



Federal Communications Commission
Washington, D.C. 20554

July 23, 2020

Prime Cities Broadcasting, Inc.
John B. Tupper
61 Widewater Road
Hilton Head Island, SC 29926
keppertup@hotmail.com
(via electronic mail)

Re: Request for Reinstatement and
Extension of License Under Section
312(g)
KJRW, Eureka, CA
LMS File No. 0000116620
Facility ID No. 42640

Dear Licensee:

This concerns the above-referenced request to reinstate and extend license and silent authority (Request) filed by Prime Cities Broadcasting, Inc. (Prime Cities), licensee of KJRW, Eureka, California (KJRW or Station).¹ For reasons set forth below we deny the request, and dismiss the above-captioned application.

Background. Section 312(g) of the Communications Act of 1934 (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.”² 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.³ For example, the Commission has granted section 312(g) relief to stations whose facilities were destroyed by natural disasters such as hurricanes;⁴ where silence was

¹ Request of Prime Cities Broadcasting, Inc. for Reinstatement and Extension Under Section 312(g), LMS File No. 0000116620 (filed June 26, 2020) (Request).

² 47 U.S.C. § 312(g); 47 CFR §§ 73.1635(a)(4), 73.1740(c), 73.1750.

³ 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”).

⁴ *V.I. Stereo Communications*, 21 FCC Rcd 14259, 14262 (2006) (*V.I. Stereo*) (reinstating license where silence due to destruction of towers in hurricanes); *Media Bureau Provides Guidance For Broadcast Licensees Still Rebuilding in the Aftermath of Hurricanes Irma and Maria*, Public Notice, 33 FCC Rcd 8368, 8368-69 (MB 2018) (*PR and USVI Hurricane Guidance*) (granting relief and extending the license of stations damaged or destroyed by Hurricanes Irma and Maria).

necessary in furtherance of public safety,⁵ where reinstatement of the station's license was necessitated by court order;⁶ where stations were actually displaced by the Incentive Auction and repacking process,⁷ or where station silence was the result of governmental closure.⁸ The Commission also said it would consider cases where stations were forced to remain dark for more than 12 months by the Incentive Auction and repacking process.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

The Station originally went silent on May 29, 2019, to perform transmitter repairs, and the initial silent authority was granted on June 11, 2019.¹¹ In December of 2019, Prime Cities requested an extension of silent authority, noting that, while the transmitter repairs had been completed, the station was unable to return to air due to financial reasons.¹² At the time of that request, Prime Cities states that the Station had made efforts to secure a financially viable programming affiliation, but was to that point

⁵ *Community Bible Church*, 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).

⁶ *Mark Chapman, Court-Appointed Agent*, 22 FCC Rcd 6578, 6580 (MB 2007) (*Mark Chapman*) (reinstating license where silence necessitated by licensee's compliance with court order).

⁷ 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) (stating that displaced LPTV stations that remain silent for more than one year may request an extension or reinstatement of license where the 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).

⁸ See, *Universal Broadcasting of New York, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd at 10319 (2019) (station unable to file STA to resume service due to a federal government shutdown), *Pet. for recon. denied*, *Universal Broadcasting of New York, Inc.*, Letter Order, DA 20-753 (MB July 17, 2020).

⁹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6807, para. 586 (2014).

¹⁰ See, e.g., *New Visalia Broadcasting, Inc.*, 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.*, 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.*, 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*, 20 FCC Rcd 17232 (MB 2005) (*Zacarias*) (station taken off the air due to a business decision); *Kingdom of God*, 29 FCC Rcd 11589 (MB 2014) (*Kingdom of God*) (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); *In the Matter of Roy E. Henderson*, 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*, DA 20-541, (rel. May 22, 2020) (*G.I.G.*).

¹¹ Request of Prime Cities Broadcasting, Inc. for Silent Authority, LMS File No. 0000074572 (filed June 7, 2019) (Silent Authority).

¹² Request of Prime Cities Broadcasting, Inc. for Extension of Silent Authority, LMS File 0000093107 (filed Dec. 10, 2019) (Silent Extension).

unsuccessful.¹³ The Media Bureau granted this request on December 11, 2019.¹⁴ KJRW remains silent, and its license automatically expired on May 29, 2020.

Request. In its Request, Prime Cities seeks reinstatement and extension of the Station’s license and silent authority through November 29, 2020.¹⁵ Prime Cities maintains that it is in current talks with a potential programming provider, despite the current business conditions resulting from the COVID-19 pandemic.¹⁶ Prime Cities believes that these negotiations have the potential of reaching a significant minority population and making the station financially viable.¹⁷ Prime Cities argues that reinstatement and extension of the Station’s license will “promote equity and fairness” pursuant to section 312(g) by allowing the station to return to the air and provide its community of license with a local broadcast signal.¹⁸

Discussion. Upon review of the facts and circumstances presented, we find that Prime Cities’ request to reinstate and extend the license of KJRW does not satisfy the requirements of section 312(g). Consistent with the public interest, we only provide section 312(g) relief, including reinstatement of a station’s license, to stations that are forced off the air by compelling circumstances beyond their control. We have consistently declined to extend such relief to stations that have remained off the air due to the station’s own business decisions or financial reasons.¹⁹ The station initially went off the air to complete tower repairs, but remained off the air because Prime Cities made the business decision to not expend additional funds to return the Station to the air until it had secured a financially advantageous programming agreement.²⁰ In the instant Request, Prime Cities once again states that it is keeping the Station silent because it has decided it is not financially viable to return it to the air without such a programming agreement.²¹ Such voluntary business decisions do not constitute the type of “compelling circumstances” necessary for a finding of equity and fairness to grant relief pursuant to section 312(g).²² Therefore, we decline to reinstate and extend KJRW’s license.

Accordingly, the Request of Prime Cities Broadcasting, Inc. for Reinstatement and Extension Under Section 312(g), filed by Prime Cities Broadcasting, Inc. **IS DENIED** and the request for extension

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Request at 1.

¹⁶ *Id.* The World Health Organization has classified COVID-19 as a pandemic and the President declared it a national emergency.

¹⁷ Request at 1.

¹⁸ *Id.*

¹⁹ See *Zacarias, Kingdom of God, G.I.G. supra.* note 10.

²⁰ See *Silent Authority, supra.* note 11; *Silent Extension, supra.* note 12.

²¹ Request at 1.

²² See *Zacarias, supra.* n. 10 (station taken off the air due to a business decision); *Kingdom of God, supra.* n. 10 (station’s numerous periods of extended silence were a direct result of licensee’s own business decisions).

of silent authority **IS DISMISSED**. Further, the license of KJRW, Eureka, California **IS CANCELLED** and its call sign **DELETED**.²³

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Anne Thomas Paxson, Esq.

²³ We remind Prime Cities, that, pursuant to section 73.1740(a)(4) of the rules, they must continue to adhere to the requirements in the Station's authorization pertaining to lighting of antenna structures. *See* 47 CFR 73.1740(a)(4).