

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

In the Matter of
International Aerospace Solutions, Inc.
DKTHO(AM), South Lake Tahoe, CA
Application for Renewal of License
Application for Special Temporary Authority
DK241BK, South Lake Tahoe, CA
Application for Renewal of License
Application for Special Temporary Authority
Facility ID No. 51528
File Nos. 0000155930
BESTA-20210803AAA
Facility ID No. 146398
File Nos. 0000155931
BSTA-20210820AAA

MEMORANDUM OPINION AND ORDER

Adopted: February 13, 2023

Released: February 14, 2023

By the Commission:

I. INTRODUCTION

1. The Commission has before it an Application for Review (AFR)1 from International Aerospace Solutions, Inc. (IAS), licensee of deleted AM station KTHO and FM Translator K241BK (Translator), both South Lake Tahoe, California (collectively, Stations).2 IAS seeks review of a January 28, 2022 Media Bureau (Bureau) decision3 finding that the Stations' licenses expired automatically as a matter of law due to extended failure to broadcast as authorized and the staff appropriately dismissed applications to renew the Stations' licenses based on their expiration.4 For the reasons set forth below, we deny the AFR.

II. BACKGROUND

2. Broadcast licenses authorize stations to operate with the specific parameters identified therein, including the location of a station's transmitter. Licensees are required to request and obtain Special Temporary Authority (STA) prior to any operation at variance from the licensed parameters.5

1 International Aerospace Solutions, Inc., Application for Review, Pleading File No. 0000185966 (rec. Mar. 7, 2022).

2 The Stations have been listed in the Media Bureau's licensing databases as DKTHO and DK241BK since the dismissal of the Stations' license renewal applications, and they are listed as such in the caption and ordering clauses of this order. Otherwise, they will be referred to herein by their original call letters, KTHO and K241BK.

3 Barry D. Wood, Esq., Letter Order (MB Jan. 28, 2022) (January Decision).

4 IAS, Letter Order (MB Nov. 15, 2021) (November Letter).

5 47 CFR § 73.1635.

They also must notify the Commission if they stop broadcasting for 10 days and request STA to remain silent for more than 30 days.⁶

3. Section 312(g) of the Communications Act of 1934, as amended (Act)⁷ provides that broadcast licenses expire automatically as a matter of law upon failure to transmit broadcast signals for a consecutive 12-month period.⁸ For purposes of section 312(g), operation from an unauthorized location is no better than silence.⁹ Following expiration as a matter of law, the spectrum associated with the former license generally becomes available for use by future auction-winning bidders that would be given an opportunity to better serve the public or without auction to existing broadcasters proposing minor facility changes. Although section 312(g) affords the Commission some discretion to reinstate an expired license in limited circumstances, the Commission has exercised that discretion only rarely. In particular, the statute permits reinstatement if the Commission finds that such action would “promote equity and fairness,”¹⁰ but the Commission has exercised that discretion only for compelling circumstances beyond the licensee’s control, such as natural disasters.¹¹

4. In the present case, IAS was licensed to operate KTHO and to retransmit the AM signal over a co-owned, co-located FM translator which had no authority to originate programming of its own.¹² IAS ceased operating both Stations from the licensed site sometime in December 2018 after the tower owner seized the Stations’ transmission equipment due to nonpayment of rent but IAS did not timely share that information with the Commission. To prevent automatic expiration of the Stations’ licenses under section 312(g), IAS needed to resume broadcasts of the AM station from an authorized location within 12 months, *i.e.*, by December 2019 and, within that same period, resume retransmission of the AM signals over authorized facilities of the Translator. There is no evidence that IAS resumed authorized operations of either of the Stations within that timeframe. The record indicates, however, that the Translator was on air in 2019 and 2020 from an unknown location while KTHO was silent, in apparent violation of the prohibition on program origination from translator stations. The FCC’s Enforcement Bureau (EB) later learned of these matters through public complaints and began to investigate.

5. IAS first requested STA to broadcast at variance from licensed parameters in January 2021 for KTHO and in February 2021 for the Translator in applications submitted to the Media Bureau. At that time, the Bureau was unaware of the complaints directed to EB nor of the considerable duration of the alleged violations. Because IAS’ STA requests failed to disclose that the Stations had been silent and/or operating from unauthorized facilities for a consecutive 12-month period, the Bureau granted STA

⁶ *Id.* § 73.1740(a)(4).

⁷ 47 U.S.C. § 312(g).

⁸ *Id.* Broadcasting is defined as “dissemination of radio communications intended to be received by the public.” *Id.* § 153(7).

⁹ See *Eagle Broad. Group, Ltd.*, 563 F.3d 543, 553 (D.C. Cir. 2009) (*Eagle*); *Chinese Voice of Golden City*, Memorandum Opinion and Order, 35 FCC Rcd 13638, 13644, para. 14 (2020), *aff’d sub. nom per curiam*, *Chinese Voice of Golden City v. FCC*, No. 20-1514 (D.C. Cir. Nov. 30, 2021) (*Chinese Voice*).

¹⁰ 47 U.S.C. § 312(g). Reinstatement is also possible if the licensee prevails in an administrative or judicial appeal or the applicable law changes. *Id.*

¹¹ *E.g.*, *V.I. Stereo Comm. Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006) (damage from three hurricanes) (*V.I. Stereo*).

¹² FM translators are secondary facilities that are prohibited from originating programming with very limited exceptions which IAS has not claimed applicable. See 47 CFR § 74.1231(f) (requesting financial support), (g) (notifying of imminent danger), or (h) (FM translator for AM daytime-only station may continue to transmit programming when the AM station is off the air for the night).

without considering whether the licenses had already expired as a matter of law.¹³ After learning of the EB complaints, the Bureau contacted IAS three times between March 2021 and October 2021 to clarify the Stations' operating history but received no response by a final Bureau-established deadline of October 11, 2021.¹⁴ In an October 19, 2021 email, however, IAS' counsel acknowledged that IAS had been operating both Stations from a temporary site at reduced power, and stated that IAS was checking with its engineer to determine why listeners might have heard the Translator but not KTHO.¹⁵ On November 15, 2021, having received no further information from IAS, the Bureau determined, based on the information it had, that the Stations' licenses had expired automatically as a matter of law pursuant to section 312(g).¹⁶

6. On December 20, 2021, IAS submitted for the first time some of the information that the Bureau had previously requested, along with a petition for reconsideration of the November Letter.¹⁷ For example, IAS admitted that it had not been operating the Stations from the licensed site, and provided the address and coordinates of the site from which it had been transmitting, which was the home of its engineer.¹⁸ IAS did not dispute that the Stations ceased broadcasting and/or operated with unauthorized facilities for more than 12 consecutive months, thereby triggering automatic license expiration under section 312(g). Rather, IAS argued that newly presented facts and arguments warranted reinstatement pursuant to the Commission's discretion to promote equity and fairness. Among these new arguments were that: (1) the owner of IAS has Parkinson's Disease, which affected his ability to execute certain tasks including to respond to the Bureau's inquiries; (2) IAS would assign any reinstated licenses to its engineer, who is a member of a minority group; (3) the Stations were negatively affected by loss of site, the coronavirus (COVID) pandemic, and loss of advertising revenue; (4) loss of the Stations would be anti-competitive, resulting in monopolistic control of the radio market in an underserved community; (5) the Stations provide safety information responsive to the Tahoe Basin's unique geography, weather, and wildfires as well as provide COVID information; and (6) the Stations' operations from an unauthorized site did not cause any interference and conferred a public benefit by providing local news, weather, and emergency information.¹⁹

7. The Bureau dismissed the Petition in the January Decision, finding the matters therein untimely because IAS could have presented each one previously had it responded to the Bureau's inquiries.²⁰ On alternative and independent grounds, the Bureau denied the Petition because the

¹³ The STA requests neither disclosed prior unauthorized operations nor provided dates on which operation with authorized parameters ceased. *See* File Nos. BSTA-20210128AAA (KTHO STA granted Feb. 5, 2021, extension request File No. BESTA-20210803AAA dismissed Nov. 15, 2021), BSTA-20210217AAH (Translator STA granted Feb. 9, 2021, extended by File No. 20210820AAA Aug. 20, 2021). Had the Bureau staff been aware of the Stations' history of silence/unauthorized operations, the Bureau would have noted the automatic expiration of the licenses pursuant to section 312(g) and would have dismissed the STA requests as moot, consistent with standard practice.

¹⁴ The January Decision describes the three attempts in further detail. *See* January Decision at 2. The instant proceeding focuses in particular on a May 2021 Letter of Inquiry. *See* IAS, Letter, Ref. 1800B3-VM (MB May 4, 2021) (LOI).

¹⁵ Email from Barry Wood, wood@legalcompass.com to Victoria McCauley, Victoria.McCauley@fcc.gov (Oct. 19, 2021). Counsel noted that IAS does not feed the Translator from the KTHO over-the-air signal but, rather, from the same computer used to generate KTHO's programs and, thus, had asked the engineer to determine whether KTHO might have been off air briefly while the Translator continued running from the same program source. *Id.*

¹⁶ *See* November Letter.

¹⁷ IAS, Petition for Reconsideration, Pleading File No. 0000177536 (filed Dec. 20, 2021) (Petition).

¹⁸ Email from Barry Wood, wood@legalcompass.com to Victoria McCauley, Victoria.McCauley@fcc.gov (Dec. 20, 2021).

¹⁹ Petition at 2-9.

²⁰ The Commission's rules (Rules) provide that it will not consider petitions for reconsideration that rely upon facts that were known or in existence at the time of the petitioner's last opportunity to present such matters. *See* 47 CFR

information IAS provided did not reflect any compelling circumstances beyond the licensee's control and, thus, established no basis for reinstatement to promote equity and fairness.²¹

8. In the AFR, IAS repeats its equity and fairness arguments and stresses that IAS eventually came into compliance despite earlier difficulties.²² IAS contends that the January Decision focuses too narrowly on IAS' delays in requesting STA and responding to inquiries, which it considers "ministerial" matters that are far less important to the public interest than the potential loss of local programming that the Stations provided.²³ IAS further maintains that reinstatement of its licenses -- taking into account the health challenges of its principal and its plan to assign any reinstated license to a member of a minority group -- would not conflict with the plain language of section 312(g), which IAS contends is intended to address complete failure to operate but not operation from an unauthorized location.²⁴

III. DISCUSSION

9. We agree with the Bureau that the Stations' licenses expired pursuant to section 312(g) and that the staff correctly dismissed the Stations' renewal applications. In examining Applications for Review, the Commission will consider *inter alia* whether an action taken on delegated authority: (1) contains an erroneous finding as to an important or material question of fact or prejudicial procedural error; (2) conflicts with statute, regulation, case precedent, or established Commission policy; or (3) applies a precedent or policy which should be overturned or revised.²⁵ We disagree with IAS' claims that the Bureau made material errors, interpreted section 312(g) in a manner that conflicts with Congressional intent, and applied a policy that the Commission should revise.²⁶

10. Because the Bureau thoroughly addressed IAS' arguments and the AFR presents no arguments that would lead us to change the Bureau's determinations, we affirm the January Decision for the reasons stated therein. As a threshold matter, the January Decision's procedural dismissal of IAS' reconsideration request was correct because, as the Bureau noted, IAS' reconsideration petition relied on arguments it could have but did not raise previously, such as disclosure of the health challenges of the owner of IAS, the financial impact of COVID, and alleged potential benefits of continued operations.²⁷ IAS now contends that the Bureau should have viewed those new matters merely as delayed responses to the Bureau's LOI and not as untimely submissions on reconsideration. We disagree. The Commission has long rejected piecemeal submission of information because it hampers the Commission's ability to

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§ 1.106(c)-(d); *see also* *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966). Commission processes operate inefficiently when facts are presented piecemeal, so the Rules encourage complete information at an early stage, thereby minimizing the need for reconsideration proceedings. *See id.*

²¹ *See* January Decision at 4.

²² Indeed, IAS contends that it should instead be commended for taking steps to move toward compliance by filing, albeit belatedly, for STA. AFR at 6.

²³ *Id.* at 4-6, 9.

²⁴ *Id.* at 7-9.

²⁵ 47 CFR § 1.115(b)(2).

²⁶ Specifically, IAS argues that the January Decision: (1) erroneously determined that there was not an equity and fairness basis for reinstatement; (2) misinterpreted section 312(g) as applying to unauthorized operations in conflict with purported Congressional intent that it apply to complete silence; (3) erroneously ignored the Commission's paramount obligation to promote the public interest; (4) applied section 312(g) policies which should be revised; and (5) should have been more flexible in view of the disability of the owner of IAS.

²⁷ *See supra*, para. 6; January Decision at 3, citing 47 CFR § 1.106(c)-(d).

operate efficiently, and in the public interest.²⁸ The Rules thus specifically prohibit submission of new facts on reconsideration, with limited exceptions not applicable here.²⁹ We do not accept the claim that IAS is being unfairly “punished” for a delayed response to the LOI.³⁰ The Stations’ licenses expired as a matter of law under section 312(g) due to the Stations’ extended lack of authorized operations and not as a result of the failure by IAS to respond timely to the LOI. Moreover, as discussed below, we agree with the Bureau’s alternative and independent finding that the new facts at issue, even had IAS presented them in a timely manner as a response to the LOI, would not have supported reinstatement of the Stations’ licenses.

11. Because there is no dispute that the stations were silent and/or operating from an unauthorized location for a consecutive 12-month period, the only substantive issue before us is whether we should exercise our discretion under the equity and fairness exception to section 312(g). Consistent with the Bureau’s action, we decline to exercise that discretion. As noted above, the Commission has generally exercised its authority to reinstate for equity and fairness only where failure to transmit broadcast signals in accordance with FCC authorizations stemmed from compelling reasons beyond the licensee’s control.³¹ Here, as the Bureau found, IAS’ failure to satisfy its licensing requirements was due to its own actions, *i.e.*, loss of the authorized site for non-payment of rent and choice thereafter to operate from its engineer’s home without requesting and obtaining STA to do so.³² While IAS professed to have been unaware of the need to request STA to operate from a new site with different technical parameters, it is long-standing precedent that ignorance of the law is not a mitigating factor.³³ The Bureau also correctly rejected IAS’ reliance on the COVID pandemic as a basis for reinstatement because IAS did not establish any direct connection between COVID and the automatic cancellation of its licenses. As the Bureau observed, the Stations failed to transmit authorized broadcast signals for a consecutive 12-month period by late 2019, several months before COVID first became a pandemic in the United States in March 2020.³⁴ While IAS presents its principal’s disability as a matter beyond its control, the Bureau properly stated that the Commission expects licensees to delegate any matters they are unable to carry out themselves.³⁵ A licensee’s choice of whether to delegate station management functions is a matter within its control.

²⁸ See *Carolyn S. Hagedorn*, Memorandum Opinion and Order, 11 FCC Rcd 1695, 1696, para. 12 (1996); see also *Payne of Virginia, Inc.*, Memorandum Opinion and Order, 66 FCC 2d 633, 637, para. 8 (1977).

²⁹ 47 CFR § 1.106(c).

³⁰ AFR at 2. We note that IAS never challenged the authority of the Bureau to issue the LOI pursuant to Section 403 of the Act and Section 73.1015 of the Rules. See 47 U.S.C. § 403; 47 CFR § 73.1015.

³¹ See *supra* para. 3. See also *Kingdom of God, Inc.*, Memorandum Opinion and Order, 31 FCC Rcd 7522, 7527 & n.40 (2016), *aff’d sub nom. Kingdom of God, Inc. v. FCC*, 719 Fed. Appx. 19 (D.C. Cir. 2018, per curiam) (Mem.) (*Kingdom*) (citing *V.I. Stereo*, 21 FCC Rcd at 14259).

³² Site-related matters are considered within a licensee’s control because the licensee chooses the site. See *Kingdom*, 31 FCC Rcd at 7528 and cases cited therein (reinstatement of license expired under section 312(g) not appropriate where failure to broadcast was due to licensee’s own actions, finances, or business judgments).

³³ See January Decision at 4, citing *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992). It is well established that licensees are expected to be familiar with and to comply with Commission requirements and that subsequent corrective action does not excuse violations. *KGVL, Inc.*, Memorandum Opinion and Order, 28 FCC 2d 258, 259 (1973).

³⁴ January Decision at 4, citing *Levine/Schwab Partnership*, Memorandum Opinion and Order, FCC 22-1, para. 3 (rel. Jan. 5, 2022), appeal pending (affirming Bureau’s denial of tolling of construction deadline because site loss rather than COVID was the primary basis for ongoing failure to construct).

³⁵ January Decision at 4, citing *Stuart W. Nolan, Jr.*, Letter Order, 31 FCC Rcd 11716, 11726 (MB 2016) (waiver of construction period not warranted based on injury to licensee’s son because permittees are expected to delegate matters they are unable to carry out themselves) and *Texas Grace Comm.*, Memorandum Opinion and Order, 16 FCC Rcd 19167, 19168-72, paras. 3, 13 (2001) (rejecting permittee’s argument equating principal’s health problems

(continued....)

12. The remainder of IAS' arguments do not allege any matter beyond its control but, rather, suggest potential benefits from continued operations and alleged negative consequences if the Commission does not reinstate the licenses. None of these matters establish any equity and fairness basis for reinstatement.³⁶ For example, with respect to IAS' desire to assign the license to its engineer, the Commission has stated that licensees cannot avoid section 312(g) expiration by assigning the license to another party prior to expiration;³⁷ IAS' plan to assign its licenses post-expiration similarly provides no grounds for reinstatement.

13. Moreover, at least one of IAS' arguments – that the public will lack local news, weather, and emergency information without the Stations – is unsupported.³⁸ Commission records indicate there are well over a dozen other AM and FM stations that place a signal over some or all of IAS' service area and IAS did not explain to the Bureau why those stations could not provide adequate information responsive to the needs of South Lake Tahoe, including in emergencies. IAS now asserts in the AFR that the other stations allegedly focus their programming on Reno, Nevada and consider the Tahoe Basin of California to be of secondary importance.³⁹ We give no credence to this unsupported argument. The Commission affords broadcasters significant discretion and flexibility in selecting the types of programming to meet their obligation of responding to matters important in their community.⁴⁰ Coverage of local issues within news programs is one, but not the only, type of issue-responsive programming available for that purpose.⁴¹ Second, with respect to the Stations' availability to keep local residents informed in emergencies, our review of emergency information from South Lake Tahoe indicates that, in the 2019-21 period, local plans recommended following other local media outlets, not IAS' Stations, for emergency information. The City of South Lake Tahoe's website, for the period in question, recommended that, in the event of an emergency, local residents should follow the City's Facebook page for the latest updates or "listen to local radio and check for EAS Alerts on KLRT 93.9 FM or KOWL 1410 AM, and local television station (Channel 21)."⁴² Similarly, the online South Tahoe Emergency Guide, for the period in question, listed the following outlets in the "Media/TV/Radio" section of its Important Contacts page: *Tahoe Daily Tribune*, KMTN-TV, KRLT 93.9 FM, and Resort Sports

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to acts of God like natural disasters for purposes of tolling construction period). The Bureau appropriately rejected IAS' contention that federal law requires more lenient enforcement of Commission rules to accommodate disabilities. See January Decision at 4, citing 29 U.S.C. § 794 and *FCC Section 504 Programs & Activities Accessibility Handbook* (available at <https://www.fcc.gov/general/section-504-handbook>). We also disagree with IAS' argument that the Commission should apply "federal policy demanding that a person's disability be considered in evaluating matters such as 'equity and fairness'" under section 312(g). See AFR at 7. IAS has provided neither the specific policy applicable here nor the evidence demonstrating how its principal's disability directly caused or contributed to the Stations' failure to operate with authorized facilities for a consecutive 12-month period.

³⁶ For example, we will not reinstate based on the following matters which IAS presents as mitigating factors: (1) IAS' desire to assign the license to a member of a minority group; (2) lack of interference from the unauthorized operations; or (3) a purported lack of alternative sources of local news and emergency information. See AFR at 4-5.

³⁷ See *Implementation of Section 403(l) of the Telecommunications Act of 1996*, Order, 11 FCC Rcd 16599, 16601, para. 6 (1996).

³⁸ See January Decision at 5. Broadcast licensees are obligated to provide informational programming meeting the needs of their communities but are also obligated to comply with the Act and the Rules.

³⁹ AFR at 4-5.

⁴⁰ See *Office of Comm., United Church of Christ v. FCC*, 707 F.2d 1413, 1431 (D.C. Cir. 1983).

⁴¹ Licensees can, for example, respond to important community issues in public affairs programming, public service announcements, editorials, free speech messages, community bulletin boards, and religious programming. *Id.* at 1430.

⁴² See <https://www.cityofslt.us/171/Emergency-Disaster-Information>. A review of website archives shows that similar language has appeared on this page at least since January 12, 2019. See <https://archive.org/web/>.

Network.⁴³ Even if we were to accept IAS' contention *arguendo*, the nature of other stations' programming creates no exception to section 312(g).⁴⁴

14. Finally, we reject IAS' suggestion that we stop treating unauthorized transmissions as equivalent to no transmissions at all for purposes of our section 312(g) analysis. IAS characterizes this as an “unwise” and “outdated” Commission “policy” that goes beyond the plain language and intent of section 312(g).⁴⁵ IAS, however, is incorrect when it argues that section 312(g)'s lack of an explicit reference to unauthorized operations requires a more narrow reading in which license expiration would be triggered only by a station's complete silence.⁴⁶ Unauthorized operation is a violation of Section 301 of the Act, which prohibits any person from transmitting radio signals “except under and in accordance with this chapter and with a license ... granted under the provisions of this chapter.”⁴⁷ Willful unauthorized operation of a radio station is a serious violation of a statute that can lead to administrative or criminal sanctions, including seizure of the equipment, fines, and imprisonment.⁴⁸ Congress considered unauthorized operations so detrimental that it banned former “pirate” radio operators from obtaining licenses in the Low Power FM service.⁴⁹ It is well settled that unauthorized transmissions are not sufficient to avoid expiration of a station's license by operation of law.⁵⁰ In rejecting an argument similar to IAS', the D.C. Circuit suggested that the requirement to transmit from an authorized location is implicit in the statute's use of the term “broadcast signals” because “it strains credulity to suggest that the reference to ‘broadcast signals’ in §312(g) includes *unauthorized* and *unlicensed* transmissions.”⁵¹ IAS' unauthorized transmissions from its engineer's home were not “broadcast signals” for purposes of section 312(g).

15. We further reject IAS' argument that its unauthorized operations were harmless because they caused no interference to other radio stations. Avoiding interference is important, but not the only reason for requiring operations in accordance with a license. If licensees like IAS could move their facilities without prior consent, it would thwart our ability to authorize new stations and modification of existing stations because Commission records would not accurately reflect locations where spectrum is in use, which areas can accommodate additional stations, and which communities already have or lack adequate service. Unauthorized operations also sometimes involve uncertified equipment, disruption of

⁴³ See <http://www.southtahoemergencyguide.com/steg/importantcontacts.aspx>. A review of website archives shows that similar language has appeared on this page at least since February 28, 2019. See <https://archive.org/web/>.

⁴⁴ We also find that the Bureau properly rejected IAS' reliance on a 2021 presidential executive order encouraging independent federal agencies to, among other things, recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity, including among persons with disabilities and persons who live in rural areas. See January Decision at 5, citing Executive Order 13985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021). We conclude that the Bureau's finding that the Stations' licenses expired pursuant to Section 312(g) is consistent with this Executive Order because freeing up this unused channel creates new opportunities for others to provide service to this area.

⁴⁵ AFR at 2, 7-9.

⁴⁶ See *id.* at 8-9.

⁴⁷ 47 U.S.C. § 301.

⁴⁸ See *id.* § 501.

⁴⁹ See *Radio Broadcasting Preservation Act of 2000*, Pub. L. No. 106-553, 114 Stat. 2762, § 632(a)(1)(B), *codified in* 47 CFR § 73.854. See also *Ruggiero v. FCC*, 317 F.3d 239 (D.C. Cir. 2003), *cert. denied*, 540 U.S. 813 (2003) (statutory ban of prior unauthorized operators in the LPFM service satisfies a substantial government interest in ensuring compliance with broadcast regulations).

⁵⁰ *Chinese Voice*, 35 FCC Rcd at 13644 (finding no persuasive argument for revisiting long-standing interpretation of section 312(g)).

⁵¹ *Eagle*, 563 F.3d at 553 (emphasis in original). See also *Kingdom*, 719 Fed. Appx. at 20.

air traffic control communications, and similar problems. Moreover, even if we were to accept that IAS caused no interference in this instance, there is no indication that IAS knew that result when it began operating from the unauthorized location. We, therefore, find that IAS' professed lack of interference provides no basis for departure from our licensing practices.

16. We also disagree with IAS' contention that section 312(g) is outdated because there is no longer a robust demand at auction for spectrum returned to the Commission.⁵² First, it is axiomatic that the Commission cannot waive a statutory provision.⁵³ Second, section 312(g) reflects the fundamental interest in preventing "warehousing" of scarce spectrum and expediting new radio service by automatically terminating licenses without need for a hearing following a station's extended failure to operate as authorized.⁵⁴ The spectrum re-use that section 312(g) facilitates is not necessarily auction-dependent.⁵⁵ Regardless of whether the Commission decides to include the former KTHO and Translator spectrum in a future auction, adjacent channel AM and FM stations may propose minor facility changes that use the recovered spectrum to expand service to the Lake Tahoe area, thereby providing additional service to the public. We uphold the January Decision.

IV. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that the Application for Review filed by International Aerospace Solutions, Inc., former licensee of DKTHO(AM) and FM Translator DK241BK, both South Lake Tahoe, California, **IS DENIED**.

18. **IT IS FURTHER ORDERED** that the findings that the licenses of DKTHO(AM) and DK241BK expired as a matter of law pursuant to section 312(g) of the Communications Act of 1934, as amended, 47 U.S.C. 312(g), and dismissal of applications for license renewal as moot (File Nos. 0000155930 and 0000155931) **ARE AFFIRMED**.

⁵² AFR at 8. IAS argues the demand has decreased with declining broadcast revenues especially in smaller markets and observes that no one bid in a 2021 Commission auction for AM broadcast spectrum in the St. Louis market. *Id.*

⁵³ See, e.g., *Maricopa Comm. College Dist.*, Memorandum Opinion and Order, 29 FCC Rcd 15042, 15044-45 (2014) (Commission cannot waive statutory ban on airing commercial announcements on noncommercial stations); *Metromedia, Inc.*, Memorandum Opinion and Order, 56 FCC2d 909, 909-10, n.3 (1975) (Commission cannot waive statutory 30-day period for filing petitions for reconsideration).

⁵⁴ See *Family Life Ministries, Inc.*, Letter Order, 23 FCC Rcd 15395, 15397 (MB 2008) (section 312(g) ensures "that scarce broadcast spectrum does not lie fallow and unavailable to others capable of instituting and maintaining service to the public."). See also *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Third Report and Order, 26 FCC Rcd 17642, 17645 (2011) (fundamental interest in expediting new radio service and preventing warehousing).

⁵⁵ Section 312(g) is applicable to all broadcast stations, including noncommercial stations which are exempt from auction. *Cf.*, 47 U.S.C. § 309(j)(2)(C) (cross-referencing *id.* § 397(6)) (exempting noncommercial educational broadcast stations from auction). Spectrum recovered from commercial stations is subject to auction if used for new stations or to make major changes to existing stations, but is available without auction for minor changes to existing stations.

19. **IT IS FURTHER ORDERED** that erroneously granted requests for temporary authority to operate DKTHO(AM) and DK241BK at variance after their licenses had already expired as a matter of law (File Nos. BESTA-20210803AAA and BSTA-20210820AAA) **ARE MOOT**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary