

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Chinese Voice of Golden City,)	
Appellant,)	
)	
v.)	No. 20-1514
)	
Federal Communications Commission,)	
Appellee,)	
)	
Silver State Broadcasting, LLC,)	
Intervenor.)	

**OPPOSITION OF FEDERAL COMMUNICATIONS COMMISSION
TO MOTION FOR STAY PENDING APPEAL**

The Federal Communications Commission (“FCC” or “Commission”) respectfully opposes the motion for stay pending appeal filed by Chinese Voice of Golden City (“Chinese Voice”).¹

In the underlying case, Chinese Voice, the former licensee of low power FM radio station KQLS-LP, Las Vegas, Nevada, challenges an FCC order holding that the station’s license expired by operation of law under Section 312(g) of the Communications Act, 47 U.S.C. § 312(g). *Chinese Voice of Golden City DKQLS-*

¹ Because this case is brought pursuant to 47 U.S.C. § 402(b), it is an “appeal” rather than a “petition for review,” and we designate the parties as “appellant” and “appellee.”

LP, Las Vegas, Nevada, Memorandum Opinion and Order, 35 FCC Rcd 13638 (2020) (“*Order on Appeal*”) (J.A. 203).² Chinese Voice initiated its appeal on December 23, 2020 and filed its opening brief on the merits on April 12, 2021. The government filed its responsive brief on June 11.

In the meantime, on April 23, 2021, the FCC’s Enforcement Bureau issued a Letter of Inquiry to Chinese Voice, seeking information related to whether it was continuing to operate the station after its license had expired. *See* Motion for Stay at 3. On June 4, 2021, more than five months after it filed its appeal, Chinese Voice filed a motion to stay the FCC’s order pending appeal, asserting that a stay of the Order on Appeal “would have the effect of staying any enforcement action by the FCC during the pendency of this appeal.” Motion for Stay 4.

Chinese Voice is not entitled to the extraordinary remedy of a stay pending appeal. First, its appeal has no likelihood of success on the merits. Longstanding FCC precedent, affirmed by this Court in *Eagle Broadcasting Group, Ltd. v. FCC*, 563 F.3d 543 (D.C. Cir. 2009), makes clear that Chinese Voice’s license expired by operation of law under 47 U.S.C. § 312(g) when Chinese Voice failed to

² Citations to J.A. refer to the Joint Appendix filed with Chinese Voice’s opening merits brief.

broadcast from an authorized location for a “consecutive 12-month period,” 47 U.S.C. § 312(g), including some 15 months when it broadcast from a location more than two-and-a quarter miles from its licensed site.

Chinese Voice has also not demonstrated that it will be irreparably injured in the absence of a stay. It alleges that the Letter of Inquiry “has the potential” to force it to cease operations, Motion for Stay 18. But the Letter of Inquiry simply asks questions; it does not impose penalties. And while Chinese Voice has no right to broadcast with an expired license, there is no reason why Chinese Voice could not resume operations (from a licensed location) if this Court were to conclude that its license had not expired. Finally, a stay would undermine the public interest in ensuring that broadcast stations operate only from their authorized locations, and not from locations several miles away, and cease broadcasting if their licenses have expired. The motion for stay should be denied.

BACKGROUND

A. License Expiration under Section 312(g)

Under the Communications Act, no person may operate a broadcasting station except “under and in accordance with . . . a license” granted by the FCC “under the provisions of [the Act.]” 47 U.S.C. § 301. To ensure that broadcast

licenses granted under the Act will be used, Section 312(g) of the Act provides: “[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.” 47 U.S.C. § 312(g).

Section 312(g) grants the agency discretion to “extend or reinstate” a 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.” 47 U.S.C. § 312(g).

Under well-settled circuit precedent, “unauthorized and unlicensed transmissions are no better than silence” for purposes of Section 312(g), *Eagle Broadcasting Group, Ltd. v FCC*, 563 F.3d 543, 552-553 (D.C. Cir. 2009). In *Eagle*, a radio station licensed to operate from a site in Parker, Arizona, ceased operations at that site and commenced operations—without authorization—from a different location. 563 F.3d at 548. The FCC determined that because the station had failed to broadcast from the site authorized in its license for more than a year, its license had expired as a matter of law under Section 312(g). In a unanimous opinion, this Court affirmed. As the Court explained, “it strains credulity to suggest

that the reference to ‘broadcast signals’ in § 312(g) includes unauthorized and unlicensed transmissions.” *Id.* at 552. And it would be “absurd,” the Court stated, to read the statute to “allow a station to avoid expiration by broadcasting from any site, even one that is thousands of miles removed from the authorized location.” *Ibid.* The Court therefore held that “in assessing a licensee’s rights under § 312(g), the FCC reasonably concluded that an unauthorized transmission counts for nothing.” *Id.* at 553.

B. Chinese Voice

On November 20, 2014, the FCC issued a construction permit to Chinese Voice to build a low power FM radio station in Las Vegas, Nevada at the geographic coordinates 36°11’24”N, 115°08’35”W. (J.A. 2-3). On November 19, 2017, Chinese Voice filed an application for a license to operate the constructed station, in which it certified that KQLS-LP “was constructed as authorized in the underlying construction permit.” (J.A. 6). The FCC issued the station license on December 12, 2017. (J.A. 8-9).

On August 9, 2019, Chinese Voice filed an application to modify the KQLS-LP license, stating that it had “recently determined that the coordinates included in its license application were in error by 256 feet.” (J.A. 21) (capitalization omitted).

Chinese Voice added that the “correct coordinates” for its site (the “West Owens Avenue” site) were “36-11-21.6 N, 115-08-36.1 W.” (J.A. 21) (capitalization omitted). The FCC granted the license modification application on August 16, 2019, but rescinded the grant on August 20, 2019. *See* J.A. 22.

C. Bureau Proceedings

On November 19, 2019, based on Chinese Voice’s admission in its license modification application that KQLS-LP had not been broadcasting from its licensed site for more than 12 consecutive months, the FCC’s Media Bureau (“Media Bureau”) issued a letter notifying Chinese Voice that “the Station’s license has expired pursuant to [Section 312(g)] of the Act” and that “the facts of this case do not support reinstatement of the license to promote fairness and equity.” November 19, 2019 Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau to Chinese Voice of Golden City (“Letter Decision”) at 1, 2 (J.A. 28, 29).

On December 5, 2019, Chinese Voice filed a petition to reconsider the Media Bureau’s Letter Decision. (J.A. 30). Chinese Voice did not dispute that it had failed to broadcast from its licensed location for more than 12 consecutive months, but instead argued that “it was contrary to Commission rules and

precedent to treat a license as expired based upon the facts alleged in the Letter Decision.” *See* Motion for Stay at 8.

The Media Bureau denied reconsideration and reaffirmed its decision that Chinese Voice’s license had expired by operation of law under Section 312(g). *Chinese Voice of Golden City*, Memorandum Opinion and Order, 35 FCC Rcd 567 (MB 2020) (“Reconsideration Decision”) (J.A. 59).³

The Reconsideration Decision also incorporated new information of which the Media Bureau had subsequently become aware. Instead of a 256-foot difference between its licensed and actual operation, Chinese Voice had in fact been broadcasting since January 2018 from a location that was more than two-and-a quarter *miles* away from that at which it had been licensed.

This new information came to light when, during an investigation by the FCC’s Enforcement Bureau, on August 8, 2019, Mr. Bo Tian, the president of

³ Contrary to Chinese Voice’s contention (Motion for Stay at 1-2), the Media Bureau did not base its decision on an erroneous finding that Chinese Voice had broadcast from a site 70 miles from its licensed site. While the Letter Decision set forth the wrong license coordinates—“35-11-24 N, 115-08-35 W” rather than “36-11-24 N, 115-08-35 W,” *see* Letter Decision at 1 (J.A. 28)—the *Reconsideration Decision* acknowledged this “typographical error,” but found it “was harmless” because there was no dispute that Chinese Voice failed to broadcast from the correct coordinates. (J.A. 61-62).

Chinese Voice, submitted a declaration detailing the station's operations. (J.A. 10). The declaration explained that, from January 20, 2018, until May 2, 2019, Chinese Voice had transmitted not from its licensed site, nor from the site 256 feet away, but rather an entirely different location (the "East Charleston Boulevard Site") 2.27 miles away. Tian Statement, ¶ 8 (J.A. 11). While the "change in the [Media] Bureau's understanding of the facts" did not "alter the conclusion in the Letter [Decision] that the Station's license was forfeited pursuant to section 312(g)," the Media Bureau determined that its more accurate understanding of the facts "completely undermines [Chinese Voice's] argument that this case involves a mere coordinate correction of less than three seconds." *Id.* ¶ 10 (J.A. 62).

Moreover, the Media Bureau "conclude[d] that [Chinese Voice] may have withheld material information in the License Modification Application and made incorrect statements to the Commission in [its petition for reconsideration] when it repeatedly claimed that the Station's actual transmitter site was never changed." *Id.* ¶ 16 (J.A. 64). Because of this "possible" "misrepresentation and/or lack of candor," the Media Bureau "require[d] that [Chinese Voice] and its principals attach a copy of [the *Reconsideration Decision*] to any FCC broadcast application

that any of them file in the next five years so that a character assessment can be made in connection with any such application.” *Ibid.*

D. *Order on Appeal*

On February 14, 2020, Chinese Voice applied to the Commission to review the Media Bureau’s *Reconsideration Decision*. Application for Review at 1 (J.A. 69). On November 25, 2020, the Commission released the *Order on Appeal*, dismissing in part and otherwise denying the application for review. *Order on Appeal* ¶¶ 1, 18 (J.A. 203, 212).

In doing so, the Commission “affirm[ed] the holding in the *Reconsideration Decision* that the Station’s license expired as a matter of law.” *Id.* ¶ 13 (J.A. 208).⁴ As the Commission determined, the KQLS-LP license expired as a matter of law “because the station did not operate from an authorized facility from at least January 2018 until May 2019, the time it was operating at the East Charleston Boulevard Site, regardless of its operations at the West Owens Avenue Site.” *Ibid.*

The Commission “reject[ed] [Chinese Voice’s] argument that broadcasting from an unauthorized location should qualify as ‘broadcasting’ for purposes of

⁴ The Commission also dismissed in the alternative, “as procedurally defective,” certain arguments by Chinese Voice that had not been presented to the Bureau. *Order on Appeal* ¶ 12 & n.52 (J.A. 208).

section 312(g).” *Ibid.* (J.A. 209). As the Commission emphasized, the Court “in *Eagle* fully analyzed the Commission’s construction of section 312(g) under both steps of *Chevron* and concluded it was eminently reasonable.” *Ibid.* In any event, the Commission “reaffirm[ed]” that the transmission of unauthorized broadcast signals for a period of twelve consecutive months is insufficient to avoid automatic license expiration under section 312(g), and so “uph[e]ld the Bureau’s finding here that the Station’s license expired by operation of law.” *Id.* ¶ 14 (J.A. 209).

The Commission also “affirm[ed] the [Media] Bureau’s decision not to exercise its discretion under section 312(g) in this case to extend or reinstate [Chinese Voice’s] license to promote equity and fairness.” *Id.* ¶ 16 (internal quotation marks omitted) (J.A. 210). As the Commission explained, it “has exercised this discretion only in rare circumstances where a station was silent as the result of natural disasters or other compelling reasons beyond the licensee’s control.” *Ibid.* Here, “[Chinese Voice] did not allege that the Station’s construction at the wrong location was beyond its control,” but to the contrary, “admit[ted] that it deliberately moved the Station’s transmitter to the East Charleston Boulevard Site in order to be closer to Chinatown and operated the

Station from that site for more than a year without Commission approval.” *Ibid.* (J.A. 210-11).

Finally, the Commission “affirm[ed] the [Media] Bureau’s finding that [Chinese Voice] may have engaged in misrepresentation and/or lack of candor.” *Id.* ¶ 17 (internal quotation marks omitted) (J.A. 211). The Commission explained that, despite certifying in its November 2017 license application that KQLS-LP was constructed and operating “at the Permit Site,” Chinese Voice “[i]n fact, . . . did not construct at and had never operated from the Permit Site.” *Ibid.* (J.A. 211). Instead, as Chinese Voice “revealed to [the Enforcement Bureau] almost two years later on August 8, 2019 and only after [the Enforcement Bureau] had initiated an investigation,” that KQLS-LP “had operated from two different unauthorized sites, one of which was located more than two miles from the Permit Site.” *Ibid.* (J.A. 211). Yet, on August 9, 2019, “[Chinese Voice] filed the License Modification Application, which indicated only that the geographic coordinates included in the License Application ‘were in error by 256 feet’ and did not mention that the Station had in fact operated from an unauthorized site over two miles away for a period of 15 months.” *Ibid.* (J.A. 211).

Although the Commission found that “these circumstances support the Bureau’s conclusion that [Chinese Voice] may have engaged in misrepresentation and/or lack of candor,” it upheld the “Bureau’s decision not to pursue a misrepresentation investigation at this point.” Instead, “[c]onsistent with the Bureau’s decision,” the Commission “require[d] [Chinese Voice] and its principals to include copies of the *Reconsideration Order* as well as [the *Order on Appeal*] with any Commission broadcast applications they file for the next five years.” *Ibid.* (J.A. 211). “Because [Chinese Voice] held no other Commission authorizations,” the Commission explained that “there was no immediate need to perform a character assessment,” and further explained that the “main point of the requirement is to ensure that any subsequently-filed applications are not routinely processed,” which will “ensure[] that the Commission has the opportunity to perform a character assessment” of Chinese Voice’s fitness to be a Commission licensee. *Ibid.*

E. The Letter of Inquiry

On April 23, 2021, the FCC’s Enforcement Bureau sent Chinese Voice a Letter of Inquiry seeking information on the station’s operations. *See* Motion for Stay at 3. The Letter of Inquiry sought information on whether the station

continued to broadcast without a license after Chinese Voice was notified that the station's license had expired under § 312(g). *Ibid.* On May 10, 2021, Chinese Voice filed motions with the FCC to stay the enforcement proceeding and quash the Letter of Inquiry. *Id.* at 4. On June 21, 2021, the Enforcement Bureau denied those motions. *Chinese Voice of Golden City, DKQLS-LP, Las Vegas, Nevada, Order, __ FCC Rcd __, DA 21-719 (EB, June 21 2021) (“Bureau Stay Denial”)*, attached as Addendum A.

ARGUMENT

It is well settled that a stay pending appeal is not warranted unless the movant demonstrates that (1) it will likely prevail on the merits, (2) it will suffer irreparable harm without a stay, (3) a stay will not harm other parties, and (4) a stay will serve the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009). As we explain, Chinese Voice cannot show a likelihood of success on the merits; or that it will be irreparably injured in the absence of a stay; or that the public interest weighs in favor of its continued operation without an FCC license. A stay should therefore be denied.

I. Chinese Voice Has Not Shown That It Is Likely To Prevail On The Merits

First and foremost, Chinese Voice’s appeal is unlikely to succeed. Section 312(g) of the Communications 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.” 47 U.S.C. § 312(g). And under the clear precedent of the Commission and this Court, only the transmission of broadcast signals from an authorized location in accordance with the station’s license matters for purposes of Section 312(g). *See Eagle*, 563 F.3d at 553 (“unauthorized and unlicensed transmissions are no better than silence”); *Kingdom of God, Inc. v. FCC*, 719 Fed. Appx. 19, 20 (D.C. Cir. 2018) (“transmissions from [an] unauthorized location . . . do not constitute ‘broadcast signals’ for purposes of § 312(g)”; *A-O Broadcasting*, 23 FCC Rcd 603, 608 (2008) (rejecting the “contention that unauthorized transmissions prevent cancellation under Section 312(g)” as “inconsistent both with the purposes of Section 312(g) and with other provisions of the Act”).

There is no dispute that Chinese Voice has never broadcast from its licensed location, including a period of least 15 months when it broadcast from a location

more than two-and-a-quarter miles away from its licensed location. Because the station failed to broadcast from the site authorized in its license for more than a year, its license expired as a matter of law under Section 312(g), as the FCC correctly determined.

Chinese Voice argues (as it does in its merits brief) that the facts of its case differ from those presented in *Eagle*. Motion for Stay at 14. But the case is on all fours: In both cases, the licensee failed to transmit a broadcast signal from its authorized location for 12 consecutive months, and the station's license accordingly expired by operation of law pursuant to section 312(g) for precisely that reason. *See* 563 F.3d at 553.

Chinese Voice nonetheless contends that the FCC's interpretation of Section 312(g) is incorrect. Motion for Stay at 14. But this Court upheld the FCC's reading of the statute in *Eagle*, stating that, "[i]f anything, the plain meaning of § 312(g)" supported the agency's interpretation, 563 F.3d at 553, and a contrary construction would lead to an "absurd result," *id.* at 552. As the Commission explained, "if read to permit unauthorized operation to avoid license expiration, Section 312(g) would encourage violation of [the licensing requirements of] Section 301 and defeat its

own purpose of ensuring timely construction and operation of authorized facilities that serve the public.” *Order on Appeal* ¶ 14 (J.A. 209).

Next, Chinese Voice alleges the FCC failed to recognize a conflict between Section 73.875 of the FCC’s rules—which concerns license modifications for low power FM stations, like KQLS-LP—and Section 73.1690, which governs license modifications generally. Motion for Stay at 15. But as the Commission explained, there is no conflict, because Section 73.1690 is not among the rules applicable to low power FM stations. *See Order on Appeal* ¶ 15 n.65 (J.A. 210). In any event, the FCC rules governing when and under what circumstances license modifications may be made have nothing to do with whether a license has expired under Section 312(g). In this case, by the time Chinese Voice filed its application to correct its coordinates in August of 2019, it had been broadcasting from an unlicensed location for at least 15 months; no subsequent modification of its license could have cured that fact.

Chinese Voice complains that in other instances the FCC “routinely grants licensees the opportunity to correct antenna coordinates.” Motion for Stay at 15, 16. But none of the examples cited by Chinese Voice “indicate that the unauthorized operations had gone on for 12 consecutive months.” *Order on Appeal*

¶ 14 n.64 (J.A. 209-10). They are thus inapposite to this case, which involves license expiration under Section 312(g).

Chinese Voice contends that the FCC “violated the APA when it held that [Chinese Voice] engaged in misrepresentation or lack of candor.” Motion for Stay at 15. But the FCC stated only that Chinese Voice “may” have engaged in such behavior. *Order on Appeal* ¶ 17 (J.A. 211). And that tentative determination was reasonable. Chinese Voice wrongly certified in its license application that it had constructed the station “as authorized in the underlying construction permit” (J.A. 6), and its subsequent license modification application simply stated that its station was erroneously located “256 feet” away from its authorized site, omitting that it had broadcast from a location more than two-and-a-quarter miles away from its licensed location for more than 15 months. J.A. 21. Chinese Voice complains that it was not allowed to present further mitigating evidence, Motion for Stay at 15, but it retains the opportunity to do so in the future if it applies for a new license. *Order on Appeal* ¶ 17 (J.A. 211).

Finally, Chinese Voice argues that the FCC erred in not reinstating its license. Motion for Stay at 16-17. But Section 312(g) gives the agency authority to reinstate a license “to promote equity and fairness,” 47 U.S.C. 312(g), and the FCC

has done so “only in rare circumstances where a station was silent as the result of natural disasters or other compelling reasons beyond the licensee’s control.” *Order on Appeal* ¶ 16 (internal quotation marks and citation omitted) (J.A. 210). *See id.* ¶ 16 n.69 (J.A. 210) (reinstatement under 312(g) is “phrased as an exception to the general rule that most affected licenses will be forfeited”). Those circumstances are not present here—Chinese Voice simply chose to broadcast from an unlicensed location to be closer to listeners in Las Vegas’s Chinatown. *Id.* at 16 (J.A. 210).

Chinese Voice emphasizes that it provides “Chinese language programming to the Chinese speaking population in its service area.” Motion for Stay at 17. But the nature of a station’s programming (which it is free to change and other stations are free to replicate) has nothing to do with whether its failure to broadcast from its authorized site is excusable. *See Eagle*, 563 F.3d at 553 (“An unauthorized transmission is neither condoned nor recognized by the Act. Rather, it is prohibited.”) And the FCC reasonably declined to enlarge the scope of “equity and fairness” grounds for reinstatement under Section 312(g) beyond extraordinary factors outside a broadcaster’s control. *Order on Appeal* ¶ 16 n.69 (J.A. 210).

II. Chinese Voice Has Not Shown Irreparable Injury

A party seeking a stay must “demonstrate that irreparable injury is *likely*” in the absence of a stay. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008). This Court “has set a high standard for irreparable injury.” *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). “Such injury must be both certain and great, actual and not theoretical, beyond remediation, and of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm.” *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015) (internal quotation marks omitted). To obtain a stay, Chinese Voice “must provide proof” that irreparable harm “is certain to occur in the near future.” *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). It has not met this demanding standard.

Chinese Voice asserts that the Enforcement Bureau’s Letter of Inquiry “has the potential to threaten and intimidate the principals of [Chinese Voice] to abandon their pending appeal.” Motion for Stay at 18. *See id.* at 4. But Chinese Voice provides no basis on which to conclude that the Letter of Inquiry—which only seeks information and imposes no penalty—would cause it to abandon its appeal, which it has to date litigated vigorously. *See Bureau Stay Denial* ¶ 4 (the

Letter of Inquiry “merely seeks information” and “does not order [Chinese Voice] to cease operating the Station, nor does it propose forfeitures”). *See generally Action for Children’s Television v. FCC*, 827 F. Supp. 4, 6 (D.D.C. 1993) (“The [Letter of Inquiry] is a request for additional information about the broadcasts in question and does not represent a final determination of [a] violation.”). Nor was the issuance of the Letter of Inquiry “highly unusual,” as Chinese Voice suggests. Motion for Stay at 1. Having received information that Chinese Voice was continuing to broadcast after being notified that its license had expired—in violation of the bedrock licensing requirement of the Communications Act, *see* 47 U.S.C. § 301—it was incumbent on the agency to inquire into the facts.

Chinese Voice also alleges that the Letter of Inquiry could force it to shut down its operations. Motion for Stay at 18. Relying on a single sentence in a declaration from its operations manager in 2019, Chinese Voice alleges that if the station ceases operations, “it will be virtually impossible to regain its antenna site, staffing, volunteers, listeners and donors.” Motion for Stay at 18; *see* Motion for Stay Add. E. Wholly apart from the Letter of Inquiry, Chinese Voice has no right to operate its station with an expired license, nor has it ever had a right to broadcast from an unlicensed location. *See* 47 U.S.C. § 301. In any case, Chinese Voice does

not explain why it could not restart operations (from a licensed location), and reacquire staff, volunteers, listeners and donors, in the unlikely event that the Commission's order were overturned.

Chinese Voice asserts that, while its appeal is being pursued, its landlord “could find alternative uses” for its antenna site, and that other “FM translator stations” might relocate near its location, Motion for Stay at 19, but it does not show that those consequences are reasonably foreseeable (and why it could not maintain the lease of its site while it awaits the result of its appeal).

Chinese Voice also points to Section 307(c)(3) of the Communications Act, which provides that the license of a station that has filed an application for renewal shall continue in effect until the disposition of its application. Motion for Stay at 19 (citing 47 U.S.C. § 307(c)(3)). But that section has no application to Section 312(g), which provides without qualification that the license of a station that has not broadcast from its authorized location for 12 consecutive months “expires.” 47 U.S.C. § 312(g).

In sum, Chinese Voice's assertions fall well short of the “proof” that irreparable harm “is certain to occur in the near future.” *Wis. Gas*, 758 F.2d at 674.

III. The Public Interest Weighs Against A Stay

Finally, a stay in this case would harm the public interest in ensuring that broadcast stations operate at their licensed locations, and in accordance with a license that has not expired. Congress, by statute, has made clear that the license of a broadcast station that fails to broadcast from its licensed location for 12 consecutive months expires, unless the Commission determines that there are reasons of “equity or fairness” to reinstate it. 47 U.S.C. § 312(g). The Commission reasonably determined that there were no such circumstances here. There is a clear public interest in implementing Congress’s legislative decision that broadcast licenses expire if the licensee, without good reason, has not broadcast from its licensed location for 12 consecutive months.

Chinese Voice nevertheless contends that the public interest will be served by its provision of Chinese language programming to Chinese-speaking listeners in Las Vegas. Motion for Stay at 21. But as we have noted, Chinese Voice is free to change its programming at will, and there is nothing to prevent any of the other radio stations in the Las Vegas market from providing such programming. In any event, Chinese Voice it is not entitled to provide any programming without a broadcast license, *see* 47 U.S.C. § 301, and the Commission has duly determined

that Chinese Voice's license has expired, *see* 47 U.S.C. § 312(g). Whatever the public interest benefits of the programming that Chinese Voice provided when it had a license, the Communications Act recognizes no public interest benefit to the provision of programming by a radio station without a license.

CONCLUSION

For the foregoing reasons, the motion for stay pending appeal should be denied.

Respectfully submitted,

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June 21, 2021

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CERTIFICATE OF FILING AND SERVICE

I, Matthew J. Dunne, hereby certify that on June 21, 2021, I filed the foregoing Opposition of Federal Communications Commission to Motion for Stay Pending Appeal with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the electronic CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ Matthew J. Dunne

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Addendum A

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Chinese Voice of Golden City)	File No. EB-FIELDWR-21-00031760
DKQLS-LP, Las Vegas, Nevada, Facility ID No.)	FRN: 0023130925
194198)	
)	

ORDER

Adopted: June 21, 2021

Released: June 21, 2021

By the Chief, Enforcement Bureau:

1. On November 19, 2019, the Media Bureau notified Chinese Voice of Golden City (CVGC) that its license for station DKQLS-LP, Las Vegas, Nevada, Facility ID No. 194198 (Station) had expired pursuant to section 312(g) of the Act.¹ On April 23, 2021, the Enforcement Bureau (Bureau) sent a Letter of Inquiry (LOI) to CVGC regarding whether it had continued to operate the Station after its license expired.² On May 10, 2021, CVGC filed with the Commission both a Motion to Quash the LOI and a Motion for Stay³ of the Bureau's investigation into whether CVGC violated the Communications Act of 1934, as amended (Act),⁴ and the Commission's rules by continuing to operate the Station. For the reasons set forth below, we (a) dismiss the Motion to Quash as procedurally defective and otherwise deny it, and (b) deny the Motion for Stay.

2. CVGC brings its Motion to Quash under section 1.334 of the Commission's rules, which, on its face, applies only to subpoenas.⁵ The Bureau issued the LOI pursuant to sections 4(i), 4(j) and 403 of the Act, not under its subpoena power in section 409(e) of the Act.⁶ Because section 1.334 is specific to subpoenas, and because the LOI is not a subpoena, the Motion to Quash is procedurally defective and we therefore dismiss it.

¹ 47 U.S.C. § 312(g); *See* Letter from Albert Shuldiner, Chief, Audio Division, FCC Media Bureau, to Chinese Voice of Golden City (Nov. 19, 2019), at http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=93164 (Notification Letter). CVGC filed a petition for reconsideration of the Notification Letter and sought a stay of its effectiveness. On January 15, 2020, the Media Bureau denied CVGC's petition and dismissed the stay request as moot. *Chinese Voice of Golden City, DKQLS-LP, Las Vegas, Nevada*, Memorandum Opinion and Order, 35 FCC Rcd 567 (MB 2020) (*Recon Order*). CVGC then sought review by the Commission and again requested a stay of the license expiration. On November 25, 2020, the Commission denied CVGC's application for review and also dismissed the stay request as moot. *Chinese Voice of Golden City, DKQLS-LP, Las Vegas, Nevada*, Memorandum Opinion and Order, 35 FCC Rcd 13638 (2020) (*Review Order*).

² Motion of Chinese Voice of Golden City to Quash Letter of Inquiry (filed May 10, 2021) (on file in EB-FIELDWR-21-00031760) (Motion to Quash); Letter of Inquiry from Axel Rodriguez, Field Director, Enforcement Bureau, to Chinese Voice of Golden City (April 23, 2021) (LOI).

³ Motion of Chinese Voice of Golden City for Stay of Enforcement Proceedings (filed May 10, 2021) (on file in EB-FIELDWR-21-00031760) (Motion for Stay).

⁴ 47 U.S.C. §§ 151, *et seq.*

⁵ Motion to Quash at 1; 47 CFR § 1.334.

⁶ LOI at 1; *Compare* 47 U.S.C. §§ 154(i), 154(j), 403, *with* 47 U.S.C. § 409(e).

3. We also deny, on alternate and independent grounds, the substantive legal arguments set forth in the Motion to Quash. The Motion to Quash enumerates nine overlapping arguments, which effectively set forth four legal claims. *First*, the Motion to Quash argues that the Bureau lacks jurisdiction to investigate CVGC's conduct in light of its pending appeal to the United States Court of Appeals for the District of Columbia Circuit of the Commission's determination on further review of the Media Bureau's orders that the Station's license had expired pursuant to section 312(g) of the Act.⁷ We disagree. The Notification Letter took effect on release, and CVGC's license has expired.⁸ Further, although the LOI asks whether CVGC operated the station after the Station's license expired, it also seeks information that the Bureau needs to assess whether such operations complied with the Commission's rules pertaining to low power FM radio stations. For example, the LOI seeks information regarding the Station's power output, location, and its participation in the Emergency Alert System.⁹ Accordingly, the Bureau's investigation of CVGC through the LOI is distinct from the matter before the court, and therefore does not conflict with the court's review.

4. *Second*, the Motion to Quash argues that the LOI is threatening, coercive, and is meant to thwart CVGC's ability to seek judicial review.¹⁰ We reject this argument. The LOI merely seeks information regarding CVGC's conduct;¹¹ it does not order CVGC to cease operating the Station, nor does it propose forfeitures pursuant to section 503(b) of the Act for apparent liability or make findings that the company violated the Act or the Commission's rules.¹²

5. *Third*, the Motion to Quash asserts that CVGC has a right to continue to operate the Station pending the resolution of its appeal.¹³ We reject this argument as premature. The Bureau presently lacks sufficient information to make a determination as to whether CVGC operated the Station following the expiration of its license and, if so, whether it lacked the authority to do so. Were the Bureau to take any position regarding this argument, it would effectively pre-judge its own investigation.

6. *Fourth*, the Motion to Quash asserts that granting it would serve the public interest.¹⁴ Not so. Congress has tasked the Commission with the management of radio spectrum and has authorized it to enforce its rules.¹⁵ Were we to grant CVGC's motion, it would set a precedent that would enable all appellants in licensing matters to avoid any scrutiny of their conduct pending the outcome of their appeal.

7. Turning to the Motion for Stay, CVGC bases its motion on its likelihood to prevail both in its Motion to Quash and in its pending appeal of the *Review Order*.¹⁶ Having dismissed and otherwise

⁷ Motion to Quash at 11 – 15.

⁸ See 47 CFR § 1.102(b)(1) (non-hearing and interlocutory actions taken pursuant to delegated authority effective upon release).

⁹ LOI at 5.

¹⁰ Motion to Quash at 15 – 20.

¹¹ See LOI at 2 (stating that “[t]he purpose of this investigation is to determine the extent to which CVGC operates or has operated the Station without the requisite Commission authority after its license expired”).

¹² *Id.* (stating that the “LOI constitutes an order of the Commission to produce the documents and information requested herein”).

¹³ Motion to Quash at 21 – 24.

¹⁴ *Id.* at 24.

¹⁵ 47 U.S.C. §§ 301, 501, *et seq.*

¹⁶ Motion for Stay at 3, *citing Wash. Metro. Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977) (establishing that proponents of a stay must demonstrate that (a) it is likely to succeed on the merits, (b) it will be irreparably harmed if the stay is not granted, (c) third parties will not be harmed by the stay, and (d) granting the stay serves the public interest).

denied the Motion to Quash, CVGC's arguments regarding its likelihood of prevailing in that motion are moot. CVGC's appeal of the *Review Order* does not prevent the Bureau from investigating the facts surrounding CVGC's alleged operation of the Station after the expiration of the Station's license. Even if CVGC prevails in its appeal, the Bureau has a basis to investigate CVGC's compliance with the Commission's service rules pertaining to the Station. We therefore deny the Motion for Stay.

8. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i), 4(j) and 403 of the Act,¹⁷ the Motion to Quash filed by Chinese Voice of Golden City is hereby **DISMISSED** and otherwise **DENIED**.

9. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i), 4(j), and 403 of the Act,¹⁸ the Motion for Stay filed by Chinese Voice of Golden City is **DENIED**.

10. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i), 4(j), and 403 of the Act,¹⁹ Chinese Voice of Golden City **SHALL SUBMIT** its response to the Bureau's Letter of Inquiry on or before July 6, 2021.

11. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by first class mail and certified mail, return receipt requested, to Bo Tian, President, Chinese Voice of Golden City, 2801 South Valley View Boulevard, Suite 5E, Las Vegas, Nevada 89102, and to James L. Winston, Esq., Rubin, Winston, Diercks, Harris & Cooke, LLP, 1250 Connecticut Avenue, NW, Suite 700, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

¹⁷ 47 U.S.C. §§ 154(i), 154(j), 403.

¹⁸ *Id.*

¹⁹ *Id.*