

**Request for Waiver of 47 C.F.R. § 74.1263(e)
and
Exercise of Discretion under 47 U.S.C. § 312(g)**

Christian Heritage Broadcasting, Inc. (“CHBI”), licensee of three noncommercial educational FM stations and five translators, including K252DG, Facility Id. No. 77798, Sioux Falls, South Dakota, herein requests waiver of Section 74.1263(e) of the Commission’s Rules (“Rules”) and the exercise of the discretion afforded the Commission through Section 312(g) of the Communications Act of 1934, as amended (the “Act”, to permit K252DG to resume operations with the modified facilities specified in this application, notwithstanding that the station has been silent for a period of years.

Background. At some point prior to June 2009, K252DG went silent because the grain elevator that served as the translator’s transmitter site went out of business. Additionally, the licensee was no longer able to provide a signal to the translator. Exactly when the translator went silent is unknown.¹

In June 2009, the General Manager of CHBI submitted a letter to the Commission, addressed to the Office of the Secretary, seeking cancellation of the K252DG license. The Commission never responded to or acted upon that letter. K252DG is currently listed in CDDBS as “licensed.”

¹ CHBI herein also requests waiver Section 74.1263 (c) of the Rules to excuse any failure to notify the Commission of the discontinuance of K252DG’s operations.

CHBI has been approached by Backyard Broadcasting South Dakota Licensee, LLC (“Backyard”), the licensee of Station KWSN (AM), Sioux Falls, South Dakota, to enter into an arrangement whereby K252DG would serve as a fill-in translator to rebroadcast the programming of KWSN. Such an arrangement would require relocation of the translator and resumption of its operation. This application and this waiver request are being filed to gain authorization to take those actions.²

Public Interest Showing. In 2009, the Commission authorized, under certain conditions, the use of FM translators to rebroadcast the signals of a local AM stations. *Amendment to Service Eligibility for FM Translator Stations*, Report and Order, 24 FCC Rcd 9642 (2009). Recently, the Chief of the Audio Division termed this deregulatory measure “an unqualified success.” *The Cromwell Group, Inc. of Illinois*, Letter Decision, 26 FCC Rcd 12685, 12689 (Chief, Audio Div., 2011) (hereinafter “*Cromwell*”). The Commission itself has said that the use of FM translators to rebroadcast AM stations “has proven to be a very successful deregulatory policy.” *Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Third Further Notice of Proposed Rule Making, FCC 11-105 (rel. July 12, 2011) (“*Third Further Notice*”) at p.15. The Commission further noted that “[a]necdotal reports from many AM licenses repeatedly emphasize their vastly increased ability to cover local community, governmental and school events, and, generally, to better serve the needs of their community.” *Id.*

² The parties anticipate that at some point, CHBI will seek Commission consent to assign K252DG to Backyard. Such an application is not pending as of this time.

The restoration of K252DG to operational status represents the best, and very likely only, opportunity in the foreseeable future to permit Station KWSN to be rebroadcast on an FM translator and thereby significantly better serve the needs of Sioux Falls.

Importantly, allowing K252DG to return to operation will not run counter to the objective of ensuring that Low Power FM licenses are available in all markets. Sioux Falls is not in an Arbitron market and not otherwise identified in the *Third Further Notice* as a spectrum-limited market. Clearly, Sioux Falls will continue to have enough available channels to provide a meaningful opportunity to prospective LPFM operators to file applications in the upcoming LPFM window to serve the community.

Also importantly, the proposed relocation, which qualifies as a minor change under Section 74.1233(a) of the Rules, is not the first in a series of “hops.” The proposed transmitter site will be the ultimate location of translator for the foreseeable future.

CHBI acknowledges, as it must, that K252DG has been silent for more than 12 months. Although Section 312(g) of the Act deems the license of a station that has been silent for 12 month to be expired, it gives the Commission discretion to reinstate an expired license. Specifically, Section 312(g) provides that the Commission “may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any reason to promote equity and fairness.”

In this case, CHBI urges that it would be equitable and fair to allow the restoration of service by K252DG because it would facilitate the rebroadcast of Backyard's KWSN (AM) on this FM translator and thereby allow KWSN to better serve the needs of Sioux Falls. A waiver is appropriate "if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule." *Cromwell*, 26 FCC Rcd at 12686 (citations omitted). In this instance, strict adherence to the rule will result in KWSN not being rebroadcast on a FM translator for the foreseeable future. Given the particular circumstances present here, the public interest benefit that would result from grant of this waiver request outweighs any incremental harm that might be done to the policy against the "warehousing" of spectrum underlying Section 312(g) of the Act and Section 74.1263(e) of the Rules. CHBI was not warehousing spectrum. Indeed, it found that it could not use K252DG and took steps to have the Commission cancel the license. Now, an excellent use for the translator has been found. CHBI asks the Commission to permit that use rather than simply kill off this translator.