



Federal Communications Commission
Washington, D.C. 20554

January 17, 2018

In Reply Refer to: 1800B3-VM

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Jake Chavez
Kern Community Radio Inc.
1908 Jessie St.
Bakersfield CA 93305

In re: KSVG(FM), Mettler, CA
Facility ID No. 172976
Silent since December 1, 2016

**Notification of License Expiration and
Deletion of Call Letters**

Dear Mr. Chavez:

Our records indicate that Station KSVG(FM), Mettler, California (Station), licensed to Kern Community Radio Inc. (KCR), has been silent or operating with unauthorized facilities since December 1, 2016.¹ On July 25, 2017, the Enforcement Bureau's Regional Director held that the Station had violated 47 CFR §§ 73.1350(a), 73.1560(d), and 11.52(d)(1) of the Commission's Rules by operating with unauthorized facilities.² KCR's Response to NOV admitted the violations, and confirmed that the Station went silent on December 1, 2016, that all broadcasts subsequent to that date were from an unauthorized location at reduced power, and that they were operating with a noncompliant EAS source.³

Section 312(g) of the Communications Act of 1934, as amended (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 the such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness."⁴ Well-established Commission precedent dictates that licensees cannot avoid the statutory deadline set forth in Section 312(g) through the use of unauthorized facilities.⁵ Thus, a station is subject

¹ See *Kern Community Radio Inc.*, Notice of Violation, File No. EB-FIELDWR-17-00024250 (EB, Regional Director, Region Three, July 25, 2017) (NOV); Response of Kern Community Radio to NOV, Sept 6, 2017 (Response to NOV).

² NOV at 1-2.

³ Response to NOV at 3; Declarations of Jake Chavez and Gregory Noel Looney at 2.

⁴ 47 U.S.C. § 312(g). The Commission conducts a case-by-case factual analysis to determine whether reinstatement would "promote equity and fairness." *Id.* The Commission has exercised this statutory discretion only when the failure to timely resume broadcasts was for a compelling reason beyond the licensee's control. See, e.g., *V.I. Stereo Commc'n Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006) (destruction of towers in hurricane and damage to rebuilt tower in subsequent hurricane); *Harry Martin, Esq.*, Letter Order, 23 FCC Rcd 15012 (MB 2008) (licensee completed all steps to resume broadcasts but remained silent to promote air safety due to Federal Aviation Administration error for which licensee was not responsible); *Mark Chapman, Court-Appointed Agent*, Letter Order, 22 FCC Rcd 6578 (MB 2007) (silence to comply with court order).

⁵ See *Eagle Broad. Group, Ltd.*, 563 F.3d 543, 553 (D.C. Cir. 2009) ("Under the statute, unauthorized and unlicensed transmissions are no better than silence"); see also *James McCluskey*, Letter Order, 27 FCC Rcd 6252, 6254-55 (MB 2012) ("an unauthorized transmission counts for nothing").

to Section 312(g)'s license expiration provision if: (a) the station fails to operate for twelve consecutive months or longer; (b) the station operates with unauthorized facilities for such a period; or (c) a combination of the prior two situations occurs for such a period.⁶

Based on the admissions in the Response to NOV, we find that the Station's license has expired pursuant to this provision of the Act. We also find that the facts of this case do not support reinstatement of the license to promote fairness and equity.

In this case, we note that KCR has submitted a list of mitigation factors in response to the NOV.⁷ We recognize that this list is responsive to the possible forfeiture that KCR was expecting to be imposed for its violations, had it resumed the Station's operation pursuant to an FCC authorization. However, considering the outcome herein, we wish to address the impact of these factors on our determination that the Station's license expired as a matter of law pursuant to Section 312(g) of the Act. Here, despite the mitigation factors presented in the Response to NOV, the decision to resume operation with unauthorized facilities was consciously made by the licensee and was not compelled by circumstances beyond its control. The Commission has consistently declined to exercise its Section 312(g) discretion when, as here, station silence is the result of a licensee's own inaction and exercise of business judgment.⁸

Accordingly, the Commission's public and internal databases have been modified to indicate that the broadcast license for the Station⁹ EXPIRED as a matter of law, at 12:01 a.m. on December 2, 2017, and we HEREBY DELETE the Station's call sign KSVG.

Finally, we note that it is imperative to the safety of air navigation that any prescribed painting and illumination of the Station's tower be maintained until the tower is dismantled. Accordingly, the owner of the tower where the Station's transmitting antenna is located is required, pursuant to Section 303(q) of the Act, to maintain the tower in the manner prescribed by our rules and the terms of the cancelled license.¹⁰

Sincerely,


Peter H. Doyle

Chief, Audio Division

Media Bureau

cc: Michael Couzens, Esq.

⁶ *Id.*

⁷ Response to NOV at 4. These are: 1) lack of any previous history of violations; 2) full cooperation extended to EB field investigators; 3) no concealment or dishonesty; 4) lack of third party complaint regarding the unauthorized transmissions; 5) no record of interference or public hazard; 6) small, financially struggling rural public radio station; 7) desire (albeit mistaken given the methods chosen) to preserve the continuity of broadcast service to the public. However, the Response to NOV fails to explain why KCR elected not to seek FCC approval to operate with modified facilities, either pursuant to special temporary authority or a modification application. See 47 CFR §§ 73.1635, 73.1690, and 73.1745(a).

⁸ See *WJBW, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 2301, 2305 (2017).

⁹ File No. BLFT-20070220AAO.

¹⁰ See 47 U.S.C. §303(q). See also 47 CFR §§ 17.1 *et seq.* and 73.1213; *Streamlining the Commission's Antenna Structure Clearance Procedure*, WT Docket No. 95-5, 11 FCC Rcd 4272 (1995).