

**Request for:**  
**Silent STA; Tolling Waiver and/or Extension of Construction Permit Deadline;**  
**and Section 312(g) Relief from 1-Year Silence**

Eduardo Gallegos, licensee of KSOY-LD, McAllen, TX (the “Station”), files this Request for: Silent STA; Tolling Waiver and/or Extension of Construction Permit Deadline; and for Section 312(g) Relief from 1-Year Silence.<sup>1</sup> Through this filing, the Station—which has undergone multiple forced channel changes as a result of spectrum reconfigurations; initially from channel 69 to channel 44 (*see* CDBS File No. BLTTL-20000922ACJ), and most recently from channel 44 to proposed channel 34 (*see* LMS File No. 0000054868)—seeks to preserve its ability to continue to serve its majority-Hispanic and -Latinx community of license with important Spanish-language news, informational, emergency, and entertainment programming.

*Background*

Prior to July 13, 2020, the Station was operational on digital Channel 44. A relatively “early adopter” of digital technology, the licensee has been operating KSOY-LD in digital since 2014—significantly prior to the now-superseded September 2015 digital conversion deadline; thus, this is not a situation where an analog LPTV operator attempted to “ride the regulatory wave” as long as possible by repeatedly delaying the conversion to digital but instead it is a situation where a sole proprietor licensee voluntarily invested in the community by upgrading the station before he was required to do so.<sup>2</sup> However, on July 13, 2020, the Station was displaced by the mandated reconfiguration of operations in the 600 MHz duplex gap, and thus began its current period of silence.<sup>3</sup> Notably, the licensee planned for the Station’s displacement and by that time had taken all steps necessary to preserve KSOY-LD’s ability to continue to serve its community. The licensee had timely identified a compliant digital displacement channel and facility, filed for the necessary construction permit, undergone required frequency coordination with Mexico, and identified and proactively addressed a potential interference issue by consenting to 2.96% interference from another station. *See* LMS File No. 0000054868.

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<sup>1</sup> The licensee is contemporaneously filing both (1) an Application for Silent STA and Request for 312(g) Relief, and (2) an Application for Tolling or Waiver of Tolling Rule (i.e., FCC Form 2100, Schedule Tolling). Because the same factual content underlies each application, the licensee is attaching this full explanatory exhibit to each application.

<sup>2</sup> The licensee’s early investment in converting the KSOY-LD to digital operations is especially noteworthy in light of the fact that the sole proprietor licensee owns and operates only one TV facility, while all other Class A, LPTV, and TV translator facilities licensed to McAllen are licensed to entities that own, at a minimum, four TV facilities.

<sup>3</sup> *See, e.g., 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, DA 20-573 (rel. June 1, 2020) (“LPTV/translator stations on channels 38, 44, 45 and 46 are subject to the requirement that they cease operations by July 13, 2020.” (emphasis added)). That deadline was “a hard deadline—no extensions of time to continue operating in these bands” were permitted. *Id.*

Unfortunately, due to unforeseeable circumstances, including the global COVID-19 pandemic—and despite having made substantial progress toward construction—the licensee has thus far been unable to complete the construction of the Station’s displacement facilities. As a result, and because as of July 13, 2020, the Station was no longer permitted to broadcast on Channel 44, during the relevant period of silence the licensee has had no other recourse but to keep the Station dark and diligently work toward constructing its second digital displacement facilities.

Notably, the licensee has carefully monitored the February 15, 2022, expiration date for the Station’s displacement CP. And once third-party equipment and permitting delays rendered the licensee unable to construct the Station’s authorized displacement facilities by the expiration date, he sought assistance from legal counsel in seeking a request for an extension of the construction deadline. It was only when the licensee began examining ways to address the pending CP construction deadline, however, that the licensee realized that he also needed to request STA (as well as relief under Section 312(g)) to cover the Station’s required silence during the construction period. The licensee expeditiously sought and retained new, undersigned counsel, and is therefore making this request as soon as practicable given those circumstances.

The licensee has experienced multiple unforeseeable impediments to constructing the authorized displacement facilities by the current CP construction deadline. At the most foundational level, the licensee’s vendors have had difficulty obtaining the necessary permitting from the local governing body in the county in which the licensee’s proposed facilities will be constructed. Initially, it was indicated that no permit would be required. However, that assessment later changed, and the local governing body required not just information and engineering from the licensee—but also from the tower site owner itself—to process the necessary permitting application. All of these required interactions and corresponding processing times have generated construction timeline delays, both due to having to coordinate shifting requirements with the multiple entities involved and short staffing at those entities caused by the ongoing COVID-19 pandemic.

Substantial delays have also been caused due to unforeseen, lingering issues with FAA clearance. In particular, at around the same time the tower site owner submitted an FAA Notice of Proposed Alteration as required for the Station’s displacement facilities, another notification to add a different frequency to the same tower was submitted to the FAA. The licensee is informed and believes that the FAA must first take action on the other Notice, at which point the tower site owner can resubmit the Notice required for the Station’s displacement facilities for FAA processing. The tower site owner has indicated that they have contacted the FAA about this issue, but that the FAA has not responded.

The licensee has further experienced delays in equipment delivery due to COVID-19’s effects on the supply chain. By way of example, the antenna manufacturer for the Station’s displacement facilities recently notified the licensee that it would be unable to meet its original scheduled shipping date due to supply chain issues caused by COVID-19, and which was already atypically

protracted due to the pandemic and due to the specialized engineering that was needed to allow the antenna to be mounted at the proposed tower site.

Furthermore, the licensee simply does not have as many resources as other, larger operators would have to bear in navigating the foregoing unforeseeable circumstances and delays. The licensee is a sole proprietor, and KSOY-LD has fewer than five full-time employees. As a result, throughout this period where both the Station has been required to be silent (i.e., with severely diminished capacity to generate revenue) and the COVID-19 pandemic has been in full swing, the licensee has experienced difficulty both with finances and staffing availability. Although the licensee is aware of the repack reimbursement process, the COVID-19 pandemic and lack of station revenue has made it difficult to expend the substantial initial capital required to fully build out KSOY-LD's facilities. Those issues have been further exacerbated by the unexpected death of KSOY-LD's engineer, which placed the licensee in the position of having to manage the displacement project with none of the engineer's institutional knowledge regarding the project needs and status.

Notwithstanding the foregoing, the licensee has taken substantial steps in building out its displacement facilities such that construction can be completed expeditiously once the final few permitting, shipping, and regulatory pieces fall into place. All the licensee's preexisting tower-mounted equipment has been removed from the Station's former site and, to the extent it will be re-used for digital Channel 34, has been prepared to be deployed at the site specified in the displacement CP. Moreover, the Station's transmitter has undergone all necessary changes to repurpose it for the Station's displacement facilities, including the installation of a new channel 34 mask filter and all necessary RF plumbing changes. As a result, all equipment is either already ready to be installed or on order with an anticipated shipping date only a few days from the date of this filing. Once FAA and local permitting and corresponding paperwork is completed—timelines that are beyond the licensee's control—the licensee reasonably anticipates that it will be able to complete construction of its digital facilities within only a few weeks.

#### *Request for Silent STA*

In light of the foregoing, the licensee respectfully requests Silent STA covering the period from July 13, 2020, to six months after the date of this filing. Because this STA request is being filed belatedly in part, the licensee respectfully requests *nunc pro tunc* treatment of the filing. The licensee has been silent of necessity due to displacement, and is now nearing the end of its ongoing efforts to construct KSOY-LD's displacement facilities. To be clear, the licensee believes that he will be able to finish constructing KSOY-LD's displacement facilities within the next several months. However, given the unpredictable nature of the COVID-19 pandemic and its resulting effects on both the supply chain for equipment and general worker availability, the licensee respectfully requests a full six additional months of silent STA.

*Request for Tolling Waiver and/or Extension of Construction Permit Deadline*

Additional time to construct post-auction displacement facilities may be granted subject to the Commission's tolling provisions found in Section 73.3598(b) of the Rules. *See Incentive Auction Task Force & Media Bureau Announce Procedures for Low Power Television, Television Translator & Replacement Translator Stations During the Post-Incentive Auction Transition*, Public Notice, 32 FCC Rcd 3860, 3867 & nn.60–61 (2017) [hereinafter "*Displacement PN*"]. These tolling provisions provide that a construction permit can be tolled when specific circumstances beyond the control of the licensee occur. *See id.* (noting that a construction permit deadline may be tolled under specific circumstances such as acts of God and delays due to administrative or judicial review); 47 CFR § 73.3598(b).

Additionally, for "good cause shown," the Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3. In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *Northeast Cellular*, 897 F.2d at 1166. These waiver standards have been applied to the Commission's tolling rules, including in the case of displaced stations seeking to extend time to construct final displacement facilities. *Displacement PN*, ¶ 19. Consistent with these considerations, the Commission will grant stations additional construction time where "rare or exceptional circumstances" beyond the Applicant's control prevent construction. *Id.*; *see 1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules, and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, ¶ 42 (1999) (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" and concluding that in such "limited circumstances" the Commission would entertain requests for waiver of its "strict tolling provisions"). In the case of displaced stations, the Commission has indicated that it is likely "to look favorably" upon requests where a displaced station can demonstrate that it requires additional construction time due to an "inability to procure necessary resources" as a result of external circumstances. *See Displacement PN*, ¶ 19.

The particular facts here demonstrate the good cause necessary to waive Section 73.3598(b). As explained in greater detail above, the licensee has diligently pursued construction of its displacement facilities and would have constructed those facilities but for the unforeseeable circumstances surrounding the required permitting, required equipment, and effects of the COVID-19 pandemic. All equipment necessary to build out the final displacement facilities is either on order or on hand, with the last remaining equipment ship date set for February 10, 2022. As a result, a waiver to permit the licensee a brief additional construction period would serve the public interest by preserving KSOY-LD's ability to serve its community with the significant equipment, resource, and time outlays that have already been expended in constructing the Station's displacement facilities.

*Request for Section 312(g) Relief from 1-Year Silence*

In addition, the licensee respectfully requests waiver of the application of Section 312(g) of the Communications Act to permit the licensee to return the Station to operations with the authorized KSOY-LD displacement facility once constructed. As discussed above, the Station went silent on **July 13, 2020**.

Section 312(g) 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.”<sup>4</sup> In the *Incentive Auction R&O*, the Commission explained that it would be receptive to requests for extension of a station’s license under Section 312(g), “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.”<sup>5</sup> Additionally, in the *Post-Incentive Auction Procedures Public Notice*, the Media Bureau committed to “examine whether the station has demonstrated that its silence is the result of compelling reasons beyond the station’s control, including facts that relate to the post-auction transition process”<sup>6</sup> when considering requests to extend or reinstate a stations license under Section 312(g) in order to promote fairness and equity. Finally, in the *Special Displacement Window PN*, 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.<sup>7</sup> The Media Bureau 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, it would “consider a request for extension or reinstatement pursuant to section

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<sup>4</sup> 47 U.S.C. § 312(g).

<sup>5</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, FCC 14-50, 29 FCC Rcd 6567, ¶ 585 (2014) (hereinafter *Incentive Auction R&O*).

<sup>6</sup> *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, DA 17-106, 32 FCC Rcd 858, ¶ 49 (IATF/MB 2017) (hereinafter *Post-Incentive Auction Procedures Public Notice*); see also *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, DA 18-884, 33 FCC Rcd 8240, n.25 (MB/IATF 2018) (citing *Christian Broadcasting of East Point, Inc.*, FCC 15-158, 30 FCC Rcd 13975, ¶ 4 (2015)).

<sup>7</sup> 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 (IATF/MB 2018) (hereinafter *Special Displacement Window PN*).

312(g) of the Communications Act and a request for waiver of the Commission rule.”<sup>8</sup>

As demonstrated throughout this filing, good cause exists for waiver of and relief under Section 312(g) to promote fairness and equity in this circumstance. Indeed, such relief has previously been granted in similar circumstances, including where (as here) stations have been displaced by 600 MHz operations and unforeseeable personnel circumstances prevented timely construction (*see, e.g.*, LMS File Nos. 0000156723; 0000156724; 0000156726; 0000156725), and where (as here) outstanding local permitting and FAA issues prevented timely construction (*see Harry C. Martin, Esq.*, Letter Decision, 23 FCC Rcd 15012, 15014 (2008)).

In addition, grant of the requested relief will serve the public interest by ultimately permitting KSOY-LD to resume operations and continue broadcasting to the majority-Hispanic and -Latinx communities it has historically served with important Spanish-language news, informational, emergency, and entertainment programming. McAllen, Texas—KSOY-LD’s community of license—is home to a Hispanic or Latinx population of approximately 84.8%.<sup>9</sup> And KSOY-LD has historically served that community with independent Spanish-language programming containing at least several newscasts per day. As evidenced by this filing, the licensee seeks to preserve such service going forward.

Finally, no interference issues would be caused by a grant of this request for relief, and a grant would not delay, alter, or affect in any way the nationwide transition of full power and Class A stations nor the construction of displacement facilities by low power television operators, nor the offering of new 600 MHz wireless services by new 600 MHz wireless licensees. Nor would any party be injured or prejudiced by a grant of the requested relief. To the contrary, the licensee powered down KSOY-LD to ensure the availability of various unlicensed uses in the 600 MHz Band. Grant of the requested relief will not undermine or delay any post-auction transition goals. Given all the foregoing, the licensee respectfully requests waiver of and relief pursuant to Section 312(g) to permit KSOY-LD to resume broadcasting once its displacement facilities are constructed. Grant of this Section 312(g) request for relief is supported by the *Incentive Auction R&O*, the *Post-Incentive Auction Procedures Public Notice*, and the *Special Displacement Window PN*. A grant will allow KSOY-LD to return to service and broadcast programming of local interest to and in the native language of the majority of viewers in the Station’s community of license, and is therefore in the public interest.

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<sup>8</sup> *Id.* at n.25 (citing 47 U.S.C. § 312(g)); *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, ¶ 12 (IATF/MB 2017).

<sup>9</sup> *See, e.g.*, U.S. Census Bureau, *McAllen, Texas* (last visited Feb. 3, 2022), <https://www.census.gov/quickfacts/fact/table/mcallencitytexas/RHI725219#RHI725219>.