



Federal Communications Commission
Washington, D.C. 20554

November 17, 2023

SENT VIA CERTIFIED MAIL AND ELECTRONIC MAIL

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In re: KUHD-LD, Camarillo, CA
Facility ID No. 67963
LMS File No. 0000185074
License Cancellation

Dear Licensee:

This letter is to inform you that the license of Station KUHD-LD, Camarillo, California (Station), licensed to Obidia Porras (Porras), has automatically expired pursuant to section 312(g) of the Communications Act of 1934, as amended (Act),¹ its license has been cancelled and its call sign has been deleted. On independent and alternative grounds, the Station's construction permit has been forfeited and its analog license has expired.

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."² 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.³ For example, the Commission has granted section 312(g) relief to stations whose facilities were destroyed by natural disasters such as hurricanes;⁴ where silence was necessary in furtherance of public safety,⁵ where

¹ 47 U.S.C. § 312(g).

² *Id.* See also 47 CFR § 74.15(f).

³ See *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617, para. 27 (2008) (*A-O Broad.*) ("This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited").

⁴ *V.I. Stereo Communications Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259, 14262, para. 8 (2006) (reinstating license where silence due to destruction of towers in hurricanes).

⁵ *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).

reinstatement of the station's license was necessitated by court order;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

Furthermore, section 74.788(b) of the Commission's rules (Rules) states that if a construction permit for an incomplete facility that not extended, it "shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission."⁹ In addition, section 74.790(m) of the Rules required that all low power television stations cease analog operations as of July 13, 2021, and their analog licenses shall "automatically cancel at that time without any affirmative action by the Commission."¹⁰ Therefore, any station that had not completed construction of a digital facility was required to go silent on that date and analog operations were unauthorized.

Station History. The Station was a licensed LPTV station whose digital companion channel 44 was displaced by the Incentive Auction and repacking process. On July 9, 2021, the Station obtained a construction permit to flash-cut to digital on its analog channel 6,¹¹ surrendered its prior digital facility,¹² and, because it had not yet converted to digital, was assigned an expiration date of July 13, 2021 (Digital

⁶ *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).

⁷ *Universal Broadcasting of New York, Inc.*, Letter Order, 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* 47 CFR § 74.788 (2022). Effective October 24, 2022, 47 CFR § 74.788 of the Rules was eliminated and found by the Commission to be duplicative with 47 CFR § 73.3598 of the Rules. *See* 87 FR 58200, Oct. 24, 2022; *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations*, Order and Sixth Notice of Proposed Rulemaking, 37 FCC Rcd 8173 (2022) (*Parts 73 and 74 Amendment Order and NPRM*); 47 CFR § 74.780(bbb) (making 47 CFR § 73.3598 applicable to all TV translator and LPTV stations). At the time the violation at issue occurred, however, 47 CFR § 74.788 was in effect and to the extent necessary we find that the Station was also not constructed in accordance with 47 CFR § 73.3598.

¹⁰ 47 CFR § 74.790(m). Effective October 24, 2022, 47 CFR § 74.731(m) of the Rules was eliminated and the language from that rule moved to 47 CFR § 74.790(m). *See* 87 FR 58200, Oct. 24, 2022; *Update of Parts 73 and 74 Amendment Order and NPRM*, 37 FCC Rcd 8173.

¹¹ *See* LMS File No. 0000150742 (Digital CP).

¹² *See* Withdrawal of License to Cover LMS File No. 0000004340.

CP).¹³ The Station ceased analog operations and went silent on July 13, 2021.¹⁴ The Station's construction permit was subsequently extended to January 10, 2022,¹⁵ and subsequently modified twice.¹⁶ The most recently-modified version of the Digital CP specifies that the facilities would be located on a free-standing tower located on Red Mountain in California at coordinates 34° 20' 55.0" N+ and 119° 20' 16.0" W- with a radiation center at 655.5 meters AMSL and an effective radiated power of 0.07 kW.

On January 10, 2022, Porras filed a request for waiver of the tolling rules (Tolling Waiver)¹⁷ seeking tolling of the Station's construction permit application for various reasons, including supply chain and resource constraints, construction delays, and the COVID-19 pandemic.¹⁸ On January 20, 2022, the Media Bureau's Video Division (Division) sent Porras a letter stating that it was unable to process the Tolling Waiver without additional information and providing Porras 30 days to amend (Deficiency Letter).¹⁹ The Division received no response to the Deficiency Letter.

In an application for license to cover filed February 18, 2022 (License Application), Porras specified parameters for the Station's construction on channel 6 identical to those specified in the Digital CP, as modified.²⁰ When asked to certify if the facility was "constructed as authorized in the underlying construction permit," Porras responded "yes."²¹ Porras further certified that "all terms, conditions, and obligations set forth in the underlying construction permit have been fully met" and "apart from changes already reported, no cause or circumstance has arisen since the grant of the underlying construction permit which would result in any statement or representation contained in the construction permit application to be now incorrect."²² Finally, Porras certified that "all statements made in this application and in the exhibits, attachments, or documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith."²³

On March 6, 2022, the Division received a complaint that the Station was not operational and had not been constructed as specified in the License Application. As a result, the Division initiated an investigation into the Station's operational status and whether it was constructed as authorized. On March 9, 2022, agents of the Enforcement Bureau's Field Office (EB), visited the transmitter site specified in the Digital CP and License Application and determined that the Station was off the air and no digital signal was measured on television TV channel 6. On March 10, 2022, agents spoke with the owner of the tower

¹³ See 47 CFR § 74.788(a).

¹⁴ See LMS File No. 0000153863.

¹⁵ See LMS File No. 0000152118.

¹⁶ See LMS File Nos. 0000177309 and 0000178227.

¹⁷ See LMS File No. 0000179601.

¹⁸ Tolling Waiver at 1.

¹⁹ See Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to Obidia Porras (Jan. 20, 2022) (Tolling Amendment Letter), a copy of which is available at LMS File No. 0000179601. The letter was sent via certified mail and USPS records indicate that it was received and signed by both Porras and her counsel on January 24, 2022. Copies of the mailing certificates and signature cards are available at LMS File No. 0000179601.

²⁰ LMS File No. 0000185074 (License Application).

²¹ See Application at License Certifications – Constructed Facility.

²² See Application at Legal Certifications – Obligations.

²³ See Application at Certification – General Certification Statements.

site who confirmed by email that as of that date there had not been any construction to date by the Station at the tower specified in the Digital CP and Application. On March 17 and 18, 2022, in a series of e-mails with Division staff, Porras through her counsel confirmed that the Station was constructed per the terms of the Digital CP, as modified.²⁴

The Division sent the Station a letter of inquiry (Inquiry Letter) directing it to provide evidence within 30 days supporting representations made in the Station's License Application that the Station was constructed as authorized in the Digital CP or provide further explanation.²⁵ The Division noted the potential inconsistencies in the Station's filings based on a complaint from a local resident alleging that the Station may not have been constructed as specified in its License Application. To date, no response has been received to the Inquiry Letter.

In addition, on August 15, 2022, Venture Technologies Group, LLC (Venture) filed an informal objection to the License Application alleging that "KUHD-LD was not constructed in accordance with its CP."²⁶ Venture states that a member of its engineering staff visited the KUHD-LD transmitter and "did not observe the antenna referenced in the CP at the site."²⁷ Venture further states that its representative also "did not receive a channel 6 signal at locations where he should have based on the specified operating parameters."²⁸ Finally, Venture maintains that a representative from the tower site specified in the Station's construction permit and Application "has confirmed that 'no KUHD equipment of any kind has been installed' at the tower site."²⁹

Discussion. Given the above referenced facts, we conclude that the Station has been silent since July 13, 2021. Although the Station filed a license to cover application on February 18, 2022, it failed to respond to the Division's Inquiry Letter and provide support that the Station had in fact been constructed as certified in the License Application.³⁰ Based on the evidence before us, we find that the license automatically expired pursuant to section 312(g) of the Act³¹ on July 14, 2022.

On independent and alternative grounds, we find that due to Porras' failure to respond to the Deficiency Letter and Inquiry Letter, its request for waiver of the Commission's tolling rules is dismissed as deficient and its License Application is dismissed as improperly filed. As a result, we find the Station failed to complete construction by its construction permit expiration date, and its construction permit was

²⁴ Copies of these emails are available at LMS File No. 0000185074.

²⁵ See Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to Obidia Porras (Aug. 11, 2022), a copy of which is available at LMS File No. 0000185074. The letter was sent via certified mail and USPS records indicate that it was received by Porras and received and signed by Porras' counsel on August 13, 2022. Copies of the mailing certificate, signature card signed by Porras' counsel, and electronic confirmation that the letters was delivered to Porras, are available at LMS File No. 0000185074.

²⁶ See Informal Objection of Venture Technologies Group, LLC (Aug. 15, 2022) (Informal Objection), a copy of which is available at LMS File No. 0000185074.

²⁷ *Id.* at 3.

²⁸ *Id.*

²⁹ *Id.* at 3-4.

³⁰ See LMS File Nos. 0000179601 (Tolling Waiver), 0000185074 (License Application) and 0000196669 (Renewal Application).

³¹ 47 U.S.C. § 312(g).

automatically forfeited pursuant to section 74.788(b) of the Rules.³² While in its License Application Porras certifies that she completed construction of her facility – albeit after its construction permit deadline – the information in the record does not support that position. The Commission has a long-established policy of the “single, unified station license,” as part of the digital conversion process.³³ Therefore, because the Station’s license has been cancelled and its construction permit has been forfeited, there is no longer a valid facility to convert to digital.³⁴

Accordingly, we find that the Station’s license has automatically expired pursuant to section 312(g) of the Act and the license of low power television station KUHD-LD, Camarillo, California, **IS CANCELLED**, its call sign **DELETED**, and all pending applications **ARE DISMISSED**.³⁵ All authority to operate the Station **HAS BEEN TERMINATED**.³⁶

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

³² 47 CFR § 74.788(b)(2022).

³³ *See Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Second Report and Order, 26 FCC Rcd 10732, 10755, para. 48 (2011) *citing Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19390, n. 362 (2004) (stating that the Commission has always been clear that a station’s two “authorizations” are part of a single, unified license).

³⁴ *See 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, 36 FCC Rcd 9467, n. 4 (MB 2021); Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to County of San Bernardino (Nov. 4, 2021) available at LMS Station Facility Nos. 11537, 11539 and 43812.

³⁵ *See* LMS File Nos. 0000179601 (Tolling Waiver), 0000185074 (License Application) and 0000196669 (Renewal Application).

³⁶ We remind Porras that she 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).