



Federal Communications Commission
Washington, D.C. 20554

DA 20-541
Released: May 22, 2020

G.I.G. of North Dakota, LLC
c/o Aaron P. Shainis, Esq.
Shainis & Peltzman, Chartered
1850 M Street NW
Suite 240
Washington, D.C. 20036

Gray Television Licensee, LLC
c/o Henry Wendel, Esq.
Cooley LLP
1299 Pennsylvania Ave. NW
Suite 700
Washington, D.C. 20004

Parker Broadcasting of Dakota License, LLC
c/o Davina Sashkin, Esq.
Fletcher, Heald & Hildreth, PLC
1300 N. 17th Street
11th Floor
Arlington, VA 22209

Re: DKCPM(TV), Grand Forks, ND,
Facility ID No. 86208

Counsel:

The Media Bureau (Bureau) has before it a Petition for Reconsideration (G.I.G. Petition),¹ timely filed by G.I.G. of North Dakota, LLC (G.I.G. or Petitioner), the former licensee of full power television station DKCPM(TV), Grand Forks, North Dakota (Station or KCPM). The G.I.G. Petition seeks reconsideration of the Video Division's (Division) March 9, 2020 letter cancelling KCPM's license due to the automatic expiration provision of Section 312(g) of the Communications Act of 1934, as amended (the Act). Gray Television Licensee, LLC (Gray), filed a "Comment," which requests reinstatement and grant of

¹ Petition of G.I.G. of North Dakota, LLC for Reconsideration of the Division's March 9, 2020, letter, File No. BRCDT-20140401AOQ (filed Apr. 7, 2020) (G.I.G. Petition).

its previously dismissed assignment application where it sought to acquire KCPM from G.I.G.² Parker Broadcasting of Dakota License, LLC (Parker), filed an opposition to the G.I.G. Petition (Opposition),³ opposing the reinstatement of the license and the potential assignment of the Station. Thereafter, G.I.G. and Gray filed replies to Parker's Opposition,⁴ and Parker filed a Motion for Leave to Reply to Gray's Assignment Petition (Parker's Motion) simultaneously with its Reply to Gray's Assignment Petition (Parker's Reply).⁵ For the reasons stated below, the Bureau denies the G.I.G. Petition, and dismisses the Assignment Petition as procedurally defective and, on a separate and alternative basis, denies the arguments raised therein.⁶

Background. Section 312(g) of the Act provides that:

If 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

² Comments of Gray Television Licensee, LLC, File No. BRCDDT-20140401AOQ (filed Apr. 17, 2020) (Assignment Petition). Although entitled "Comments," no such designation exists in response to petitions for reconsideration in non-rulemaking proceedings. *See generally* 47 CFR § 1.106. Gray's "Comment" is, in effect, a petition for reconsideration of the dismissal of BALCDT-20180209ABJ (Assignment Application). We will treat it as such, and dismiss it as untimely filed. A petitioner cannot avoid filing deadlines by calling its petition something other than a petition for reconsideration when it, in effect, seeks reconsideration or review. *See Holy Family Oratory of St. Philip Neri*, Memorandum Opinion and Order, 29 FCC Rcd 13273, 13274, para. 5 (2014) (affirming Bureau dismissal of pleading styled "Emergency Petition to Rescind Construction Permit Grant" as an untimely petition for reconsideration); *Davina Sashkin, Esq.*, Letter Order, 27 FCC Rcd 2920, 2922 (MB 2012) ("Accepting such pleadings as a means to reopen long-final Commission actions would undercut the goals of administrative efficiency and finality that underlie the statutory limits on seeking reconsideration as well as fundamental fairness to the litigants involved."). This likewise extends to Gray's May 21, 2020 Supplement to its Assignment Petition, which requests the Commission "effectuate an executive order" by granting the Assignment Application. Supplements to petitions for reconsideration must be filed within 30 days of public notice of the underlying Commission action. *See* 47 CFR § 1.106(f). We, therefore, also dismiss the supplement as untimely filed. We alternatively deny the Supplement on substantive grounds. The Executive Order referenced in the Supplement, in an effort to spur recovery from the COVID-19 pandemic, requires the heads of all agencies to identify "regulatory standards that may inhibit economic recovery" and "consider taking appropriate action, consistent with applicable law," to "temporarily or permanently rescind, modify, waive, or exempt persons or entities from those requirements." *See* Executive Order on Regulatory Relief to Support Economic Recovery, 2020 WL 2538390 (May 19, 2020). As an initial matter, we find the application of the Executive Order inapplicable to this situation as DKCPM's license expired several years ago – well before the current pandemic. Moreover, we find that the Executive Order, by its language, does not apply in this instance given that the reinstatement of DKCPM's license would be inconsistent with applicable law, specifically section 312(g) of the Communications Act of 1934 (Act). *See infra* pgs. 6-8.

³ Opposition of Parker Broadcasting of Dakota License, LLC, to G.I.G.'s Petition for Reconsideration, File No. BRCDDT-20140401AOQ (filed Apr. 17, 2020) (Opposition).

⁴ G.I.G.'s Reply to Parker's Opposition to G.I.G.'s Petition for Reconsideration, File No. BRCDDT-20140401AOQ (filed Apr. 24, 2020) (G.I.G.'s Reply); Gray's Reply to the Opposition to Petition for Reconsideration, File No. BRCDDT-20140401AOQ (filed Apr. 24, 2020) (Gray's Reply).

⁵ Motion for Leave to Reply to Gray's Assignment Petition, File No. BRCDDT-20140401AOQ (filed Apr. 24, 2020) (Parker's Motion); Parker's Reply to Gray's Comments, File No. BRCDDT-20140401AOQ (filed Apr. 24, 2020) (Parker's Reply).

⁶ Pursuant to 47 CFR § 1.106, petitions for reconsideration are required to be filed within 30 days of the public notice of the Commission's final action. Accordingly, petitions for reconsideration of the Division's March 9, 2020 letter were required to be filed by April 9, 2020, however, Gray did not file its Assignment Petition until April 17, 2020.

to the contrary

Furthermore, section 312(g) permits reinstatement of a license only 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.”⁷ The Commission’s discretion under this statutory provision is limited.⁸

In its March 9, 2020 letter, the Division held that KCPM’s license had automatically expired as a matter of law pursuant to section 312(g) on December 16, 2015, because the Station was either silent or engaging in unauthorized operation since at least December 15, 2014.⁹ The Division further concluded that, to the extent G.I.G. claimed that the Station did not go silent until January 31, 2017, G.I.G. had insufficiently described the actions it took to resume operations on January 27, 2018.¹⁰ Specifically, in its responses to the Division’s April 30, 2019, Letter of Inquiry (LOI), G.I.G. stated that it lost access to its licensed site on December 15, 2014, for failing to pay rent and because of a “retransmission consent-related dispute” with the site owner.¹¹ The Division further found that G.I.G. had not regained access to its licensed site through at least March 27, 2018.¹² However, despite lacking access to its licensed site since 2014, G.I.G. did not file an engineering request for special temporary authority (STA) to operate KCPM at a temporary site until March 27, 2018.¹³

On April 7, 2020, G.I.G. timely filed the present Petition, which requests that KCPM’s license be reinstated, and that we subsequently grant its assignment application for KCPM to Gray. G.I.G. primarily argues that the Division did not consider the “equity and fairness” provision of section 312(g) in dismissing the license, and suggests that a new exception be made for the Station based on the *Second Thursday* doctrine, which allows for the assignment of basic qualification-challenged stations in certain

⁷ 47 U.S.C. § 312(g).

⁸ See *A-O Broadcasting Corp., Memorandum Opinion and Order*, 23 FCC Rcd 603, 617 (2008) (*A-O Broadcasting*) (“This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited.”).

⁹ *Letter from Barbara Kreisman, Chief, Video Division to KCPM(TV), Grand Forks, North Dakota*, Letter Order (Mar. 9, 2020) (Letter).

¹⁰ Letter at 3. For example, when asked to provide utility bills or proof of payment associated with operating KCPM since January 1, 2013, G.I.G. contended that “[d]ue to financial constraints, KCPM was operating through the use of a gasoline fueled generator,” where the “gasoline was purchased from various stations” and thus “[n]o invoices were retained.” See Response to Letter of Inquiry, from G.I.G., to David A. Brown, Deputy Chief, Video Division, FCC Media Bureau, at 135, Response to Question 8(b) (July 9, 2019) (on file in BRCDT-20140401A0Q) (LOI Response).

¹¹ See LOI Response, at 111, Response to Question 5(b).

¹² Letter at 2.

¹³ See 47 CFR 73.1635(a)(1) (“A request for STA should be filed with FCC in Washington, DC at least 10 days prior to the date of the proposed operation.”).

circumstances.¹⁴ Additionally, G.I.G. asserts that granting the assignment application will be in the public interest of the underserved viewers in the Fargo Nielsen Designated Market Area (DMA).¹⁵

On April 17, 2020, Parker filed its Opposition to G.I.G.'s Petition, in which it maintains that: (1) no error has been shown in the Division's analysis; (2) the expiration of the KCPM license is mandated by statute; (3) the circumstances under which the Commission has provided relief under the "equity and fairness" provision of 312(g) are rare and in no way present here; (4) any anticipation of what a prospective assignee might do is irrelevant to section 312(g) analysis; and (5) that G.I.G. has not been completely forthright with the Commission.¹⁶

Acknowledging that it "has no knowledge of the facts of KCPM-DT's operation from 2014 to 2018 and takes no position on the Bureau's findings in the [Division's] Letter,"¹⁷ Gray nevertheless contends that we should grant the petition for reconsideration, reinstate the license, and grant the related assignment application.¹⁸ Gray argues that doing so will preserve the only commercial television station licensed to Grand Forks,¹⁹ and provide the additional potential public interest benefit of Gray investing in KCPM's news operations during the unprecedented COVID-19 health crisis.²⁰ It also cites multiple benefits that would accrue from common ownership of KCPM and its in-market television station KVLV-TV, Fargo, North Dakota.²¹

In its Reply, G.I.G. reiterates the arguments in its Petition regarding the "equity and fairness" provision of section 312(g) and asserts that the Commission should craft a new exception for the Station based on the *Second Thursday* doctrine.²² In support of these arguments, G.I.G. additionally contends that, contrary to Parker's argument, granting its Petition under the "equity and fairness" doctrine is warranted given the unique circumstances presented by G.I.G.'s financial situation and Gray's

¹⁴ G.I.G. Petition at 5-6. Based on the decision in *Jefferson Radio Corp. v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964) (*Jefferson Radio*), the Commission adopted a policy that generally prohibits the assignment of a license while basic qualifications issues raised against the licensee remain unresolved, and thus serves as a deterrent to licensee misconduct. *See also Stereo Broadcasters, Inc. v. FCC*, 652 F.2d 1026, 1030 (D.C. Cir. 1981). The *Second Thursday* doctrine, an exception to the *Jefferson Radio* policy, provides that even if a licensee's basic qualifications are unresolved (i.e. character), the Commission may grant an application to assign the license if: (1) the licensee is in bankruptcy, (2) the assignment will benefit innocent creditors of the licensee, and (3) the individuals charged with misconduct will have no part in the proposed operations and will either derive no benefit from favorable action on the application or derive only a minor benefit that is outweighed by equitable considerations in favor of innocent creditors. *Second Thursday Corp.*, Memorandum Opinion and Order, 22 FCC 2d 515, 516, para. 5, *recon. granted in part*, Memorandum Opinion and Order, 25 FCC 2d 112 (1970) (*Second Thursday*); *see also Maritime Communications/Land Mobile, LLC*, 31 FCC Rcd 13729, 13737-38 (2016).

¹⁵ *Id.* at 7-9.

¹⁶ Opposition at 3. We note that because we find no basis to reinstate DKCPM's license, we need not address the Opposition's lack of candor claims. *Id.* at 5-6.

¹⁷ Assignment Petition at 2.

¹⁸ *Id.* at 1.

¹⁹ *Id.*

²⁰ *Id.* at 2.

²¹ *Id.* at 14-17.

²² G.I.G.'s Reply at 3-4.

willingness to purchase the Station.²³ G.I.G. also maintains that denying its Petition will result in viewers in the Fargo DMA continuing to be underserved because an auction for the cancelled license is unlikely in the near-term.²⁴ Moreover, G.I.G. states that given the recent COVID-19 health crisis, there is additional potential public interest benefit of Gray investing in KCPM.²⁵ Lastly, G.I.G. disputes Parker’s characterization of Gray as a monopoly given that Parker previously attempted to purchase the Station and, according to G.I.G., reinstatement and grant of the assignment application to Gray would result in driving the price of advertising down because of increased competition in the local advertising market.²⁶

Gray also filed a Reply to Parker’s Opposition (Gray’s Reply), in which it argues that grant of its request will not open the door to request for reinstatement of licenses that would “rightfully expire under 312(g)” because the unique and extraordinary circumstances indicate that the “public interest benefits would be overwhelming and it would not undermine the goal and purpose of [s]ection 312(g).”²⁷ Gray claims that the facts here are unique in that: (1) the individuals involved in the Station will not have any future involvement with the Station, nor will they benefit from the sale; (2) the assignee was a *bona fide* purchaser—unaware that the Station failed to transmit a broadcast signal as licensed for 12 consecutive months; (3) the assignee has a “credible plan to ensure that the station resumes broadcasting with facilities that will make for efficient use of the spectrum”; and (4) the public interest benefits are substantial.²⁸

On April 24, 2020, Parker filed its Motion for Leave and its Reply to Gray’s Assignment Petition.²⁹ Parker first argues that Gray’s filing of a “Comment” was procedurally improper and, to the extent we might construe the pleading as a petition for reconsideration, it does not satisfy the standard in our rules.³⁰ Parker also repeats several of the arguments in its Opposition, including that the expiration of the KCPM license is mandated by statute, that any anticipation of what a prospective assignee might do is irrelevant to section 312(g) analysis, and that even if the Commission were to reinstate the license, Gray would require the Commission grant it a “failing station” waiver, but that it is unlikely Gray would be able to satisfy this waiver standard.³¹

Discussion. After careful consideration of the G.I.G. Petition and the Assignment Petition, we conclude that no basis exists for granting reconsideration of the Division’s letter decision. In order to seek reconsideration of a staff decision, a petitioner must show either: (1) the petition relies on facts or arguments which relate to events which have occurred or circumstances that have changed since the last opportunity to present such matters to the Commission; (2) the petition relies on facts or arguments unknown to the petitioner until after their last opportunity to present them to the Commission, and they could not, through the exercise of ordinary diligence, have learned of the facts or arguments in question prior to such opportunity; or (3) the Commission or the designated authority determines that consideration

²³ *Id.* at 8. Specifically, G.I.G. states that it would be unable to pay its creditors, such as Gray, if the Commission does not reinstate its license. *Id.* at 3-4.

²⁴ *Id.*

²⁵ *Id.* at 4-6, 9-11.

²⁶ *Id.* at 10-12.

²⁷ Gray’s Reply at 3.

²⁸ *Id.* at 3-6.

²⁹ See Parker’s Motion; Parker’s Reply.

³⁰ Parker’s Reply at 2-4. 47 CFR § 1.106(b)(2), (c). Parker also argues that Gray has not demonstrated material error in Video’s decision, nor does Gray present new facts or evidence that were unknown at the time of the Petitioner’s last opportunity to raise such information. Parker’s Reply at 2-4.

³¹ *Id.* at 3-4, 6-8.

of the facts or arguments relied on is required in the public interest.³² For the reasons discussed below, we deny the G.I.G. Petition and dismiss the Gray Assignment Petition.

As explained in footnote 6, *supra*, pursuant to section 1.106, Gray's Assignment Petition was required to be filed by April 9, 2020. Since Gray did not file until April 17, 2020, we are dismissing Gray's Assignment Petition as being untimely, but we nonetheless address Gray's substantive arguments below. Similarly, we concurrently dismiss Parker's Motion for Leave as moot because Gray's Assignment Petition was untimely, but we nevertheless address the arguments raised in Parker's Reply below.

We find that G.I.G. has not presented us with any new facts or arguments that either arose or were discovered since its last opportunity to present them to the Commission. The G.I.G. Petition is grounded in the conviction that the staff erred in considering whether the license should be reinstated to promote equity and fairness. Notably, G.I.G. does not dispute the Division's finding that KCPM failed to transmit an authorized broadcast signal for more than a 12-month period.³³ Pursuant to section 312(g), the Commission has discretion to reinstate a station's expired license "to promote equity and fairness." The Commission has exercised this discretion only in limited circumstances where a station's failure to transmit a broadcast signal for 12 consecutive months is due to compelling circumstances that were beyond the licensee's control.³⁴

The Commission has consistently declined to reinstate a license to promote equity and fairness pursuant to section 312(g) where failure to transmit an authorized broadcast signal was due to the licensee's "own actions, finances, and/or business judgments."³⁵ Here, the record reflects that Petitioner lost access to its licensed site in 2014 for failing to pay rent and related disputes with the site owner.³⁶ We find that this firmly establishes that the failure to transmit a broadcast signal was due to G.I.G.'s own

³² 47 CFR § 1.106(b)(2), (c).

³³ Petitioner states that "[t]he station has been operating consistently, albeit with temporary facilities, for more than 18 months." G.I.G. Petition at 4. We find that this further supports our finding that the Station has been silent or engaging in unauthorized operation since December 2014. Furthermore, this recent unauthorized operation does not remediate the fact that G.I.G. failed to notify the Commission about its unauthorized operation until it found a potential buyer for the Station.

³⁴ See, e.g., *V.I. Stereo Communications Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006) (concluding that reinstatement was warranted where the station's tower had been destroyed by a hurricane and, after it was rebuilt, again sustained substantial damage from three more hurricanes); *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 23 FCC Rcd at 617 ("This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited.").

³⁵ See *Kingdom of God*, Order on Reconsideration, 29 FCC Rcd 11589, 11591 (2014) ("While the Commission has exercised its discretion under Section 312(g) to reinstate a license out of equity and fairness in only a few cases – each of which involved silence for compelling reasons beyond the licensee's control – the Commission has declined to reinstate licenses where failure to transmit a broadcast signal was due to the licensee's own actions, finances, and/or business judgments.").

³⁶ LOI Response at 111, Response to Question 5(b).

actions, finances, and business judgments.³⁷ Similarly, we find that nothing in the record suggests G.I.G. experienced circumstances out of its control similar to any instances where the Commission has exercised its discretion to reinstate a license.³⁸ As such, we decline to reinstate G.I.G.'s license because its failure to transmit a broadcast signal since 2014 was due to its own actions, finances, and business judgments.

We also reject G.I.G.'s contention that the Commission should expand section 312(g)'s "equity and fairness" provision, akin to the *Second Thursday* doctrine.³⁹ As discussed above, the *Jefferson Radio* policy prohibits the assignment of a license where basic qualification issues raised against the licensee remain unresolved. This policy was adopted in order to serve as a deterrent to licensee misconduct. The Commission created the *Second Thursday* doctrine as a narrow exception to this policy. This doctrine provides that even if a licensee's basic qualifications are unresolved (i.e. character), the Commission may grant an application to assign the license if: (1) the licensee is in bankruptcy, (2) the assignment will benefit innocent creditors of the licensee, and (3) the individuals charged with misconduct will have no part in the proposed operations and will either derive no benefit from favorable action on the application or derive only a minor benefit that is outweighed by equitable considerations in favor of innocent creditors.⁴⁰

Here, we find no basis for the creation of an exception akin to the *Second Thursday* doctrine to section 312(g).⁴¹ The *Second Thursday* doctrine is a limited bankruptcy exception to the Commission's

³⁷ See, e.g., *Christian Broadcasting of East Point, Inc.*, 30 FCC Rcd 13975, 13976 (2015) (holding that the licensee provided no evidence that the station's silence was beyond its control); *New Visalia Broadcasting, Inc.*, 29 FCC Rcd 9744 (2014) (finding that the record did not show that health problems prevented the principals from resuming operations); *Richard R. Zaragoza, Esq. Gary S. Smithwick, Esq.*, 28 FCC Rcd 8924, 8926 (2013) (declining to reinstate a license where the former licensee made a business decision to leave the station silent); *Eagle Broadcasting Group, Ltd.*, 23 FCC Rcd 588, 592, 589-90 (2008); *Zacarias Serrato*, 20 FCC Rcd 17232 (MB 2005) (station taken off the air due to a business decision); *In Re Applications of Golden Eagle Commc'ns, Inc. Golden Eagle Commc'ns, Inc. (Assignor) & Golden Feather Broad. Corp. (Assignee)*, 6 FCC Rcd 5127 (1991) (rejecting the petitioners' argument that the Commission apply a policy analogous to the *Second Thursday* policy to situations where a permittee has undertaken considerable expense but was unable to complete construction allegedly due to other circumstances).

³⁸ *Universal Broadcasting of New York, Inc.*, 34 FCC Rcd 10319 (MB 2019) (station unable to file STA to resume service due to a federal government shutdown); *Community Bible Church*, Letter, 23 FCC Rcd 15012, 15014 (MB 2008) (finding that reinstatement was warranted where the 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); *Mark Chapman, Court-Appointed Agent*, Letter, 22 FCC Rcd 6578 (MB 2007) (reinstating an expired permit when the station's extended silence was the result of the licensee's compliance with an order issued by a state court).

³⁹ See *Second Thursday Corp.*, Memorandum Opinion and Order, 22 FCC 2d at 516, para. 5.

⁴⁰ *Id.*

⁴¹ In addition, we agree with the Opposition that the creation of an exception based on the *Second Thursday* doctrine in this instance "is not supported by precedent and seeks an enlargement of past interpretations of Section 312(g) that would have a significant impact well beyond the instant case." Opposition at 2.

public interest policy, whereas section 312(g) is a statutory automatic expiration.⁴² The only overlap with this situation is the presence of innocent creditors. Although we are sympathetic to the plight of the innocent creditors, we are legally constrained from crafting such an exception to section 312(g). In this regard, we note that the *Second Thursday* doctrine was well-established prior to the creation of section 312(g) in 1996.⁴³ If Congress had wished to incorporate the *Second Thursday* doctrine into section 312(g), it could have done so.⁴⁴ Furthermore, we agree with the Opposition that allowing such an expansion of the “equity and fairness” provision of section 312(g) would result in encouraging other broadcasters to more readily disregard the automatic expiration of section 312(g).⁴⁵ Accordingly, we decline to extend the *Second Thursday* doctrine to section 312(g)’s “equity and fairness” provision.⁴⁶

We likewise reject that the facts present a compelling situation for us to exercise our discretion under the “equity and fairness” provision. As previously explained, Gray claims that the facts here are unique in that (1) the individuals involved in the Station will not have any future involvement with the Station, nor will they benefit from the sale; (2) the assignee was a *bona fide* purchaser—unaware that the Station failed to transmit a broadcast signal as licensed for 12 consecutive months; (3) the assignee has a “credible plan to ensure that the station resumes broadcasting with facilities that will make for efficient

⁴² Gray, citing *Second Thursday*, argues that “the Commission [has] found it equitable and fair to grant an application to assign or transfer an FCC license if it could protect innocent creditors and find an alternative entity to operate the station without providing material benefit to the individual(s) accused of misconduct.” Assignment Petition at 3. Despite Gray’s contention, the *Second Thursday* doctrine is actually “rooted in the Commission’s duty to accommodate federal bankruptcy law when doing so will not unduly interfere with the Commission’s public interest responsibilities.” *Maritime Communications/Land Mobile, LLC*, 31 FCC Rcd at 13732.

⁴³ 47 U.S.C. § 312(g) (1996), amended by 47 U.S.C. § 312(g) (2004).

⁴⁴ See also Opposition at 5 (noting that section 312(g) “applies to existing licensees and includes no language that suggests that future performance by a different licensee is in any way a relevant consideration.”).

⁴⁵ Opposition at 4 (“GIG has not shown that exercise of discretion here would not have the effect of encouraging other broadcasters to relax their concern about the one-year deadline, to the detriment of meeting their public interest obligations. Indeed, if licensees could rely on such an exception to Section 312(g), no struggling broadcaster would prioritize remaining on the air and serving the public. Instead, it is easy to imagine that opening the door to such waivers of the 312(g) automatic license expiration deadline would encourage licensees who make poor business decisions to take their stations off the air or to operate them with unauthorized facilities until a buyer can be found, even if that means not serving the public for an extended period of time.”). For these same reasons, we also find G.I.G.’s argument in its Reply that this case would serve as a “cautionary tale” unpersuasive. See G.I.G.’s Reply at 8. As G.I.G. lays out in its Reply, silence inhibits income and creates financial challenges. *Id.* at 6-7. Therefore, to provide section 312(g) relief to those financially challenged would provide relief to silent stations, which is contrary to the statutory purpose.

⁴⁶ Even if we were persuaded to expand G.I.G.’s section 312(g)’s “equity and fairness” provision, by creating an exception based on the *Second Thursday* doctrine, we would find that the *Second Thursday* factors are not present in this case. Here, G.I.G.’s license automatically expired pursuant to 312(g) because the Station was either silent or engaging in unauthorized operation for over 12 consecutive months—a finding undisputed by the former licensee in its Petition. Letter at 2. Thus, G.I.G.’s basic qualifications were not at issue, only the operational status of KCPM. Additionally, G.I.G. does not contend that it has entered bankruptcy; rather, it claims financial constraints will bring it to the brink of bankruptcy if its license is not reinstated. Specifically, G.I.G. states that it “does not have sufficient capital to repay its debts so [its] creditors cannot recoup the money they are owed. Indeed, if any of [G.I.G.’s] creditors were to file suit in a court of competent jurisdiction, [G.I.G.] is likely to declare bankruptcy and the station’s innocent creditors would be forced to divide up the station’s assets, which are valued at an amount far less than [G.I.G.] owes.” G.I.G. Petition at 5. Therefore, we find that G.I.G. cannot satisfy the *Second Thursday* doctrine.

use of the spectrum”; and (4) the public interest benefits are substantial.⁴⁷ With respect to the first statement, we disagree that G.I.G. would not derive a material benefit from the reinstatement of the license because, if reinstated, G.I.G. could repay its creditors, including Gray, which is, on its face, a material benefit to G.I.G. Moreover, a seller is typically uninvolved in a station’s operations following consummation of a sale and thus, is not a particularly unique circumstance. With respect to the second statement, we find it immaterial that Gray was unaware of the operational status of the Station.⁴⁸ Rather, in the course of exercising due diligence, Gray could have become aware of deficiencies in reviewing KCPM’s public file and authorizations. Even if it did not, Gray should not be rewarded for failing to fulfill its due diligence obligation. With respect to the third and fourth statements, there is nothing particularly unique about the fact that Gray has a plan to resume broadcasting, or that such resumption would have public interest benefits, facts that would presumably be the case regarding any potential buyer of KCPM. Thus, we disagree with Gray that, under the facts present here, grant of its request would not result in a broad expansion of the “equity and fairness” provision of section 312(g). Additionally, we find such an expansion to be administratively unworkable. Allowing such an exemption to section 312(g) would cast into doubt the finality of all license cancellations, which in turn hinders the ability of the Commission to fulfill its statutory obligations, and to include such spectrum in any potential future auction.

Lastly, to the extent G.I.G. and Gray contend that reinstating the license and subsequently granting the assignment application are in the public interest, we find their arguments unpersuasive.⁴⁹ Rather, consistent with Commission precedent, we find that the public interest would not be served by reinstating the license of the former licensee that has “continuously failed to provide its community with reliable, consistent, authorized service.”⁵⁰ While viewers and advertisers in the Fargo DMA could potentially benefit from Gray operating the Station, that does not change our analysis that there is no legal basis for reinstating the license pursuant to section 312(g), and without reinstatement, the proffered benefits of the assignment are moot.⁵¹ Similarly, Parker’s motivations in opposing the reinstatement and assignment of the Station likewise does not change our analysis.⁵² We recognize the arguments regarding the COVID-19 health crisis, but note that the Station automatically expired years before this crisis due to

⁴⁷ Gray’s Reply at 3-6.

⁴⁸ Further, we believe a finding that actual knowledge is a material factor would discourage a potential buyer from performing its due diligence in acquiring a station.

⁴⁹ Even if we found that reinstatement of the license was in the public interest, as noted in Parker’s Opposition, Gray’s ownership of KCPM would require a waiver of the Local Television Ownership Rule. *See Review of the Commission’s Regulations Governing Television Broadcasting*, Report and Order, 14 FCC Rcd 12903, 12938, para. 79 (1999), *recon. granted in part*, 16 FCC Rcd 1067 (2001); *see also 2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al.*, MB Docket No. 14-50, Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd 9802 (2017) *vacated and remanded*, *Prometheus Radio Project*, 939 F.3d 567 (3rd Cir. 2019), *petition for rehearing en banc denied*. However, because we find no basis to reinstate the license, we need not reach this issue.

⁵⁰ *In the Matter of Roy E. Henderson*, 33 FCC Rcd 3385, 3388 (2018) (finding no basis to reinstate the license where the station failed to operate with authorized facilities for over four years).

⁵¹ G.I.G. Petition at 8. For this same reason, we find as moot G.I.G.’s arguments in its Reply that there would be a greater public interest benefit to the Fargo DMA if Gray invested in KCPM given the recent COVID-19 health crisis and because it is unlikely there will be an auction in the near-term. *See* G.I.G.’s Reply at 4-6, 9-11.

⁵² *See* G.I.G. Reply at 10-12. Specifically, G.I.G. contends that Parker is opposing the assignment of the Station to Gray in order to prevent more competition in the DMA. *Id.*

the Station's extended periods of silence and undisputed unauthorized operation.⁵³ We do not agree that this unprecedented health crisis would justify us either acting out of accordance with longstanding precedent or allowing G.I.G. to benefit from its longstanding failure to serve its community. This is especially so in light of the fact that the effects of this transaction will extend well beyond this crisis, as the acquisition by Gray would require a permanent, as opposed to temporary, waiver of the Local Television Ownership Rule. Thus, given the prolonged and continuous nature of G.I.G.'s failure to transmit a broadcast as licensed, we do not find that it would be in the public interest to reinstate its license.

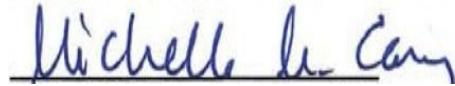
ACCORDINGLY, IT IS ORDERED that having concluded that G.I.G. of North Dakota, LLC, has failed to present any facts or arguments that warrant reconsideration and reinstatement of its expired license, the Petition for Reconsideration filed by G.I.G. of North Dakota, LLC, **IS DENIED**, pursuant to sections 5(c)(5), 309, and 310(d) of the Communications Act of 1934, as amended, and section 1.106 of the Commission's Rules.⁵⁴ **IT IS FURTHER ORDERED** that Gray Television Licensee, LLC's Petition for Reconsideration of the assignment application and May 21, 2020, Supplement **ARE DISMISSED as untimely, and alternatively DENIED in all other respects. IT IS FURTHER ORDERED** that Parker Broadcasting of Dakota License, LLC's Motion for Leave to Reply to Gray's Assignment Petition **IS DISMISSED.**

⁵³ See Letter at 3 (finding that the Station expired in 2015).

⁵⁴ 47 U.S.C. §§ 155(c)(5), 309, 310(d); 47 CFR § 1.106.

These actions are taken pursuant to delegated authority pursuant to sections 0.61 and 0.283 of the Commission's rules.⁵⁵

Sincerely,

A handwritten signature in blue ink that reads "Michelle M. Carey". The signature is written in a cursive style and is positioned above a horizontal line.

Michelle M. Carey
Chief, Media Bureau

⁵⁵ 47 CFR §§ 0.61, 0.283.