



Federal Communications Commission
Washington, D.C. 20554

October 12, 2022

Sent via Certified Mail and Electronic Mail

Sarkes Tarzian, Inc.
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Re: Request for Reinstatement and
Extension of License and Silent
Authority
K40JV-D, Stateline, etc., NV
Facility ID No. 167159
LMS File No. 0000116405 and
0000136502

Dear Licensee:

This concerns requests to reinstate and extend the license and silent authority (Request), as amended, filed by Sarkes Tarzian, Inc. (STI) licensee of low power television (LPTV) station K40JV-D, Stateline, etc., Nevada (K40JV-D or Station). For reasons set forth below, we deny STI's Request and, pursuant to section 312(g) of the Communications Act (Act), the Station's license has been automatically cancelled and its call sign deleted.

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."¹ 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 licensee's control.² For example, the Commission has granted section 312(g) relief to stations whose facilities were destroyed by natural disasters such as hurricanes;³ where silence was necessary in furtherance of public safety,⁴ where reinstatement of the station's license was necessitated by

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

² *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").

³ *V.I. Stereo Communications Corp.*, 21 FCC Rcd 14259, 14262, para. 8 (2006) (reinstating license where silence due to destruction of towers in hurricanes).

⁴ *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 air safety after discovering and reporting that FCC and FAA records contained incorrect tower information).

court order;⁵ where stations were actually displaced by the Incentive Auction and repacking process;⁶ or where station silence was the result of governmental closure.⁷ 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.⁸

Request. K40JV-D was a digital LPTV station whose channel 40 facilities were displaced by the Incentive Auction and repacking process. As a result, the Station has been silent since November 25, 2019.⁹ The Station filed a digital displacement application requesting a construction permit for channel 16 and that application was granted on September 14, 2018 (Displacement CP).¹⁰ The Station failed to complete construction of the Displacement CP facilities, failed to request tolling of the Displacement CP expiration date, and the Displacement CP expired on September 14, 2021.¹¹

In its Initial Silent STA, STI stated that the Station had suspended operations as a result of being displaced in connection with the "television repack."¹² STI stated that it will be unable to rebuild the Station "until construction of a nearby building on which it plans to install its new facilities is complete in

⁵ *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).

⁶ *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)).

⁷ *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)).

⁸ *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).

⁹ *See* LMS File No. 0000094002 (granted Dec. 23, 2019) (Initial Silent STA); LMS File No. 0000091239 (suspension of operations notice).

¹⁰ *See* LMS File No. 0000054391.

¹¹ STI has not filed any request to reinstate the Displacement CP or any request for additional displacement relief. As such, even if the Station's license were reinstated and extended it would need to file a new displacement application.

¹² Initial Silent STA, Request for STA at 1.

early summer” (presumably 2020).¹³ The silent STA was granted and the Station was given authority to remain silent until June 23, 2020.

In a request that is still pending and is a part of our consideration in this case, STI subsequently sought to extend its silent authority on June 22, 2020.¹⁴ In the Silent Extension Request, STI restated its plan to rebuild the Station on “a nearby building on which it planned to install its new facilities.”¹⁵ STI stated that “[t]he building was supposed to be completed in early summer ... [u]nfortunately, due to the COVID-19 pandemic, the timeline for the building is not on schedule and (STI) has been experiencing difficulties gathering updated information from the Forest Service and state agencies.”¹⁶ STI provided no documentation to support its claims that the effects of the COVID-19 pandemic were delaying construction of the new building on which the Station was planning to construct its displacement facilities.

On February 19, 2021, almost three months after the Station’s license automatically expired pursuant to section 312(g) of the Act on November 25, 2020, STI submitted the Request seeking reinstatement and extension of the Station’s license. STI recounted the fact that the Station had been displaced by Incentive Auction and repacking process and that as a result it was forced to go silent November 25, 2019.¹⁷ In an almost identical filing to its previous requests for silent authority, STI states that its “plan to rebuild the Station is contingent on construction of a nearby building on which it planned to install its new facilities.”¹⁸ STI reported that “the building was supposed to be completed in early summer 2020 . . . [u]nfortunately, due to the COVID-19 pandemic, the timeline for the building is not on schedule and STI had been experiencing difficulties gathering updated information from the relevant stakeholders.”¹⁹ STI stated that it was “recently informed that the Tahoe Regional Planning Association has finally granted approval for the construction and construction will commence in the summer of 2021.”²⁰ Once again, STI provided no documentation to support these claims.

In the Request, STI argued that the circumstances preventing completion of construction of the Station’s displacement facilities were “clearly outside of STI’s control since construction has been further delayed due to the COVID-19 pandemic.”²¹ STI went on to argue that a license reinstatement and extension under the equity and fairness provision of section 312(g) “would be consistent with the criteria set forth by the Commission and the Media Bureau for such extensions,” as well as other license extensions granted by the Bureau pursuant to section 312 of the Act.²²

¹³ *Id.*

¹⁴ See LMS File No. 0000116405 (Silent Extension Request).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Request at 1.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 2.

²² *Id.* citing Letter to Local Media TV Chicago, LLC (W40CN-D) from Barbara A. Kreisman, Chief, Video Division (Oct. 16, 2020) (*Local Media*) (granting section 312(g) relief where station was subject to unanticipated construction delays, including due to compliance with local building codes) on file at LMS File No. 0000121554; and Letter to

In light of the fact that STI's Request as originally filed failed to provide sufficient detail to grant reinstatement of the license and a further extension, Video Division staff, in March 2022, contacted STI and requested that it submit additional information to support its Request.²³ In an amendment filed April 21, 2022, STI included a timeline of the steps it has taken since the Station went silent to complete construction of the displacement facilities.²⁴ The timeline includes very limited information and general statements about STI's construction efforts.²⁵ For example, on November 25, 2019, the date the Station went silent, STI simply states "Construction plan is to rebuild when a facility being built by Epic Wireless is complete in Summer 2020."²⁶ The next entry is three months later on February 19, 2020, when STI mentions that it received an update from the tower owner on the local permitting process and that it confirmed its continued interest in using its site.²⁷

The next entry on STI's timeline is not until almost a year later. On January 28, 2021 – over two months after its license had already automatically expired – STI notes that its chief engineer corresponded with the tower owner and was informed that local approval was received and that a lease with the U.S. Forest Service was being negotiated.²⁸ Not until almost thirteen months later in March 2022 – and nearly 16 months after the Station's license expired – STI once again contacted the tower owner to determine why the tower had not been constructed in the Summer of 2021.²⁹ STI states that it was informed by the tower owner that the tower would be completed in the Summer of 2022.³⁰ STI provides no explanation or documentation for why construction of the third party tower was delayed, no explanation for the long periods where it failed to learn the status of the tower project, no evidence of any effort to identify alternative facilities to resume broadcasting, and no reference or request for relief related to the Station's expired Displacement CP.

As for construction required to complete the contemplated facility, STI states that it still must coordinate installation of the Station's facilities with another wireless company that will be on the tower,

Sanford Broadcasting Group, Inc. (WBFT-CD) from Barbara A. Kreisman, Chief, Video Division (Aug. 14, 2020) (*Sanford*) (granting section 312(g) relief where station was subject to unanticipated delays in receipt of equipment and in obtaining required local permits), on file at LMS File No. 0000116294. W40CN-D now goes by call sign W27EB-D, but for purposes of this letter it will be referred to as W40CN-D.

²³ See Email to Nancy Ory, Esq., counsel for STI, from Shaun Maher, Attorney Advisor, Video Division (Mar. 8, 2022), a copy of which is available at LMS File No. 0000136502. STI was asked to supply the following information: (1) since the station went silent 11/25/19, a detailed accounting of all steps taken to resume operations including specific dates for each action and supporting documentation; (2) since the station went silent, a detailed accounting of any and all compelling circumstances outside of the Station's control that prevented the resumption of service including specific dates of each circumstance and supporting documentation (and describe how such circumstance(s) directly impacted the resumption of service; (3) and a detailed accounting of what construction remains and a timeline plan of how and when the Station expects to complete construction and begin operations.

²⁴ See LMS File No. 0000136502, amendment filed April 21, 2022 (Amendment).

²⁵ *Id.* at 2.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

order a transmitter and antenna for the displacement channel, hire a tower installation crew, and then complete installation after the new tower is complete in the Summer of 2022. STI did not provide a clear timeline for completing those steps or a precise date by which it expects the construction project to be complete and the Station to resume broadcasting.

Discussion. Upon review of the facts and circumstances presented, we find that the Station's license has automatically expired pursuant to section 312(g) of the Act. STI has failed to adequately demonstrate that its failure to return the Station to air before its one-year silent deadline was due to compelling circumstances beyond the licensee's control and that reinstatement is not warranted under the "equity and fairness" provision of section 312(g) of the Act.

We conclude that the Station's extended silence was a direct result of inaction on the part of STI and its own voluntary business decisions. Notably absent from STI's timeline of construction is any progress to construct the Station's digital displacement facilities or consideration of alternatives to return the Station to broadcast operations, such as the construction of temporary facilities or finding a new tower site for the Station's permanent operations. Since November 2019 when STI made the decision to locate the Station's displacement facilities onto a new, unconstructed tower, STI does not appear to have made any substantive progress towards actually completing construction of its displacement facility or even beginning such construction. For example, it has not provided any evidence that it has ordered equipment, hired or even engaged with any necessary installation crews, or with the exception of its limited communication with its prospective tower owner, undertaken any of the preparatory steps required for installation of a facility. Other than a generalized estimate that STI expects that the tower would be complete in the summer 2022, the submission provides no clear timeline or plan for actually completing construction of the Station's transmission facility or resuming broadcast operations. STI argues that it could not control its construction schedule because its proposed tower location was being built by a third party. However, we view such a decision to locate the Station's displacement facilities on a tower structure that has yet to be built (over four years after being issued a Displacement CP and nearly three years after going silent) as a voluntary decision on STI's part not to seek alternatives to return the Station to broadcast operations. It also does not foreclose STI from taking other action in anticipation of construction of the tower. We have previously determined that voluntary business judgments do not warrant reinstatement or extension of a station's license under section 312(g) of the Act. Further, STI has not explained why, considering the largely nonexistent progress that was being made to construct its new tower, it did not find an alternative location for the Station to operate from, even if temporarily, to avoid such an extended period of silence.³¹ While STI may not have had direct control over the construction of the new tower, it certainly had control over its ability to evaluate the situation and undertake prudent efforts to ensure its license remained valid.

Furthermore, other than making general claims that construction was delayed by the COVID-19 pandemic and various permitting issues, STI is unable to show any compelling circumstances that prevented construction for now over four years. Despite being asked to supplement its Request, STI only provided a brief timeline and limited documentation on the steps it had taken. It provided no information on the delays it encountered and how the COVID-19 pandemic directly impacted its efforts. In order to find the compelling circumstances prevented the Station from resuming operations, STI should have included documentation demonstrating the specific steps it had taken to complete construction, resume operation, and how circumstances outside of its control had impacted the specific efforts that it attempted

³¹ We note that the Station's Displacement CP has expired and were we to extend the Station's license, STI would need to obtain a new construction permit for its proposed displacement facilities on channel 16.

to undertake. For example, STI could have provided evidence of how COVID-19 or some other obstacle directly prevented the third party tower owner from timely building its new tower. Similarly, STI makes vague references to delays in the local permitting process but provides no details or documentation to support these claims, such as what permits were required, whether and when they were requested, how the absence of any permits prevented construction of the facility or the Station from being able to resume operation, what was the precise cause of any permitting delay, and what efforts were being taken by STI in light of the delays.

Finally, as for STI's claims that prior Media Bureau precedent support grant of its Request, we disagree.³² In both the case of *Local Media* (W40CN-D) and *Sanford* (WBFT-CD) cited by STI in its Request, the stations had undertaken diligent and significant construction efforts at the time of their requests.³³ They fully explained the efforts that had been undertaken and the efforts that remained to complete construction. In fact, both licensees were able to complete construction of their facilities even in the midst of the early months of the COVID-19 pandemic.³⁴ Here, STI has failed to provide any detailed explanation as to why it has not made any notable progress since November 2019 to return its Station to the air or towards completing construction. Therefore, we conclude that a different result is called for in this case.

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

Accordingly, the request to reinstate and extend license filed by Sarkes Tarzian, Inc. for K40JV-D, Stateline, etc., Nevada **IS DENIED**. Further, the license of K40JV-D, Stateline, etc., Nevada **IS CANCELLED**,³⁵ and its call sign **DELETED**. All authority to operate the Station **IS TERMINATED**.³⁶ All pending applications **ARE DISMISSED**.

Furthermore, we note that STI previously submitted eligibility information to the TV Broadcaster Relocation Fund for the Station.³⁷ The final invoice filing deadline for the Fund was September 6, 2022 and STI did not file any request for extension prior to that deadline. Because the Displacement CP expired on

³² See Request at 2.

³³ *Local Media* and *Sanford*, *supra* at n. 21.

³⁴ WBFT-CD completed construction and filed a license to cover on October 14, 2020. See LMS File No. 0000124673 (granted Oct. 19, 2020). W40CN-D completed construction and filed a license to cover on November 23, 2020. See LMS File No. 0000126802 (granted Nov. 24, 2020). Following grant of its license to cover, W40CN-D was forced to go silent due to electrical issues. See LMS File No. 0000130079. It promptly resumed operation pursuant to the technical parameters of its license on January 18, 2021. See LMS File No. 0000131667.

³⁵ CDBS File No. BLDTT-20070926ALN.

³⁶ We remind STI that it must continue to adhere to the requirements in the former station's authorization pertaining to lighting of antenna structures. See 47 U.S.C. §303(q); 47 CFR §§17.1 *et seq.*, 73.1213 and 73.1740(a)(4). See also *Streamlining the Commission's Antenna Structure Clearance Procedure*, Report and Order, 11 FCC Rcd 4272, 4293 (1995) (tower owner bears primary responsibility for maintaining tower painting and/or lighting).

³⁷ See LMS File No. 0000088073.

September 14, 2021 and the Station's license has been canceled, it is no longer eligible for the program.³⁸

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Nancy Ory, Esq.

³⁸ See *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 34 FCC Rcd 1690, 1704, para. 26 (2019).