



Federal Communications Commission
Washington, D.C. 20554

October 17, 2022

Sent via Certified Mail and Electronic Mail

Channel 51 of San Diego, Inc.
4575 Viewridge Avenue
San Diego, CA 92123
swift@kusi.com

Re: Request for Reinstatement and
Extension of License and Silent
Authority
K12PO, Temecula, CA
Facility ID No. 41601
LMS File No. 0000185014

Dear Licensee:

This concerns a request to reinstate and extend license and silent authority (Request), as amended, filed by Channel 51 of San Diego, Inc. (CSD), licensee of low power television (LPTV) station K12PO, Temecula, California (K12PO or Station). For reasons set forth below, we grant the Request, waive all applicable rules, reinstate and extend the Station's license, and grant it silent authority to May 12, 2023.

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

K12PO is an LPTV station whose channel 12 facilities were displaced by the Incentive Auction and repacking process when full power station KDOC-TV, Anaheim, California, was repacked to channel 12. KDOC-TV began operating on its repacked channel 12 on March 19, 2019⁹ and, as a result, the Station has been silent since March 15, 2019.¹⁰ In 2018, the Station filed a displacement application requesting a construction permit for channel 15.¹¹ Due to the potential for interference to land mobile radio facilities, the Commission was unable to grant the application for channel 15. The Station subsequently filed an application and was granted a construction permit for displacement to channel 3 on May 14, 2020 (Displacement CP).¹²

In December 2021, in conjunction with a review of the status of the Station's construction of the Displacement CP facilities, the Video Division sent CSD a letter inquiring as to the Station's operational

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. 0000068601.

¹⁰ *See* LMS File No. 0000070343.

¹¹ *See* LMS File No. 0000052518.

¹² *See* LMS File No. 0000106809. The displacement application was assigned a construction permit expiration date of May 12, 2023.

status.¹³ Specifically, the Video Division noted that, based on Commission records, it appeared the Station may have been silent for more than one year and the Station was afforded 30 days to provide evidence that the Video Division's information is incorrect and that, in fact, the Station had either not been silent for more than one year or went silent but returned to the air with authorized facilities prior to its one-year silent anniversary.¹⁴

On January 20, 2022, CSD submitted its Response to the Inquiry Letter.¹⁵ CSD acknowledged that the Station had been silent since March 15, 2019 when it was forced to go silent as a result of KDOC-TV commencing operations on its repacked channel 12.¹⁶ CSD recounted how the Station had been displaced by the Incentive Auction and repacking process and initially attempted to obtain channel 15 as the Station's digital displacement channel.¹⁷ CSD also outlined the issues it had with respect to that application and land mobile radio (LMR) interference and how it ultimately decided to file instead for digital displacement channel 3 in March 2020, an application that the Commission granted in May 2020.¹⁸ CSD argued that "equity and fairness weigh heavily in favor" of allowing CSD to construct its digital displacement facilities on channel 3.¹⁹

On April 11, 2022, CSD supplemented its Response explaining the various construction challenges CSD has faced following grant of its channel 3 displacement application.²⁰ For example, CSD noted the delays it encountered ordering its antenna and transmitter.²¹ Their supplement also highlighted specific obstacles regarding the Station's tower and delays in construction the necessary structural analyses due to backlogs involving approved of tower engineers that the Station's tower owner would permit to conduct such work.²²

¹³ See Letter to Channel 51 of San Diego, Inc., from Barbara A. Kreisman, Chief, Video Division (Dec. 21, 2021) (Inquiry Letter), a copy of which is available on LMS at the K12PO main station page, Facility ID No. 41601.

¹⁴ *Id.*

¹⁵ See Letter to Marlene H Dortch, Secretary, Federal Communications Commission from Channel 51 of San Diego, Inc. (Jan. 20, 2022) (Response), a copy of which is available on LMS at the K12PO main station record, Facility ID No. 41601.

¹⁶ Response at 1. We note that, in October 2019, six months after the Station was forced to go silent on channel 12, and while its channel 15 displacement application remained pending, CSD filed a paper copy of a document styled "Request For Tolling or Waiver Regarding Section 74.15(f) of the Commission's Rules" (2019 Request For Tolling)." A copy of this October 2019 paper filing was not received by staff when filed, but a copy was included as an attachment to the Response. In that filing, CSD asked that the Commission toll or waive the provision of its rules that provides for an automatic expiration of a station's license upon failure to transmit a signal for 12 consecutive months. See 47 CFR § 74.15(f).

¹⁷ Response at 1-2.

¹⁸ *Id.*

¹⁹ *Id.*, at 3.

²⁰ See Amendment to LMS File No. 0000185014 filed April 11, 2022 (Supplement).

²¹ *Id.*

²² *Id.*

In a further supplement to its Response filed on September 6, 2022,²³ CSD provided both a detailed timeline of the efforts it has undertaken since grant of the Displacement CP, but also provided an update on its efforts since its last filing to complete construction of the Station's displacement facilities and the additional delays outside of its control it encountered.²⁴ For example, CSD cites to emails from the Station's tower owner that not only detail all of CSD's efforts to coordinate installation of the Station's equipment, but highlight various installation delays that have been encountered.²⁵ CSD reports that in May 2022 it was alerted by the owner of the Station's proposed tower that the structural analysis of the Station's use of the tower had failed.²⁶ In July and August 2022, CSD documents that it encountered delays obtaining the required building permits from the City of Riverside, California for the installation of the Station's equipment at its proposed tower location.²⁷ Finally, in early September 2022, CSD reports that, upon unpacking the Station's new antenna, it discovered that the antenna was damaged. CSD states that it is working with its antenna manufacturer to make the necessary repairs.²⁸

In a third supplement, filed on October 6, 2022, CDS states that its antenna manufacturer has reported that its damaged antenna is "beyond repair" and that a new antenna must be manufactured.²⁹ While the re-manufactured of the antenna is being prioritized by the antenna manufacturer, the replacement requires parts only found in Italy.³⁰ At last report, those parts were expected to arrive to the manufacturer from Italy in early October.³¹ Through its counsel, CSD has informed Video Divisions staff that it estimates that its antenna can be re-manufactured, shipped back to it and the station can be constructed before the expiration date of the Displacement CP in May 2023.

In the interim, CSD has sought special temporary authority to immediately resume operation from a temporary facility on channel 3 while construction of its permanent displacement facility is completed.³² CSD estimates that it can have the temporary facility operating within one week of grant of the STA.³³ CSD asserts that it has "acted in good faith to restore service the residents of Temecula."³⁴ and based on the unique facts and circumstances reinstatement and extension if the Station's license is warranted.

Discussion. Upon review of the unique facts and circumstances presented, we find that CSD's request for reinstatement and extension of license and silent authority pursuant to section 312(g) satisfies the requirements of section 312(g) as described in the *Incentive Auction R&O*, the *Post-Incentive Auction Procedures PN*, and the *Special Displacement Window PN*, and is in the public interest. Consistent with

²³ See Amendment to LMS File No. 0000185014 filed April Sept. 6, 2022 (Second Supplement).

²⁴ *Id.* at 1-7.

²⁵ *Id.*

²⁶ *Id.* at 5.

²⁷ *Id.* at 6-7.

²⁸ *Id.* at 7.

²⁹ See Amendment to LMS File No. 0000185014 filed October 7, 2022 (Third Supplement).

³⁰ *Id.* at 1.

³¹ *Id.*

³² See LMS File No. 0000195120.

³³ Third Supplement at 1.

³⁴ Response at 4.

the public interest, we will provide section 312(g) relief to displaced LPTV and TV translator stations that are forced off the air by circumstances beyond their control. K12PO was displaced by the Incentive Auction and repacking process and its efforts to resume operation and complete construction have been hindered by issues related to potential LMR interference, as well documented tower siting, equipment manufacturing, and equipment installation delays. For similar reasons, we find that CSD has met the standard for extension of the Station's silent authority.

Accordingly, we find that in order to promote fairness and equity the request filed by Channel 51 of San Diego, Inc. **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,³⁵ and the license and silent authority for K12PO, Temecula, California, **IS REINSTATED AND EXTENDED to May 12, 2023**. Further, the request filed by Channel 51 of San Diego, Inc. for special temporary authority (LMS File No. 0000195120) for K12PO, Temecula, California, **IS GRANTED**. We remind CSD that another request for extension of the Station's license under the equity and fairness provision of section 312(g) will not be favorably viewed unless accompanied by a showing that completion of the Station's displacement facilities was prevented by additional compelling circumstances. CSD must also include with any such request(s) a detailed plan for completing construction and returning the Station to operation.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Howard Lieberman, Esq.

³⁵ 47 CFR §§ 74.15(f) and 74.763(c).