

Attachment A
San Bernardino County
Response to Notification

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the matter of

County of San Bernardino, Area 40)	K34QW-D, Daggett, California Facility ID 11537
)	
County of San Bernardino, Area 70)	K25GK-D, Joshua Tree, CA Facility ID 43812
)	
County of San Bernardino, Area 70 TV2)	K21GI-D, Morongo Valley, CA Facility ID 11539

To: Chief, Video Division, Media Bureau

RESPONSE TO NOTIFICATION OF LICENSE EXPIRATION

The Department of Special Districts, County of San Bernardino, California (DSD), by its attorney, here responds to the Notification of License Expiration, dated August 4, 2021.¹

Since the 1970's the County has provided over-the-air television broadcast services, supported by tax revenue, to isolated rural communities, by use of TV translators located principally at four County-owned towers. Currently each cluster uses three licensed stations to multiplex and rebroadcast twelve channels of full service TV or other service.

The digital transition for these facilities was shaped by two published deadlines. Congress created a reimbursement program for expenses in converting from analog to digital. To be eligible the operator needed to construct and license its station prior to the final grant application deadline of July 2, 2012. The other impinging deadline was the announcement by the Federal Communications Commission that all analog stations would be terminated and their licenses forfeited on September 1, 2015.

¹ DSD disclaims any continuing interest in one station listed in the Notification, K36GO. That authorization should be terminated and its call sign deleted. At Daggett, K34QW-D replaces K15BZ because the digital companion on Channel 15 was blocked by land mobile and needed to be superseded. Meanwhile, DSD does have an interest in another station, not listed in the notice, K25GK-D. DSD stipulates that all the facts, policies and defenses applicable to the two remaining listed stations will apply equally to K25GK-D.

By the NTIA deadline, the County had constructed and sought funds for three stations at each of its for four main locations, with two more for a small shadowed community at Newberry Springs. It made a series of announcements on June 18, 2012, that, beginning on July 1, 2012, a first DTV channel would be on the air. Analog channels would remain available, “but only for a limited time and not past the FCC low power analog systems conversion deadline of September 15 [sic.], 2015.” *News, Attachment A*. Fourteen months later, on August 22, 2013, the County issued a new series of *News* bulletins, *News Attachment B*, stating that all of its analog services would cease and that analog licenses would be returned to the FCC by “on or about September 16, 2013.”

For over a year now the District has duplicated broadcast of both analog and digital TV channels in an effort to accommodate the viewership. At the end of September the District will relinquish its Federal Communications Commission (FCC) analog broadcast licenses in favor of providing only digital broadcasts as mandated by the FCC.

As the *News* releases makes clear, County officials believed they were acting in fulfillment of an FCC mandate terminate all analog facilities and that they were taking this action well ahead of the final hard deadline of September 15 (actually, September 1), 2015.²

At the four principal transmitter locations, the County's goal was to add a fourth DTV channel, by applying for digital flash cut or companion channel to the existing analog facilities. Not all of these plans succeeded, but the result is seen in the three facilities listed in the caption. K25GK-D and K21GI-D are fully constructed and license applied for. K34QW-D is largely completed, but was delayed when a Canadian supplier sent the wrong combiner. In each instance, the underlying analog transmission ended, in the belief that the digital construction permit superseded it and that, regardless, the analog service would terminate on September 1, 2015.³

Section 312(g) gives the Commission latitude to ameliorate its effect, “to promote equity and fairness.” The County was acting in good faith to implement a digital transition as mandated by the

² On August 15, 2014, DSD submitted a list of sixteen analog licenses for cancellation, Attachment C.

³ The Commission in effect repealed that analog sunset deadline when it formally proposed to do so in a Notice of Proposed Rule Making in the digital LPTV proceeding, FCC 14-151 released on October 10, 2014.

Commission. It was doing so ahead of schedule. The continuation of any single analog channel would have disrupted the transition, given mixed messages and confused the public. Continuance of the unwanted analog would have delayed, not facilitated service to the public.

The sanction of a revocation here is being proposed to new, modern digital facilities, integrated with existing channels, and expanding service offerings, where there has been a long-standing freeze on new and major change applications. The facilities were designed, engineered and built for public benefit and with taxpayer money.

Nor should the long duration of the absence from air count against the licensee. It was the County's reasonable belief that, so long as a valid construction permit remained in effect, that would have the same regulatory effect as a live broadcast. That this view is not so radical may be seen in the recent Public Notice, DA-21-684, released on June 11, 2021, which cautioned:

Analog LPTV/translator stations without a valid digital construction permit as of 11:59 p.m. local time on July 13, 2021, will find that their analog license has been automatically cancelled and will have their call signs deleted.

To avoid automatic cancellation of their station license, remaining analog LPTV/translator stations that do not have a digital construction permit should immediately file an application for one to ensure that they will be considered before the July 13, 2021, analog termination deadline. The Bureau recommends filing an application for on-channel digital conversion ("flash-cut") wherever possible in order to expedite processing.

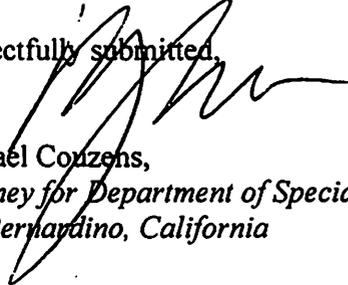
This Notice is stating that the issuance of a valid construction permit will keep the authorization viable, even after the analog shut-off. The inference behind the present notification is the opposite: that the pending construction permits were no help in tolling the effect of Sec. 312(g).

In its Section 312(g) jurisprudence, the Commission has been slow to apply the "equity and fairness" relief added to the statute in 2004, Pub. L. 108-447, div. J, Title IX [title II, §213(3)], Dec. 8, 2004, 118 Stat. 3431. With the case load under this heading steadily increasing, there is a valid concern that any new sign of sensible leniency could open the Commission to unwanted volumes of new pleas. But the circumstances here are limited to a case of a public entity incurring

public expenditure, and in the process doing no harm. The assumed error seems to have been an honest belief that the the lack of analog transmissions was “covered” by a digital construction permit. This fact should be analyzed as a singular misperception, perhaps even one to warrant a monetary forfeiture, and not blown out of proportion by the years in which it was held. Certainly, as the years go by, the licensee's lack of parallel – and expensive and pointless – analog transmissions would posses a fast diminishing, if not invisible impact on the public.

For the reasons set forth, the notification should not be applied to terminate the facilities shown in the caption.⁴

Respectfully submitted,


Michael Couzens,
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cc. Barbara Kreisman
Shaun Maher

⁴ As mentioned, with a freeze on new and major change application, the termination of any digital facility, legally constructed pursuant to a valid construction permit, is an irreplaceable loss. These completed facilities should be permitted to continue serving the public in one way or another, if need be by Special Temporary Authority, looking to the day when service can be expanded to meet the growing needs in rural areas.

NEWS

FOR IMMEDIATE RELEASE

From San Bernardino County Office of Special Districts

Contact Tim Millington (909) 387-5877

August 22, 2013

TV Districts will Discontinue Analog Television Service in place of New Digital Service Capability

MORONGO VALLEY – County Service Area 70 TV-2 will discontinue transmission of over the air analog TV broadcasts on or about September 16, 2013. For over a year now the District has duplicated broadcast of both analog and digital TV channels in an effort to accommodate the viewership. At the end of September the District will relinquish its Federal Communications Commission (FCC) analog broadcast licenses in favor of providing only digital broadcasts as mandated by the FCC.

The District has converted all previously available analog channels to a digital system found on channels 30, 32, and 34. A digital channel is known to have better picture and sound quality than analog and also allows delivery of multiple program streams or sub channels within the main channel. The following station programming is available on the over the air digital system provided by the District: 30-1 KCOP, 30-2 KCBS, 30-3 KTLA, 30-4 KOCE, 32-1 KCAL, 32-2 KESQ, 32-3 KTTV, 34-1 METV, 34-2 KDOC, and 34-3 KNBC. District residents who want to receive over the air digital channels must have an aerial antenna and either a converter box (available from retail electronics stores) or digital-ready television. To be sure that all available channels are received, digital TV viewers should run a fresh channel scan on their digital television or converter box.

Households that receive television signals via satellite or cable services are not impacted by this change. Residents of Morongo Valley can call 760-367-1833 to have questions answered and obtain information on how to receive over the air digital TV.

NEWS

FOR IMMEDIATE RELEASE

From San Bernardino County Office of Special Districts

Contact Tim Millington (909) 387-5877

June 18, 2012

TV Districts Go Digital

BARSTOW, DAGGETT, HINKLEY, NEWBERRY SPRINGS, and YERMO – County Service Area 40 will begin transition to digital TV broadcasts by making digital channels available by July 1, for District residents of the Barstow, Daggett, Hinkley, Newberry Springs, and Yermo areas.

The District is in the process of upgrading equipment to convert to digital broadcasts as mandated by the Federal Communications Commission (FCC). As a first step, one analog channel (23 KTTV) will be taken off the air and three new digital channels will be activated (18, 21, and 23). The three channel digital system will provide station programming for 10 stations (18-1 KCBS, 18-2 KNBC, 18-3 KTLA, 18-4 KCET, 21-1 KCAL, 21-2 KABC, 21-3 KTTV, 21-4 KCOP, 23-1 WGN/KHIZ, and 23-2 UN1/Univision). District residents who want to receive over the air digital channels must have an aerial antenna and either a converter box (available from retail electronics stores) or digital-ready television. A single digital channel can deliver multiple program streams. To be sure of getting all the channels available, digital TV viewers after July 1 should run a fresh channel scan on their digital television or converter box.

A number of the CSA 40 TV District analog channels (15 KCBS, 17 WGN, 19 KNBS, 35 KTLA, 39 Univision, 41 KCAL, 46 KCET, 48 KABC, 50 KCOP) will remain available as in the past, but only for a limited time and not past the FCC low power analog systems conversion deadline of September 15, 2015.

Residents who receive television signals via satellite or cable services are not impacted by these changes. Residents of the CSA 40 TV District can call 760-367-1833 to have questions answered and obtain periodic updates on digital TV conversion efforts.

SPECIAL DISTRICTS DEPARTMENT

C



COUNTY OF SAN BERNARDINO

157 West Fifth Street, Second Floor • San Bernardino, CA 92415-0450 (909) 387-5940
Fax (909) 387-5542

JEFFREY O. RIGNEY
Director

August 15, 2014

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street S.W.
Washington, D.C. 20554

RE: CANCELLATION OF LICENSES FOR THE COUNTY OF SAN BERNARDINO

Dear Ms. Secretary:

On behalf of the Department of Special Districts, San Bernardino County, please be advised that for the facilities listed below -- sixteen stations in all -- no renewal application was filed at the August 1, 2014, due date. All such facilities are deemed surplus and no longer needed. All such facilities are off the air. The authorizations **should be canceled and the call signs deleted.**

County Service Area 40

K19BS	14146	K41CY	14138
K39DW	14694	K46HT	14696
KTSK-LP	14151	K48IP	11535
K50HV	14140		

County Service Area 70 TV - 2

K13WJ	14695	K40HX	11528
K14AB	11533	K48EM	14698

County Service Area 70 TV - 4&5

K16FI	43824	K47IB	43815
K18FH	43817	K49DC	43813
K51DU	43820		

Any question with respect to this matter should be directed to the undersigned.

Respectfully submitted,

Michael Couzens,
*Attorney for Department of Special Districts,
San Bernardino County, California.*

Cc: Hossein Hashemzadeh
Tim Millington, County Special Districts Interim Division Manager

GREGORY C. DEVEREAUX
Chief Executive Officer

Board of Supervisors

ROBERT A. LOVINGOOD.....First District	JAMES RAMOS.....Third District
JANICE RUTHERFORD.....Second District	GARY C. OVITT.....Fourth District
JOSIE GONZALES.....Fifth District	

Attachment B
Supplemental Response to Notification

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of

County of San Bernardino, Area 40)	K34QW-D, Daggett, California Facility ID 11537
)	
County of San Bernardino, Area 70)	K25GK-D, Joshua Tree, CA Facility ID 43812
)	
County of San Bernardino, Area 70 TV2)	K21GI-D, Morongo Valley, CA Facility ID 11539

To: The Commission:

APPLICATION FOR REVIEW

* * *

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County of San Bernardino, California*

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December 6, 2021.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of

County of San Bernardino, Area 40)	K34QW-D, Daggett, California Facility ID 11537
)	
County of San Bernardino, Area 70)	K25GK-D, Joshua Tree, CA Facility ID 43812
)	
County of San Bernardino, Area 70 TV2)	K21GI-D, Morongo Valley, CA Facility ID 11539

To: Chief, Video Division, Media Bureau

SUPPLEMENTAL RESPONSE TO NOTIFICATION OF LICENSE EXPIRATION

The Department of Special Districts, County of San Bernardino, California (DSD), by its attorney, here supplements its response to the Notification of License Expiration, dated August 4, 2021.¹

Since the DTV switch-over the County's primary sites have been constrained by having only three Advanced TV transmitters and channels. That quota was dictated by the close deadlines for NTIA reimbursements, by availability of equipment, and other factors. This capacity is now fully utilized, or nearly so, by use of as many as four transmission stream on each station, rebroadcasting principally the Los Angeles full service TV stations from Mount Wilson.

The addition of the three single stations shown in the caption is creating a broad choice of new

¹ DSD disclaims any continuing interest in one station listed in the Notification, K36GO. That authorization should be terminated and its call sign deleted. At Daggett, K34QW-D replaces K15BZ because the digital companion on Channel 15 was blocked by land mobile and needed to be superseded. Meanwhile, DSD does have an interest in another station, not listed in the notice, K25GK-D. DSD stipulates that all the facts, policies and defenses applicable to the two remaining listed stations will apply equally to K25GK-D.

programs, never before seen. To illustrate, the K25GK-D facility at Joshua Tree is actually transmitting from Pinto Mountain over a wide rural area spanning parts of Landers to the West and Wonder Valley to the East. The channelization plan is this:

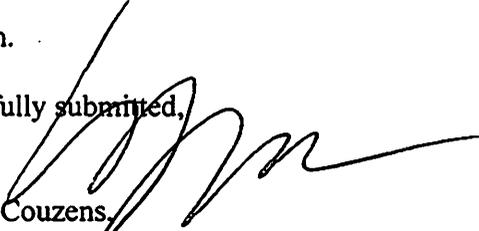
- 25.1 H&I Heroes and Icons. See <https://handitv.com/shows/>
- 25.2 KCET (TV) Flagship PBS member station in Los Angeles, also carries BBC.
- 25.3 ion Television – TV Series revivals, See <https://iontelevision.com/shows>
- 25.4 KLCS (TV), PBS member licensed to the Los Angeles Unified School District and offering arts, children's, cooking, for credit instruction, and “at home learning.”
www.klcs.org

The same channelization plan, with the same services, is being aired on K21GI-D in Morongo Valley. Station K34QW at Elephant Mountain (Daggett) has had construction delays. FCC staff advised that its original companion channel 15 was not grantable because of conflict with Channel 15 land mobile protection. It was re-engineered to Channel 34 and is expected to go live this week, with the same channel line up as Yucca Valley and Morongo.

No survey of the scope of viewership to County facilities in these areas has been tried or is even possible. However, many of the homes enjoying the County TV services can be recognized, for example, on a drive over State Highway 62, by noting the numerous masted outdoor antennas with Yagi arrays pointed at the County transmitters. These areas are too sparse for cable TV service, and where there is a clear look for communications satellites, there are few customers. The area is low cost but also low income, with many residents surviving on modest fixed-incomes. Both the existing Mount Wilson rebroadcasts and these new fourth-station services are nothing less than a life line service to a rural constituency having few realistic alternatives.

For the reasons set forth, in the initial response and by this supplement, the notification should not be applied to terminate the facilities shown in the caption.

Respectfully submitted,


Michael Couzens,
*Attorney for Department of Special Districts
San Bernardino, California*

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cc. Barbara Kreisman
Shaun Maher

September 7, 2021.

Attachment C
Staff Letter on Delegated Authority
November 4, 2021



Federal Communications Commission
Washington, D.C. 20554

November 4, 2021

Sent via Certified Mail and Electronic Mail

Department of Special Districts
Frank Haggard
P.O. Box 92415
222 West Hospitality Lane, 2d floor
San Bernardino, CA 92415
frank.haggard@sdd.sbcounty.gov

Re: Expiration of Licenses and
Request for Reinstatement of
Licenses Under Section 312(g)

Dear Licensee:

This letter concerns the request to reinstate the licenses¹ of the three television translator stations listed in the attached Appendix and licensed to the County of San Bernardino (CSB).² For reasons set forth below, we deny CSB's request and, pursuant to section 312(g) of the Act, the Stations' licenses have been automatically cancelled and their call signs deleted. Any operation of these facilities **MUST CEASE IMMEDIATELY**.³

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."⁴ 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

¹ Although styled as a "Response To Notification of License Expiration," we will consider this filing as a request to reinstate license under section 312(g) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 312(g).

² A list of the three stations covered by this action (referred to herein collectively as "Stations"), and the file numbers of the Stations' digital construction permits, licenses, and any pending applications are contained in the Appendix to this letter. We note that the Stations are licensed to three separate CSB subsidiary entities: County of San Bernardino Area 40; County of San Bernardino Area 70 and County of San Bernardino CSA 70 TV2. We shall refer to the three entities collectively as County of San Bernardino or CSB.

³ In light of an e-mail from counsel dated September 21, 2021 and their respective license applications (LMS File Nos. 0000158938, 0000152504 and 0000158524) these stations are all currently operational. See E-mail from Michael Couzens, Esq, Counsel for CSB, to Barbara A. Kreisman, Chief, Video Division, Media Bureau (Sept. 21, 2021, 2:57pm ET). Such operation is being conducted without a valid authorization and is in violation of section 301 of the Communications Act of 1934. As a result, we have referred this matter to the Enforcement Bureau for additional investigation and to ensure that all operation immediately ceases.

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

licensee's control.⁵ For example, the Commission has granted section 312(g) relief to stations whose facilities were destroyed by natural disasters such as hurricanes;⁶ where silence was necessary in furtherance of public safety,⁷ where reinstatement of the station's license was necessitated by court order;⁸ where stations were actually displaced by the Incentive Auction and repacking process;⁹ or where station silence was the result of governmental closure.¹⁰ 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.¹¹

CSB was the licensee of three analog TV translator stations serving the greater San Bernardino, California area.¹² On July 13, 2021, all low power television and TV translator stations (collectively referred to herein as "LPTV stations") were required to cease analog operation and commence digital

⁵ 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").

⁶ *V.I. Stereo Communications Corp.*, 21 FCC Rcd 14259, 14262, para. 8 (2006) (reinstating license where silence due to destruction of towers in hurricanes).

⁷ *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 a safety after discovering and reporting that FCC and FAA records contained incorrect tower information).

⁸ *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).

⁹ 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)).

¹⁰ *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)).

¹¹ 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).

¹² Request at 1. County was the licensee of a fourth television translator - K36GO, Morongo Valley, California, however, it recently cancelled the license for this station. *Id.* at n. 1.

operations.¹³ In preparation for the LPTV digital transition, Video Division (Division) staff conducted significant outreach to stations that were still listed in the Commission's databases as being licensed as analog facilities. As part of this outreach, Division staff contacted counsel for CSB via e-mail to inquire about the Stations' digital transition progress. As a result of this inquiry, it came to light that the Stations were silent and had been silent for a number of years.¹⁴ Despite being silent for an extended period of time, no request for silent authorization for the Stations was ever filed with the Commission.¹⁵

On August 4, 2021, the Division sent a letter inquiry to CSB to gather additional information about the operational status of the Stations and their extended history of silence.¹⁶ Specifically, the Division stated that the information it obtained via e-mail from counsel indicated that the Stations have been silent since 2014, and, therefore, pursuant to section 312(g), the Stations' licenses expired as a matter of law at some point in 2015.¹⁷ The Division afforded CSB with an opportunity to provide evidence that the Stations returned to the air with authorized facilities prior to their one-year silent anniversary and if the Stations resumed operations, the Division requested that CSB provide evidence of the Stations' operational history.¹⁸

CSB Response. In its Response, CSB explains that, on September 16, 2013, it made the voluntary decision to terminate operations of the Stations' analog facilities while it worked to complete their digital facilities.¹⁹ At that time, the LPTV digital transition deadline was September 1, 2015.²⁰ According to

¹³ See 47 CFR § 74.731(m); *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Third Report and Order and Fourth Notice of Proposed Rulemaking, 30 FCC Rcd 14927, 14932-33, para. 9 (2015). In that decision, the Commission extended the LPTV digital transition date until 12 months following the completion of the 39-month post-Incentive Auction transition period or 51 months from the completion of the Incentive Auction and the release of the *Closing and Channel Reassignment Public Notice*. *Id.* See *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (IATF and MB 2018) (*Closing and Channel Reassignment Public Notice*). Given the April 13, 2017 release date of the *Closing and Channel Reassignment Public Notice*, the LPTV digital transition date is **July 13, 2021**.

¹⁴ Emails between Video Division staff and counsel for CSB concerning the operational status of the Stations were exchanged on June 8, 16, 21, 23, 24 and 28, 2021. In an email dated June 23, 2021, CSB counsel stated "All County of San Bernardino analog services were terminated in 2014." See E-mail from Michael Couzens, Esq, Counsel for CSB, to Video Division, Media Bureau (June 23, 2021, 6:11pm ET). Copies of these e-mails are available in LMS under each Station's facility page.

¹⁵ Stations may suspend operations for a period of not more than 30 days absent specific authority from the Commission. See 47 CFR §§ 73.1740(a)(4) and 74.763(b). Stations that remain silent for more than 10 days must notify the Commission not later than the tenth day of their suspended operations. *Id.* Stations that need to remain silent for more than 30 days must file a Silent STA. *Id.*

¹⁶ Letter to County of San Bernardino Area 40, *et al.* from Barbara A. Kreisman, Chief of the Video Division, Aug. 4, 2021 (Division Letter). A copy of this letter is available in LMS under each Station's facility page.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Request at 1-2 citing an August 22, 2013 CSB news release where it stated that CSB would cease analog services on or about September 16, 2013. We note this is one year earlier than was initially disclosed by CSB's counsel. As such the Station's licenses would have expired on September 16, 2014.

CSB it decided to terminate the Stations' analog operations on September 16, 2013 "well ahead of the final hard deadline of September 1, 2015."²¹

In April 2015, the Commission suspended the September 1, 2015 digital transition deadline for LPTV and TV translator stations²² and subsequently postponed the digital transition to July 13, 2021.²³ Despite this fact, CSB allowed the Stations to continue to remain silent.²⁴ As rationale for its decision to take the Stations silent, CSB maintains that "continuation of any single analog channel would have disrupted the transition, given mixed messages and confused the public. Continuance of the unwanted analog would have delayed, not facilitated service to the public."²⁵ CSB goes on to state that in its opinion, continuing to air a parallel digital and analog signal would have been "expensive and pointless" and that its analog transmissions "would possess a fast diminishing, if not invisible impact on the public."²⁶

In addition, it appears that CSB mistakenly believed that the grant of digital construction permits preserved the Stations' licenses while they were silent and awaiting construction of their digital facilities. CSB explains that it was its "reasonable belief that, so long as a valid construction permit remained in effect, that would have the same regulatory effect as a live broadcast."²⁷ CSB maintains that "this view is not so radical" and cites to the Media Bureau's (Bureau) June 2021 *Analog Warning PN* reminding analog LPTV and TV translator stations without a valid digital construction permit on July 13, 2021, that their analog license would be automatically cancelled and their call signs deleted.²⁸ Since it had a valid digital construction permit, CSB presumed that this meant that the Stations' licenses were secure. CSB contends that its misreading of the Commission's rules was based "an honest belief that the lack of analog transmissions was 'covered' by a digital construction permit."²⁹ CSB goes to state that "this fact should be analyzed as a singular misperception, perhaps even one to warrant a monetary forfeiture, and not blown out of proportion by the years in which it was held."³⁰

Since the Division's letter and almost eight years after going silent, CSB completed construction of the Stations' digital facilities and resumed operations of the Stations between July and September

²⁰ See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Second Report and Order, 26 FCC Rcd 10732, 10735-39, paras. 6-12 (2011) (*LPTV DTV Second Report and Order*).

²¹ Request at 2.

²² See *Suspension of September 1, 2015 Digital Transition Date for Low Power Television and TV Translator Stations*, Public Notice, 30 FCC Rcd 3741 (MB 2015).

²³ See *supra* note 13.

²⁴ As discussed in greater detail below the Stations resumed digital operations between July 2021 and September 2021.

²⁵ Request at 3.

²⁶ *Id.* at 4.

²⁷ *Id.* at 3 citing *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, DA 21-684 (released June 11, 2021) (*Analog Warning PN*).

²⁸ Request at 3.

²⁹ *Id.* at 4.

³⁰ *Id.*

2021.³¹ On September 9, 2021, CSB filed a supplement to its response noting that the Stations are airing a combination of programming on their multicast channels including the Heroes and Icons Channel, ION Television, and rebroadcasting programming from noncommercial educational full power television stations KCET(TV), Los Angeles, California and KLCS (TV), Los Angeles, California.³² CSB states that while it has no information nor has it attempted to ascertain how many viewers are watching its signals, the areas it is serving are “too sparse for cable TV service, and where there is a clear look for communications satellites, there are few customers.”³³ CSB also maintains that the area the Stations are serving contain “many residents surviving on modest fixed-incomes.”³⁴ CSB concludes that the Stations’ broadcasts “are nothing less than a life line service to a rural constituency having few realistic alternatives.”³⁵ CSB asserts that, “with a freeze on new and major change applications, the termination of any digital facility, legally constructed pursuant to a valid construction permit, is an irreplaceable loss”³⁶ and that the Stations “should be permitted to continue serving the public”³⁷

Discussion. Upon review of the facts and circumstances presented, we find that the Stations’ licenses have automatically expired pursuant to section 312(g) of the Act. Based on its showings, we find that the Stations’ went silent on September 16, 2013 and their licenses all expired on September 16, 2014. Although the Stations resumed operation for a brief period between July 2021 and September 2021, they had no valid authorization by which to do so. We find the Stations nearly eight years of silence was a direct result of CSB’s voluntary business decision to take them silent and subsequent misinterpretation of the Commission’s rules and the Act. We also find that CSB has failed to adequately demonstrate that its failure to return the Stations to air before their one-year silent deadline was due to compelling circumstances beyond the licensee’s control and reinstatement is not warranted under the “equity and fairness” provision of section 312(g).

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.³⁸ As already cited above, in its response to the Division’s inquiry CSB notably states that “continuation of any single analog channel would have disrupted the transition, given mixed messages and confused the public. Continuance of the unwanted analog would have delayed, not facilitated service to the public.”³⁹ CSB goes on to state that in its opinion continuing to air a parallel digital and analog signal would have been “expensive and pointless” and that its analog transmissions “would possess a fast diminishing, if not invisible impact on

³¹ See LMS File Nos. 0000158938 (filed for K15BZ on September 9, 2021), 0000152504 (filed for K21GI-D on July 13, 2021) and 0000158524 (filed for K25GK-D filed on September 2, 2021). These applications remain pending.

³² See Supplemental Response to Notification of License Expiration, filed September 7, 2021 (Supplement). Counsel for CSB has also subsequently confirmed that the Stations are all operational. See E-mail from Michael Couzens, Esq, Counsel for CSB, to Barbara A. Kreisman, Chief, Video Division, Media Bureau (Sept. 21, 2021, 2:57pm ET). A copy of this e-mail is available in LMS under each Station’s facility page.

³³ Supplement.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Request at n. 4.

³⁷ *Id.*

³⁸ 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).

³⁹ Request at 3.

the public.”⁴⁰ CSB’s own words support that that the underlying cause of the Stations initial and continued silence were voluntary business judgements. There were no circumstances, compelling or otherwise, that forced the Stations to go silent or remain silent for nearly eight years.

We do not find compelling CSB’s argument that it misread the LPTV digital rules and apparently was unaware of the controlling provisions of section 312(g) of the Act. Section 312(g) clearly 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.*”⁴¹ Therefore, on September 16, 2014, when the Stations had remained silent for a 12-month consecutive period of time, their licenses automatically expired, regardless of the fact that they had been granted digital construction permits. The Commission has made this point clear in numerous items related to the LPTV digital transition. For example, in the 2011 *LPTV DTV Second Report and Order* the Commission cautioned stations that they “should be mindful of section 312(g)”⁴² if they must go silent while they complete construction of their digital facilities. The Bureau also included similar warnings about the effect of section 312(g) in numerous releases over the past four years leading up to the July 13, 2021 LPTV digital transition, including the *Analog Warning PN* that CSB claimed to rely upon that its licenses were still valid.⁴³

We also reject CSB’s contention that the language in the *Analog Warning PN* could be read to mean that analog LPTV and TV translator stations that possess a valid digital construction permit would not lose their license after the July 13, 2021 LPTV digital transition deadline, regardless of their silent status. This is an inaccurate reading of the *Analog Warning PN*, the Commission’s rules, and the Act. The purpose of the *Analog Warning PN* was to remind analog LPTV and TV translator stations that they must possess a valid digital construction permit on July 13, 2021, or risk the loss of their station license. The loss of license referred to in the *Analog Warning PN* was a result of section 74.731(m).⁴⁴ It was unrelated to the automatic cancellation provisions of section 312(g) and any license cancellation that may occur due to a station’s continuous silent status. In fact, as noted above, the same public notice that CSB cites to in support of its argument, the *Analog Warning PN*, also contained a reminder to stations that silence for any consecutive 12-month period would result in automatic license expiration of a stations’ license at the end

⁴⁰ *Id.* at 4.

⁴¹ 47 U.S.C. § 312(g) (emphasis added).

⁴² *LPTV DTV Second Report and Order*, 26 FCC Rcd at 10740, n. 45.

⁴³ See, e.g., *The Incentive Auction Task Force and Media Bureau Announce Procedures for Low Power Television, Television Translator and Replacement Translator Stations*, Public Notice, 32 FCC Rcd 3860, 3869, para. 20 (IATF/MB 2017); *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, 1238-9, para. 7 (IATF/MB 2018); *Media Bureau Reminds Low Power Television and Television Translator Stations of July 13, 2021, Digital Transition Date*, Public Notice, 35 FCC Rcd 6977, 6980 (MB 2020); *Media Bureau Reminds Low Power Television and Television Translator Stations Operating on the Guard Band/Duplex Gap Channels of Upcoming July 13, 2020 Deadline to Cease Operations*, Public Notice, 35 FCC Rcd 5495, 5496 (MB 2020); *Media Bureau Reminds Low Power Television and Television Translator Stations of July 13, 2021, Digital Transition Date*, Public Notice, 36 FCC Rcd 4771, 4774 (MB 2021); *Analog Warning PN* at 2-3 and n.11; *Media Bureau Reminds 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, DA 21-786 (released July 6, 2021).

⁴⁴ 47 CFR § 74.731(m).

of that period, by operation of law.⁴⁵ The Commission has, on numerous occasions, made abundantly clear that analog LPTV and TV translator stations that are silent for more than 12 consecutive months are subject to automatic cancellation under section 312(g) of the Act.⁴⁶

Furthermore, any claim that station's digital construction permit would survive if its analog license was cancelled prior to July 13, 2021 is incorrect. In the *Analog Warning PN* the Bureau highlighted the Commission's long-established policy of the "single, unified station license" as part of the digital conversion process.⁴⁷ The Bureau found that consistent with this policy, an analog LPTV or TV Translator station whose analog license is automatically cancelled after 11:59 pm local time on July 13, 2021 under section 74.731(m) and does not have digital construction permit by that time, would no longer have a license to modify.⁴⁸ Similarly, we find that a station whose license was canceled *prior* to July 13, 2021 would also no longer retain its digital construction permit as the two are inextricably connected to one another under the Commission's policy of a single, unified station license. Simply put, CSB cannot continue to hold a digital construction permit to convert an analog facility that no longer exists. Permitting such a result would undermine the Commission's rules and long-established licensing processes.

⁴⁵ See *Analog Warning PN* at 2-3 and n.11.

⁴⁶ See *supra* n. 43. We also note that in 2014, as part of the license renewal process, CSB was warned about the automatic cancellation provision of section 312(g). The instructions to Question 2 of the Commission's license renewal application for LPTV and TV Translators stated, in part: "Failure to operate for a period of 30 days or more, except for causes beyond the control of the licensee, shall be deemed evidence of discontinuation of operation and the licensee of the translator or LPTV station may be cancelled at the discretion of the FCC. See 47 C.F.R. §§ 74.763 and 74.1263." Specifically, section 74.763(c) of the Commission's rules codifies the automatic expiration provision of section 312(g). 47 CFR § 74.763(c). CSB filed the last license renewal applications for the Stations on July 31, 2014, prior to the violation of section 312(g). In those applications CSB disclosed that the Stations were silent. The license renewal applications were granted in early December 2014. See CDBS File Nos. BRTT-20140731ARM, BRTT-20140731AQZ, and BRTT-20140731ASF. We note that, although it is Bureau policy not to grant a Station's license renewal application while it is silent, as a result of CSB's failure to file for silent authority and an administrative error the applications were improperly granted. Grant of the renewal applications occurred after the Stations licenses automatically expired under section 312(g) and had no legal effect on the automatic cancellation provision of section 312(g) which explicitly states that the license of a station that is silent for 12-consecutive months automatically expires "notwithstanding any provision, term, or condition of the license to the contrary." 47 U.S.C. § 312(g); see 47 CFR § 74.763(c). Even if the Stations' silence for purposes of section 312(g) expiration were only evaluated from the date of the Stations' last license renewal grants, each station would have still been silent for over six years straight.

⁴⁷ *Analog Warning PN* at n.4.

⁴⁸ *Id.*

It is also well settled precedent that ignorance of a rule or law does not excuse a violation or noncompliance.⁴⁹ Whether intentional or not, the Stations continued silence for almost eight years resulted in the loss of their licenses by operation of law under section 312(g). Under section 312(g) a license expires notwithstanding any provision, term, or condition of the license to the contrary and in the absence of a underlying license to support it, any formerly valid construction permits are as a result, null and void.

The fact that CSB has now resumed operation of the Stations is irrelevant to our legal conclusion. Because the Stations licenses expired in September 2014, we find that such operation is unauthorized and in violation of section 301 of the Act. The Commission does not recognize unauthorized service for purposes of evaluating the public interest benefits of a broadcaster.⁵⁰ And while CSB believes that its unauthorized operation justifies reinstatement of the Stations' licenses under the equity and fairness provision of section 312(g), we find that the public interest would not be served by reinstating the license of a station that has been silent for nearly eight years (the equivalent of an entire license term) and "continuously failed to provide its community with reliable, consistent, authorized service."⁵¹ CSB's voluntary decision to keep these Stations silent for nearly eight years cuts against its claims as to the Station's importance to the community. Furthermore, even if we were to reinstate the Station's licenses, they are all required to file applications for renewal of license on August 1, 2022 and their current license periods end on December 1, 2022. The Stations extended period of silence would raise serious questions as to whether renewal is justified under section 309(k) of the Act.⁵²

⁴⁹ See, e.g., *Adrian Abramovitch, Marketing Strategy Leaders, Inc. and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4674, para. 32 & n.79 (2018) ("[O]ne may not "claim ignorance of the law as a defense" (internal cites omitted); *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14704, para. 10 (2015) ("PTT's purported ignorance of the law certainly does not excuse the fact that it . . . [was] out of compliance with all of the provisions of the Act and the [Commission's] [r]ules to which it was subject."); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para 3 (1991), recon. denied, 7 FCC Rcd 3454 (1992) (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance") (internal cite omitted); see also *Townsquare Media of El Paso, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6661, 6665, para. 5 & n. 37 (EB 2020) ("It is immaterial whether . . . violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight.") (internal cites omitted); *Rufus Resources, LLC*, Forfeiture Order, 33 FCC Rcd 6793, 6794, para. 5 (MB 2018) ("It is well settled that ignorance of the [Commission's] [r]ules does not excuse a violation.") (internal cites omitted).

⁵⁰ See, e.g., *In Re Jerry Szoka Cleveland, Ohio*, Decision, 14 FCC Rcd 9857, 9862 (1999) (stating that providing service to a "niche audience that is not otherwise being served adequately by licensed broadcasters" does not establish "a right to broadcast without a license and in contravention of the Commission's rules"); *C.J. Community Services, Inc., Bridgeport, Washington*, Decision, 20 FCC 860, 868 (1956) (noting that "Considerations of . . . alleged benefits of the augmented service made possible by the boosters are irrelevant to a determination as to whether an unlicensed operation causing interference to authorized service should be allowed to continue operation").

⁵¹ *In the Matter of Roy E. Henderson*, Memorandum Opinion and Order, 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, et. al*, Letter Order, 35 FCC Rcd 5373 (MB 2020).

⁵² The Bureau has previously designated for hearing the renewal applications of stations that it has determined have engaged in extended periods of silence for a majority of their license term. For example, in the case of *NIA Broadcasting* the Bureau designating WSYL (AM), Sylvania, GA for hearing after being silent for 73 percent of its license term. *NIA Broadcasting Inc., Application for Renewal of License Station WSYL (AM), Sylvania, GA*, Hearing Designation Order and Notice of Opportunity for Hearing, 36 FCC Rcd 4864 (MB 2021). In the instant case, even if we were to consider the Station's current operation to be authorized and the Stations continued to operate through the remainder their current license term, they still would have been silent for between 82 and 85 percent of their current license terms. See *supra* note 31.

Finally, despite CSB's inferences to the contrary, the Stations at issue are not the only source of entertainment, news, and emergency information to those within San Bernardino County. CSB holds licenses for nine other TV translator stations from which it can continue to provide programming to its viewers.⁵³ These licenses cover the same service areas that would have been covered by the cancelled stations.

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

Accordingly, the Department of Special Districts of the County of San Bernardino's request to reinstate the licenses under the equity and fairness provision of section 312(g) **IS DENIED**. Further, the licenses of the low power television stations set forth in the Appendix **ARE CANCELLED**, their call signs **DELETED**, and all pending applications, including any request for extension of digital construction permit and applications for license, **ARE DISMISSED**. All authority to operate these facilities **IS TERMINATED** and any operation of these facilities **MUST CEASE IMMEDIATELY**.⁵⁴ **CSB MUST NOTIFY** the Video Division within **THREE BUSINESS DAY** confirming that the Stations are no longer operational. Such notification must be sent via e-mail to Shaun.Maher@fcc.gov. Finally, all authority to construct digital facilities have also been **TERMINATED**.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Michael Couzens, Esq.

⁵³ Stations K30GU-D; K32EM-D; and K34EU-D, all licensed to Morongo Valley, CA, provide coverage to the area that would be served by K21GI. Stations K15FC-D; K17GJ-D; and K29GK-D, all licensed to Twentynine Palms, CA, all provide service to the area that would be served by K25GK. Finally, stations K18IM-D and K21MH-D licensed to Daggett, CA; and K23ML-D, licensed to Newberry Springs, CA, provide service to the area that would be served by K15BZ.

⁵⁴ We remind CSB, that, pursuant to section 73.1740(a)(4) of the rules, it must continue to adhere to the requirements in the Stations' authorizations pertaining to lighting of antenna structures. See 47 CFR § 73.1740(a)(4).

APPENDIX

Callsign	City	ST	Fac Id	CP Extension File No.	Digital CP File No.	License File No.
K15BZ	DAGGETT	CA	11537	0000152017	0000147061	0000158938
K21GI-D	MORONGO VALLEY	CA	11539	N/A	BDFCDTT-20120109ACZ	0000152504
K25GK-D	JOSHUA TREE	CA	43812	N/A	0000139136	0000158524