

REQUEST FOR REINSTATEMENT AND WAIVER OF SECTION 312(g)

Community Television Educators, Inc. (“Licensee”), licensee of KDPH-LD, Phoenix, AZ (Fac ID 168565) (the “Station”), hereby requests reinstatement of the Station’s license 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 30, 2018, the Station went silent pursuant to a notice from T-Mobile of intent to begin 600 MHz operations. See LMS File No. 0000067497. After resuming operations pursuant to an agreement with T-Mobile, the Station had to go silent again on December 30, 2019. See LMS File No. 0000096367.

WOGF has been working diligently to complete construction of the Station’s new facilities on channel 13 as authorized by its construction permit, LMS File No. 0000060017. As a result of these efforts, the Station resumed operations at reduced power on December 31, 2020—two days after the one year point since it had gone silent. WOGF anticipates completing construction on the station and filing a license to cover application shortly.

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 explained that if an LPTV or TV translator station needed to remain silent for a consecutive 12-month period, 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 KDPH-LD's silence is fully attributable to circumstances beyond its control relating to the post-Incentive Auction transition and a grant of the requested relief will promote equity and fairness. Specifically, although LPTV stations operating on channels 38-51 had until July 13, 2020 to discontinue operations, KDPH-LD had to vacate its prior channel early due to a notice from T-Mobile. WOGF worked diligently to resume operations within the one-year period under Section 312(g) but ultimately fell short by a just two days and needs a brief additional period to complete construction and file its license to cover application.

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).