, 2018, operational; November 19, 2018-August 13, 2019, silent; August 13, 2019-July 8, 2020, operational; July 8, 2020-April 8, 2021, silent, April 8, 2021-April 9, 2021, operational; since April 9, 2021, silent. *Id.* at 2. While for some of these periods KOG appears to have filed the required request for silent authority and resumption of operation notice, the dates disclosed in the Response by KOG do not entirely match up to those Commission records. For example, according to a resumption of operations notice filed on December 25, 2017, the Station resumed operation on October 26, 2017 and went silent on November 9, 2017. LMS File No. 0000036031. In its Response, KOG states that the Station was operational from October 26, 2017 through January 20, 2018.

²⁰ *Id.* at 2 and LMS File No. 0000153835.

²¹ LMS File No. 0000153835, Explanation re Resumption of Operations.

²² *Id.* at 1.

²³ 47 U.S.C. § 312(g).

²⁴ 47 CFR § 74.788(b). *See infra* note 29.

²⁵ We note that as of July 13, 2021, the Station is no longer able to operate in analog. Therefore, the only facility by which the Station could operate would be that of its now expired Displacement CP.

²⁶ To the extent the Station has resumed operation, KOG has once again failed to properly inform the Commission of the Station's operational status, especially in light of the instant proceeding. Pursuant to section 1.65 of the Rules, licensees are responsible for maintaining the continued accuracy and completeness of all information provided to the Commission. 47 CFR § 1.65(b). We decline at this time to take any enforcement action against the Station given its license has been canceled, however to the extent KOG seeks reconsideration of the instant decision and reinstatement of the Station's license we may choose to pursue enforcement action against KOG.

KOG has failed to provide evidence of such operations as requested by the Division. This draws into question whether the Station in fact operated during the time period at issue, and if such operations occurred, whether they were in accordance with the Station's license as KOG alleges in its resumption of operations notices.²⁷

Given the totality of the circumstances, we find that the Station's license has automatically expired. Furthermore, KOG has failed to demonstrate that compelling circumstances warrant a finding of equity and fairness that would warrant reinstatement and extension of the Station's license pursuant to section 312(g) of the Act.²⁸

On independent and alternate grounds, we find the Station's license has automatically expired and its call sign has been deleted pursuant to section 74.731(m) of the Rules. All analog LPTV stations were required to cease analog operation by 11:59pm on July 13, 2021 and the Station's analog license automatically expired at that time. The Bureau has found that consistent with the Commission's long-established policy of the "single, unified station license" as part of the digital conversion process, an analog LPTV or TV Translator station whose analog license is automatically cancelled under section

²⁷ See *supra* note 19. It is well established precedent that unauthorized operation does not constitute operation for purposes of a void automatic expiration under section 312(g). See, e.g. *Eagle Broad. Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, para. 9 (2008), *aff'd sub nom. Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543, 553 (D.C. Cir. 2009) (unauthorized, unlicensed broadcasts cannot constitute transmission of broadcast signals to a void termination under Section 312(g)); *A-O Broad.*, 23 FCC Rcd 603 (transmission from unauthorized location not sufficient 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). In fact KOG itself has previously been found to be engaged in unauthorized operation. See *Kingdom of God, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd 3654 (2017).

²⁸ 47 U.S.C. § 312(g). We also find, based on an examination of the Station's operational history over its current license term that the Station has a record of extended periods of silence. Since the Station's last license renewal application was granted on August 14, 2014, it appears the Station has been silent for a approximately 80 percent of the license term. On June 11, 2021, the Station late-filed a license renewal application. See LMS File No. 0000150101. Due to the Station's extended periods of silence during the pending term, it would be difficult to find that grant of the renewal application is in the public interest, as required by 47 U.S.C. § 309(k), and such application would potentially need to be designated for hearing. See e.g., *Snake River Radio, LLC*, Hearing Designation Order and Notice of Opportunity for Hearing, DA 22-115 (rel. Feb. 8, 2022) (designating for hearing the renewal application of a station who was silent for 80 percent of the license term). In addition, based on an examination of Commission records it appears that during the prior license term, prior to April 13, 2017, the Station may have also been silent for greater than a consecutive 12-month period from April 7, 2013 through March 23, 2015. See 2015 Resumption of Operation Notice filed by Kingdom of God available on the Station's LMS facility page.

Because we have found the Station's license has automatically expired and its renewal application is being dismissed, we need not undertake such an evaluation under section 309(k) of the Act, investigate further whether the Station was previously silent for a 12-month period, or address its late-filed license renewal application. However, to the extent KOG seeks reconsideration of the instant decision and reinstatement of the Station's license such an evaluation and investigation will be required and we reserve to the right to undertake any appropriate enforcement action.

74.731(m) and does not have a valid digital construction permit, no longer has a license to modify.²⁹ Therefore, because the Station's Displacement CP, which also was serving as its digital construction permit, expired on August 27, 2021, the facility is no longer valid.

Accordingly, pursuant to sections 74.788(b) of the Commission's rules, the construction permit (LMS File No. 0000054375) for W51DU, Lafayette, Indiana, was **AUTOMATICALLY FORFEITED** and the Station's call signs has been **DELETED**.³⁰ All authority to construct the stations have been **TERMINATED**. Furthermore, the license of the Station (BLTT-20061005ADX) **IS CANCELLED**, and its call sign **DELETED**. All authority to operate the Station's facilities **IS TERMINATED** and any operation of these facilities **MUST CEASE IMMEDIATELY**.³¹ Finally, all pending applications, including the Station's pending license renewal application (LMS File No. 0000150101) will be **DISMISSED**.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

²⁹ See *Media Bureau Reminds Remaining Analog Low Power Television and Television Translator Stations Without Digital Construction Permits to File Immediately in Order to Ensure A Successful Digital Transition*, Public Notice, 36 FCC Rcd 9467, 9468, n.4 (MB 2021) (*Analog Warning PN*); Letter from Barbara A. Kreisman to Department of Special Districts of San Bernardino, California at 7 (Nov. 4, 2021) available at LMS File No. 0000152504.

³⁰ We note that cancellation of the station's construction permit and deletion of its call sign by Media Bureau staff in the Licensing and Management System (LMS) is an administrative function and does not constitute an official Commission action nor require any affirmative cancellation by the Commission. See e.g., *Media Bureau Reminds Remaining 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, 36 FCC Rcd 10364 (MB 2021); *Analog Warning PN*, 36 FCC Rcd 9467; 86 FR 32262 (June 17, 2021).

³¹ We remind KOG 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).