

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 ON REVIEW

Adopted: May 17, 2022

Released: May 17, 2022

By the Commission:

I. INTRODUCTION

1. This Order on Review reflects the Commission’s latest consideration of a former radio broadcaster’s arguments concerning its defunct station license and its attempts to thwart investigation by the Commission’s Enforcement Bureau. The Commission hereby rejects the application for review and associated stay request filed by Chinese Voice of Golden City (CVGC) and directs CVGC to respond in full to the Enforcement Bureau’s April 23, 2021, Letter of Inquiry (LOI) within 14 calendar days of the date hereof.

2. On November 19, 2019, the Media Bureau notified CVGC that its license for station DKQLS-LP, Las Vegas, Nevada, Facility ID No. 194198 (Station) had expired as a matter of law on December 13, 2018. On April 23, 2021, the Enforcement Bureau (Bureau) sent the LOI to determine whether CVGC continued to operate the Station after being informed that its license expired. On May 10, 2021, CVGC filed with the Commission both a Motion to Quash the LOI and its First Motion for

1 Letter of Inquiry from Axel Rodriguez, Field Director, Office of the Field Director, FCC Enforcement Bureau, to Chinese Voice of Golden City (April 23, 2021) (on file in EB-FIELDWR-21-00031760). CVGC should note that the inquiries and document requests contained in the LOI are continuing in nature and that it must provide responsive information and documents from November 19, 2019, to the present. See LOI at 10.

2 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), 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). 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. The Commission’s decision was subsequently affirmed by the U.S. Court of Appeals for the District of Columbia Circuit. Chinese Voice of Golden City, DKQLS-LP, Las Vegas, Nevada, Memorandum Opinion and Order, 35 FCC Rcd 13638 (2020) (Review Order), aff’d sub nom. Chinese Voice of Golden City v. FCC, No. 20-1514 2021 WL6102191 (D.C. Cir. Nov. 30, 2021) (per curiam).

3 See LOI.

4 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).

Investigative Stay<sup>5</sup> of the Bureau's investigation into whether CVGC violated the Communications Act of 1934, as amended (Act),<sup>6</sup> and the Commission's rules by continuing to operate the Station. The Bureau denied CVGC's motions in its June 21, 2021, *Order*,<sup>7</sup> after which CVGC filed an Application for Review and its Second Motion for Investigative Stay.<sup>8</sup> For the reasons set forth below, we (a) dismiss and otherwise deny the Application and affirm the *Order*, and (b) deny the Second Motion for Investigative Stay.

## II. APPLICATION FOR REVIEW

### A. The Bureau's *Order* is a Valid Exercise of Delegated Authority

3. In its Application, CVGC argues that the Bureau exceeded its authority under section 0.311 of the Commission's rules by responding to the Motion to Quash and the First Motion for Investigative Stay under delegated authority, despite CVGC addressing both to the Commission rather than the Bureau.<sup>9</sup> This is a misreading of the Commission's rules. The introductory sentence of section 0.311 authorizes the Bureau to perform its duties outlined in section 0.111 of the Commission's rules, subject to specific exceptions that do not apply here.<sup>10</sup> Section 0.111(a)(18), grants the Bureau express authority to "[i]ssue or draft appropriate interlocutory orders . . . in the exercise of its responsibilities."<sup>11</sup>

4. Inasmuch as the *Order* pertained to motions meant to block the Bureau in the early stages of its investigation, the Motion to Quash and First Motion for Investigative Stay were interlocutory in nature and therefore appropriately handled by the Bureau. Moreover, the Bureau's omission of a reference in the ordering clauses of the *Order* to section 0.111(a)(18) of the Commission's rules as the basis of its authority does not mean the Bureau lacked such authority. In any event, our decision herein affirming the merits of the Bureau's *Order* for the reasons discussed renders moot any claim that the Bureau lacked delegated authority.<sup>12</sup>

### B. The Bureau Correctly Dismissed the Motion to Quash as Procedurally Flawed

5. The Bureau's *Order* dismissed CVGC's Motion to Quash because it was brought under section 1.334 of the Commission's rules, which pertains to subpoenas, whereas the Bureau issued a letter of inquiry.<sup>13</sup> In a footnote to the Application, CVGC responds by attempting to semantically equate letters of inquiry and subpoenas issued by the Commission.<sup>14</sup> As the Bureau correctly stated in the *Order*, letters of inquiry and subpoenas have different statutory underpinnings and are therefore not equivalent

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<sup>5</sup> Motion of Chinese Voice of Golden City for Stay of Enforcement Proceedings (filed May 10, 2021) (on file in EB-FIELDWR-21-00031760) (First Motion for Investigative Stay).

<sup>6</sup> 47 U.S.C. § 151 *et seq.*

<sup>7</sup> *Chinese Voice of Golden City, DKQLS-LP, Las Vegas, Nevada, Facility ID No. 194198*, Order, 36 FCC Rcd 9927 (EB 2021), <https://docs.fcc.gov/public/attachments/DA-21-719A1.pdf> (*Order*).

<sup>8</sup> Application for Review of Chinese Voice of Golden City (filed July 2, 2021) (on file in EB-FIELDWR-21-00031760) (Application); Motion of Chinese Voice of Golden City for Stay (filed July 2, 2021) (on file in EB-FIELDWR-21-00031760) (Second Motion for Investigative Stay).

<sup>9</sup> See Application at 2 – 3.

<sup>10</sup> 47 CFR §§ 0.111, 0.311.

<sup>11</sup> 47 CFR § 0.111(j).

<sup>12</sup> See *Murray Energy Corp. v. FERC*, 629 F.3d 231, 236 (D.C. Cir. 2011) (agency's ratification of staff decision resolved any potential problems with staff's exercise of delegated authority); *PMCM TV, LLC v. RCN Telecom Services, LLC, Memorandum Opinion and Order*, 32 FCC Rcd 7200, 7217, para. 26 (2017), *petitions for review denied, PMCM, LLC v. FCC*, Nos. 17-1209 & 1210 (D.C. Cir. June 20, 2018).

<sup>13</sup> See *Order*, 36 FCC Rcd at 9927, para. 2.

<sup>14</sup> Application at 2, n.5.

for purposes of the Commission's procedural rules governing motions to quash.<sup>15</sup> Accordingly, we affirm the Bureau's dismissal of the Motion to Quash on procedural grounds.

**C. The Bureau Correctly Denied the Motion to Quash on Substantive Grounds**

6. In the *Order*, the Bureau, on alternative and independent grounds, addressed and rejected CVGC's substantive arguments in support of its Motion to Quash. After considering the arguments set forth in the Application and the record in this matter, we affirm the *Order*.

**1. The Bureau's Investigation was Distinct from, and Did Not Conflict with, the Matter on Appeal**

7. In both the Motion to Quash and in the Application, CVGC challenges the Bureau's jurisdiction to issue the LOI on the basis of its then-pending appeal to the U.S. Court of Appeals for the District of Columbia Circuit of the Commission's decision that the Station's license expired. That appeal is no longer pending, and we therefore dismiss as moot those portions of the Application challenging the Bureau's jurisdiction to investigate the Station during the pendency of an unrelated appellate action. On alternative and independent grounds, we deny the Application with respect to CVGC's jurisdictional arguments.

8. According to CVGC, its pending appeal entirely divests the Commission and the Bureau of jurisdiction to investigate allegations that CVGC violated the Commission's rules or the Act by continuing to operate after its license expired.<sup>16</sup> In support of its view, CVGC cites a number of authorities, including *Winchester v. U.S. Attorney for the Southern District of Texas*, for the proposition that "under the usual rule, the district court loses all jurisdiction over matters brought to [the court of appeals] upon the filing of the notice of appeal."<sup>17</sup>

9. CVGC's reliance on *Winchester* and its kin is misplaced.<sup>18</sup> Collectively, the authorities cited in the Application establish the primacy of an appellate court's jurisdiction over the *specific* matters before it.<sup>19</sup> However, as the Bureau correctly determined, the D.C. Circuit's review of the Commission's decision that the Station's license expired on December 13, 2018, is separate from the enforcement investigation of CVGC's conduct occurring *after* being informed that its license expired.<sup>20</sup> In this regard, the Bureau's actions are consistent with precedents in which the "usual rule" referenced in *Winchester* has been found not to apply to issues that are collateral to the subject of a pending appeal.<sup>21</sup> Accordingly, we

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<sup>15</sup> See *Order*, 36 FCC Rcd at 9927; compare 47 U.S.C. §§ 154(i), 154(j), 403 (authorities cited in LOI), with 47 U.S.C. § 409(e) (subpoena authority).

<sup>16</sup> Application at 12 – 16.

<sup>17</sup> *Winchester v. U.S. Attorney for the Southern District of Texas*, 68 F.3d 947, 949 (5th Cir. 1995). See *Princz v. Federal Republic of Germany*, 998 F.2d 1 (D.C. Cir. 1993) ("an appeal properly pursued from the district court's order divests the district court of control over those aspects of the case on appeal"), citing *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982).

<sup>18</sup> We also note that the D.C. Circuit has questioned whether the general principle that a district court loses jurisdiction over matters brought to a court of appeals should also extend to administrative agencies. See *Chamber of Commerce of U.S. v. SEC*, 443 F.3d 890, 897-98 (D.C. Cir. 2006).

<sup>19</sup> Application at 12 – 16.

<sup>20</sup> *Order*, 36 FCC Rcd at 9928, para. 3.

<sup>21</sup> See, e.g., *Hyde v. Irish*, 962 F.3d 1306, 1309 (11th Cir. 2020) (acknowledging the general divestiture rule but determining that Rule 11 sanctions do not reach the merits of the matter on appeal and are collateral issues that remain within the district court's jurisdiction); *Weingarten Realty Investors v. Miller*, 661 F.3d 904, 908 (5th Cir. 2011) ("Although appeals transfer jurisdiction from the district court to the appellate court concerning 'those aspects of the cases involved in the appeal,' . . . the district court is nonetheless free to adjudicate matters that are not involved in that appeal"), quoting *Griggs*, 459 U.S. at 58.

reject CVGC's argument that its pending appeal of its license expiration stripped the Commission of its jurisdiction in this enforcement matter regarding post-expiration conduct.

## 2. The *Order* and LOI Correctly Apply Section 511 of the Act

10. We also agree with the Bureau that the LOI's invocation of section 511 of the Act is not a "tortured misinterpretation of the term 'pirate radio'"<sup>22</sup> that threatened or attempted to coerce CVGC and its principals.<sup>23</sup> As the LOI plainly states (and as directly quoted in the Application), "section 511 of the Act establishes penalties for any individual who engages in or permits acts of pirate radio broadcasting, which is defined as 'the transmission of communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Commission.'"<sup>24</sup> Through the LOI, the Bureau is attempting to investigate, *inter alia*, whether the Station continued to operate as a broadcast station after the expiration of its license, and, if so, the frequency on which the Station operated. The LOI also provided CVGC with an opportunity to explain its legal basis for continuing to operate.<sup>25</sup> Thus, with respect to section 511 of the Act, the LOI plainly seeks information to determine whether Station has operated without a license from the Commission on a frequency identified in section 511(h) of the Act. In amending the Act to include section 511(h), Congress did not draw a distinction between a station that has *never* held a Commission license and one that *previously* held a Commission license,<sup>26</sup> and we decline to do so here. Accordingly, we find that the Bureau's invocation of section 511 was appropriate in a preliminary inquiry whether the conduct of CVGC and its principals met the statutory threshold for liability under section 511 of the Act.

## 3. CVGC Has Lacked Authority to Operate the Station Since December 13, 2018

11. We depart, somewhat, from the Bureau's analysis of CVGC's argument that it was permitted to continue to operate the Station following the expiration of its license pursuant to section 312(g) of the Act. In the *Order*, the Bureau took no position on whether CVGC possesses authority to operate the Station, stating that it did not want to prejudge the outcome of its own investigation.<sup>27</sup> Given that CVGC has challenged the LOI but has not advanced a plausible theory under which it could continue to operate the Station after its license expired by operation of section 312(g), we address CVGC's claims on the merits.<sup>28</sup>

12. CVGC asserts that "[t]he Bureau interprets Section 1.102(b) as giving it the authority to prevent a licensee from broadcasting unless and until the Bureau's decision is overturned by the Commission or a reviewing court"<sup>29</sup> and that such an interpretation conflicts with section 558 of the Administrative Procedure Act (APA).<sup>30</sup> As an initial matter, the LOI seeks information from CVGC but neither directs the company to take any action regarding possible continued operation of the Station nor

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<sup>22</sup> Application at 17.

<sup>23</sup> *Order* 36 FCC Rcd at 9928, para. 4.

<sup>24</sup> Application at 17 (emphasis omitted), *quoting* LOI at 2; *see* 47 U.S.C. § 511(h).

<sup>25</sup> LOI at 5 (instructing CVGC to identify "[t]he Commission authorization pursuant to which the Station was operated").

<sup>26</sup> *See* text accompanying n.24, *supra*.

<sup>27</sup> *Order* at 2, para. 4.

<sup>28</sup> We observe, moreover, that since the Bureau released the *Order*, the D.C. Circuit denied CVGC's request for a judicial stay of the *Review Order* (and, by implication, a request to stay the expiration of the Station's license) in the separate licensing proceeding. *Chinese Voice of Golden City v. FCC*, No. 20-1514, slip op. (D.C. Cir. July 9, 2021) (*per curiam*).

<sup>29</sup> Application at 24.

<sup>30</sup> *Id.*; 5 U.S.C. § 558.

imposes any sanction on the company. In any event, we reject CVGC's argument that prohibition of operations unless and until the Media Bureau's licensing decision is overturned by a reviewing court amounts to a sanction without reasonable notice or opportunity to achieve compliance in violation of section 558 of the APA.<sup>31</sup> As the D.C. Circuit has explained, "[a] license that expires on its own terms is not protected by" 5 U.S.C. § 558.<sup>32</sup> Here, through operation of section 312(g) of the Act,<sup>33</sup> CVGC's license expired on its own terms on December 13, 2018, when it failed to "transmit broadcast signals" (i.e., as authorized in its license) for a consecutive 12-month period.

13. Next, we reject CVGC's argument that the Station's license was somehow preserved during the pendency of Commission review of the Media Bureau's decision and judicial review of the Commission's decision by operation of section 307(c)(3) of the Act.<sup>34</sup> Section 307(c)(3) provides that the "license" of a station that has filed an application for renewal shall continue in effect pending administrative or judicial review of a decision on the renewal application.<sup>35</sup> Section 307(c)(3) does not apply here because CVGC never filed a renewal application. In addition, section 307(c)(3) has no application to section 312(g), which provides, without qualification, that the license of a station "expires" if the station fails to "transmit broadcast signals" for a consecutive 12-month period.<sup>36</sup> Indeed, section 312(g) provides that the Commission may "extend or reinstate" the expired license if, among other things, the holder of the station license "prevails" in an administrative or judicial appeal.<sup>37</sup> In other words, merely filing an administrative or judicial appeal of a decision finding that a license expired pursuant to section 312(g) does not work automatically to extend or reinstate the license.

14. CVGC also argues that section 307(c)(3) of the Act "provides guidance" that the Commission "should give great consideration and review before ordering a station off the air."<sup>38</sup> We do not agree. Section 307(c)(3) expressly refers to "contin[ui]ng such *license* in effect"<sup>39</sup> while a renewal application is pending. No renewal was pending. Rather, CVGC's license expired on December 13, 2018, pursuant to section 312(g). After that date, there was no license that could continue in effect. To the extent Congress wanted to permit operations pursuant to an expired license while an appeal is pending, it would have addressed that subject in section 312(g). But section 312(g) contains no language similar to that which lawmakers expressly included in section 307(c)(3).<sup>40</sup>

15. In addition, CVGC contends that, in certain cases, until a Station has exhausted its administrative and judicial remedies, the Commission protects from use by other parties the frequency of a station that has had its call sign deleted.<sup>41</sup> However, in those instances where the Commission takes

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<sup>31</sup> Application at 24. See 5 U.S.C. § 558(c) ("withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given— (1) notice by the agency in writing of the facts or conduct which may warrant the action; and (2) opportunity to demonstrate or achieve compliance with all lawful requirements.").

<sup>32</sup> *Atlantic Richfield Co. v. United States*, 774 F.2d 1193, 1200 (D.C. Cir. 1985).

<sup>33</sup> 47 U.S.C. § 312(g).

<sup>34</sup> 47 U.S.C. § 307(c)(3).

<sup>35</sup> *Id.*; Application at 23 – 24.

<sup>36</sup> 47 U.S.C. § 312(g).

<sup>37</sup> *Id.*

<sup>38</sup> Application at 23.

<sup>39</sup> 47 U.S.C. § 307(c)(3) (emphasis added).

<sup>40</sup> See *Russello v. United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion") (citations omitted).

<sup>41</sup> Application at 23 – 24.

such steps, it does not permit the station that has had its call sign deleted to continue to broadcast without a license.

#### 4. A Grant of the Application Would Harm the Public Interest.

16. In the Application, CVGC asserts that quashing the LOI would serve the public interest.<sup>42</sup> We disagree. As the Bureau correctly stated, Congress has tasked the Commission with managing radio spectrum and has authorized it to enforce its rules. Were we to grant the Application and suspend the LOI, it would set a precedent that would enable an appellant in a licensing matter to avoid any scrutiny of its conduct (including conduct occurring after a license has expired) pending the outcome of an appeal. We will not do so.

### III. SECOND MOTION FOR INVESTIGATIVE STAY

17. Turning to the Second Motion for Investigative Stay, CVGC once again bases its motion, *inter alia*, on a claimed likelihood to prevail in the Application.<sup>43</sup> In light of the dismissal and denial of the Application, CVGC's arguments regarding its likelihood of prevailing before the Commission are moot. CVGC is thus unable to satisfy the requirements for an administrative stay of the Bureau's *Order*.<sup>44</sup> Accordingly, we deny the Second Motion for Investigative Stay.

### IV. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED** that, pursuant to section 5(c)(4) of the Act,<sup>45</sup> the Application for Review filed by Chinese Voice of Golden City is hereby **DISMISSED**, in part, and otherwise **DENIED**, and the *Order* is **AFFIRMED**.

19. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i), 4(j), and 403 of the Act,<sup>46</sup> the Second Motion for Investigative Stay filed by Chinese Voice of Golden City is hereby **DENIED**.

20. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i), 4(j), and 403 of the Act,<sup>47</sup> Chinese Voice of Golden City **SHALL SUBMIT** its response to the Bureau's Letter of Inquiry within fourteen (14) calendar days of the date hereof.

21. **IT IS FURTHER ORDERED** that a copy of this Order on Review 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,

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<sup>42</sup> Application at 24 – 25.

<sup>43</sup> See Second Motion for Investigative Stay at 4 -5.

<sup>44</sup> See *Nken v. Holder*, 556 U.S. 418, 434 (2009) (stating that the four factors considered in a request for a stay are “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies”).

<sup>45</sup> 47 U.S.C. § 155(c)(4).

<sup>46</sup> 47 U.S.C. §§ 154(i), 154(j), 403.

<sup>47</sup> *Id.*

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FEDERAL COMMUNICATIONS COMMISSION

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