

From: [Victoria McCauley](#)
To: [mike couzens](#); [Joseph Szczesny](#)
Cc: [Kevin Astor](#); [Tom Hutton](#); [Albert Shuldiner](#)
Subject: RE: Silent Status of KFSD (AM) Facility ID No 49205
Date: Wednesday, May 13, 2020 4:09:00 PM
Attachments: [image001.png](#)

Dear Mr. Couzens,

Al Shuldiner and Tom Hutton have asked me to respond to your email. They are copied here.

We have reviewed your filing requesting a “waiver” of section 312(g) of the Communications Act of 1934, as amended (Act). We note that we cannot “waive” the statute. Rather, we will treat the filing as a request for the Commission to exercise its discretion under section 312(g) to extend or reinstate an expired license “to promote equity and fairness.”

In order to proceed with an appropriate record, we require additional documentation and proof that the licensee had taken tangible steps to get the station back on the air prior to the national emergency and a more specific explanation of what prevents them from getting the station back on the air, given that broadcast stations are deemed essential facilities.

The Commission’s discretion under section 312(g) is severely limited (*A-O Broad. Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617, para.27 (2008) (“This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited”)). The Commission has exercised its authority to reinstate an expired license to “promote equity and fairness” only where the station failed to provide service for 12 consecutive months due to compelling reasons beyond the licensee’s control. (See, e.g., *V.I. Stereo Commc’ns Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006)(hurricane destruction); *Community Bible Church*, Letter, 23 FCC Rcd 15012, 15014 (MB 2008) (FCC and FAA records contained incorrect tower information); *Mark Chapman, Court-Appointed Agent*, Letter, 22 FCC Rcd 6578 (MB 2007) (compliance with a court order). Conversely, the Commission has declined to reinstate licenses where the failure to transmit a broadcast signal was due to the licensee’s own actions, finances, and/or business judgments (See, e.g., *A-O Broad.*, 23 FCC Rcd 608 (failure to complete construction at an alternate site); *ETC Communications, Inc.*, Letter, 25 FCC Rcd 10686 (MB 2010) (chose not to operate station while offering it for sale); *Kirby Young*, Letter, 23 FCC Rcd 35 (MB 2008) (not financially able to restore operations after transmitter failed). See also *Kingdom of God*, Letter, 29 FCC Rcd 11589 (MB 2014) (failure to promptly find a permanent and suitable transmitter site)).

In your request, you state that , in view of the COVID-19 travel restriction, installation personnel are not available. You also state that equipment is not available because transmitter manufacturers in Italy and Canada are either closed or are not operating at full capacity, and that necessary chip sets have become unavailable from China or Indonesia. You allege that the licensee was being diligent and that it had found a buyer who could assist with restoring the Station to the air. You state that the neither the licensee nor the prospective purchaser has any ability to implement a construction project at this time because of COVID-19.

Your allegations in support of your inability to return to the air are vague and unspecific and do not provide us enough information to make a determination at this time. We note that the reason for silence in the last year was that the licensee was financially unable to continue operation of the station. Please outline specifically how the COVID-19 emergency prevents the station from resuming operation before the license expires. This showing must show what is needed to return to the air, including efforts you have made to hire installation personnel. It must also show that you have been unable to attain the services of critical personnel because of travel restrictions. In addition, it must include documentation that the equipment you require has been sought for purchase and is unavailable. If any equipment has been ordered, please include the documentation to show delays in shipment and the expected arrival.

You must also show what efforts the licensee made to resume operation prior to the COVID-19 emergency. Please provide proof of all tangible steps taken to return the station to air prior to the state of emergency. These steps include: 1) specific efforts to secure financing or a buyer to return the station to the air; 2) a list of the necessary equipment on hand or on order; 3) arrangements for the equipment to be installed at the new site.

If any of these cannot be provided, please explain the reason.

Sincerely,

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From: mike couzens <cuz@well.com>

Sent: Monday, May 11, 2020 3:44 PM

To: Joseph Szczesny <Joseph.Szczesny@fcc.gov>; Victoria McCauley <Victoria.McCauley@fcc.gov>

Cc: Kevin Astor <kevinastor@gmail.com>

Subject: Silent Status of KFSD (AM) Facility ID No 49205

I represent North County Broadcasting Corp. whose KFSD is under silent authority expiring on June 2 to match the anniversary date of the station being off the air, June 1, 2020.

We acknowledge your e-mail of May 8, stating that unless a resumption notice is given, the station's choices would be to obtain authorization to resume at reduced facilities or to have the license terminated by operation of law.

I am writing to inquire whether, instead, a new six-month silent STA could be granted, including a waiver of Section 312(g) of the Communications Act.

Good cause is shown because I am informed and represent that, in view of the COVID-19 travel restriction, installation personnel are not available. One major installer, Bill Barrow, informed me that he has traveled 300,000 miles in the past year but now has had to stop travel completely. Several of the transmitter manufacturers are in Italy, and those sources have dried up. A Canadian

transmitter manufacturer, Bob Gullon, told me that their factory has reopened with only with limited capacity, and that necessary chip sets have become unavailable, from China or from Indonesia.

The KFSD licensee was being diligent. It entered into advanced discussions with a buyer in February, who would have assisted in placing the station back on the air. These talks became stalled by the onset of the virus. They are now moot as far as the construction, because neither the licensee nor the prospective purchaser has any ability to implement a construction project at this time.

The statute (see attachment) does authorize the Commission to waive Section 312(g) for good cause. I am aware that waivers have rarely been granted in the past. But the COVID-19 pandemic places us in new territory. Please advise.

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