

REQUEST FOR REINSTATEMENT OF LICENSE, SILENT STA, AND WAIVER OF SECTION 312(g)

Word of God Fellowship, Inc. (“WOGF”), licensee of KSUD-LP, Salt Lake City, UT (Fac ID 72485), hereby requests reinstatement of the license for KSUD-LP, authorization to remain silent, and an extension of the deadline by which the station must return to the air or forfeit its license pursuant to Section 312(g) of the Communications Act of 1934, as amended.

On December 29, 2018, KSUD-LP went silent on Channel 45 pursuant to a notice from T-Mobile of intent to begin 600 MHz operations. See LMS File No. 0000067429. Although WOGF had a construction permit to move to channel 33 at the time, see LMS File No. 0000051700, it did not receive the equipment for its displacement facility in time to complete the installation of that equipment before the Utah winter. When it became clear that KSUD-LP would not be able to resume operations by December 29, 2018, WOGF developed a plan to KSUD-LP to engage in temporary joint use of channel 12 with commonly owned KUTF(TV). See LMS File No. 0000093672. However, KUTF(TV) does not satisfy the Commission’s rules for channel sharing with a low power television station. See *Channel Sharing by Stations Outside the Broadcast Television Spectrum Incentive Auction Context*, Report and Order, 32 FCC Rcd. 2637 ¶ 14 (2017). Having exhausted its available options, Daystar now seeks a waiver of Section 312(g).¹

Section 312(g) provides that: “If 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* if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness.” 47 U.S.C. § 312(g) (emphasis added). The Commission has regularly reinstated licenses that have been off the air for more than one year where there is a reasonable explanation for the station’s extended silence.¹

In the *Incentive Auction Report and Order*, the Commission explained that it would be receptive to requests for waivers of Section 312(g) as a result of the repacking process, “tak[ing] into account the extent to which a station has been involuntarily forced to remain dark as a result of the repacking process and whether, in light of the facts presented, equity and fairness dictate a license extension or reinstatement and a waiver.”² The Media Bureau expanded upon this position in the *Post-Incentive Auction Procedures Public Notice*, explaining that in considering requests for waiver of Section 312(g), it “will examine whether the station has demonstrated that its silence is the result of compelling reasons

¹ See *V.I. Stereo Commc'ns Corp.*, Memorandum Opinion and Order, 21 FCC Rcd. 14259 ¶ 8 (2006) (reinstating license of station that was off air due to hurricane damage); *Community Bible Church*, Letter, 23 FCC Rcd. 15012, 15014 (MB 2008) (reinstating license of station unable to obtain building permit and ASR discrepancies); *Sumiton Broadcasting Company, Inc.*, Letter, 22 FCC Rcd. 6578 (MB 2007) (reinstating license of station where silence was to effectuate court order).

² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 ¶ 585 (2014), *aff'd*, *Nat'l Assoc. of Broadcasters, et al v. FCC*, 789 F.3d 165 (D.C. Cir. 2015)

beyond the station's control, including facts that relate to the post-auction transition process.”³ Finally, in the *Special Displacement Window Public Notice*, the Media Bureau permitted stations to file a displacement application on a contingent basis for channels in the repacked television band (channels 2-36) that full power and Class A stations would be relinquishing as a result of the incentive auction and repacking process and stated that, if a conditional grant would require an LPTV or TV translator station to be silent for a consecutive 12-month period prior to discontinuation of operation by the full power or Class A station, the Bureau would “consider a request for extension or reinstatement pursuant to Section 312(g) of the Communications Act and a request for waiver of the Commission rule.”⁴

The Commission should grant the instant request for waiver because KSUD-LP's silence is fully attributable to circumstances beyond its control relating to the post-Incentive Auction transition. Specifically, KSUD-LP had to vacate its prior channel before its displacement channel was available due to a notice from T-Mobile. WOGF cannot install new equipment for KSUD-LP due to weather conditions in Utah. WOGF filed an application before the one year deadline for KSUD-LP to temporarily use channel 12, but that application remains pending, and KSUD-LP may not be eligible to channel share with KUTF(TV) under the Commission's rules. Although the actual resumption date will depend on weather conditions, WOGF intends to resume KSUD-LP's operations on its displacement channel no later than June 30, 2020.

The Commission has granted waivers of Section 312(g) under similar circumstances, and WOGF respectfully requests the same consideration here.⁵

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³ *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd. 858 ¶ 49 (IATF/MB 2017).

⁴ See *Incentive Auction Task Force and Media Bureau Announce Post Incentive Auction Special Displacement Window April 10, 2018, Through May 15, 2018, and Make Location and Channel Data Available*, Public Notice, 33 FCC Rcd. 1234 ¶ 7 & n.25 (IATF/MB 2017).

⁵ See e.g., Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to KRCA License LLC, LMS File No. 0000059940 (Mar. 15 2019).