Request for Special Temporary Authority

K45IE-D, Vail, Colorado, Fac. ID No. 128356

Vail Associates, Inc., d/b/a TV8 (“Vail”), licensee of K45IE-D, Vail, Colorado (Fac. ID No. 128356), hereby respectfully requests, under the provisions of 47 U.S.C. § 312(g), additional time to remain silent beyond the normal one-year period to promote “equity and fairness.”  Vail respectfully requests that the Commission allow K45IE-D an additional six months to remain silent.

K45IE-D originally went silent on July 17, 2019, due to transmitter failure.  A request for special temporary authority was granted by the FCC for K45IE-D to remain silent through February 16, 2020.  Due to system problems with the Licensing and Management System (“LMS”), an extension request was not able to be filed at that time.

K45IE-D operates on Channel 45 and will be displaced by the repacking of the television band, as its channel is outside the new core spectrum to be used by television stations. It was granted a construction permit in the Special Displacement Window for LPTV stations[[1]](#footnote-1) to change frequencies to channel 34.[[2]](#footnote-2) In the displacement application, Vail indicated that it could transition using its current facilities by retuning its antenna and transmitter.

However, the failure of its transmission facilities in 2019 caused the station to go off the air early. The station’s chief engineer, Terry Michaud, spent several months through trial and error trying to fix the failed transmission system. Subsequently, Vail reached the conclusion that the transmission issues were due to the station’s antenna.  Due to the age of the antenna (more than 10 years) and the fact that the original antenna vendor was a one-person operation and replacement parts to repair the antenna could not be produced, a new antenna had to be ordered. The order for a new antenna system was placed in March.

The new antenna, capable of operations on displacement channel 34, arrived mid-to-late March. Plans were made to install that antenna in early April.  With the installation of that antenna, Vail could have transitioned the station to channel 34, consistent with the July 13 deadline for the general relinquishment of operations on channel 45.[[3]](#footnote-3)

However, with the installation scheduled to commence the following week, on April 3, 2020, due to the effects of COVID-19, Terry Michaud, the station’s chief engineer was furloughed without notice. Since that time, the majority of the staff of Vail Associates has been furloughed and there is great uncertainty about when the furlough will be lifted. Access to the building that houses the station, and in which the antenna is stored pending its installation, is currently unavailable to station employees.

Obviously, in a resort area like Vail, Colorado, there has been substantial negative business impact from COVID-19, particularly during the period when travel was restricted in the state.  Operations of the ski resorts at Vail were closed on March 15, with all other business activities in Vail halted on March 20, 2020. This was consistent with an order issued by Colorado Gov. Jared Polis on March 18, 2020 closing the resorts given the limited medical facilities in resort communities.[[4]](#footnote-4) The governor’s order was extended on April 6 through the end of April,[[5]](#footnote-5) and then again on April 30 through the end of May.[[6]](#footnote-6) Governor Polis has also issued a variety of other stay-at-home orders and public health directives.[[7]](#footnote-7) Only today, July 1, has there been a limited reopening of some businesses at Vail.

The economic effects are still profound and ongoing, and the company’s priorities have centered on reopening its core business to the extent possible consistent with public health guidance. Thus, the limited reopening of some activities at Vail has not included the broadcast operations or the other operations in the building that houses the station. There is continuing uncertainty as to when the furloughed employees will be reinstated.  Because of these issues, it may be well into the winter months before there is any resolution to these issues and before the new antenna can be installed.

Section 312(g) of the Communications Act of 1934 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, except that the Commission may extend or reinstate such station license…for any reason to promote equity and fairness.”[[8]](#footnote-8) In the *Incentive Auction R&O*,[[9]](#footnote-9) the Commission explained that it would be receptive to requests for reinstatement or extension of a station’s license under section 312(g), “tak[ing] into account the extent to which a station has been involuntarily forced to remain dark as a result of the repacking process and whether, in light of the facts presented, equity and fairness dictate a license extension or reinstatement and a waiver.”[[10]](#footnote-10) Further, in the *Post‐Incentive Auction Procedures PN* the Media Bureau stated that, in considering requests to extend or reinstate a station’s license under Section 312(g) to promote fairness and equity, it “will examine whether the station has demonstrated that its silence is the result of compelling reasons beyond the stations’ control, including facts that relate to the post‐auction transition process.”[[11]](#footnote-11)

Vail submits that the circumstances in this case are compelling. It would have been prepared to implement its channel change and re-commencement of operations in April had it not been for the novel coronavirus. Given the station’s location in a particularly vulnerable community especially hard-hit economically by the impact of the virus, and the total shutdown of the business—required by government mandate—of the licensee in which the television operation is but a small part, this is the kind of natural disaster the FCC has recognized as warranting a finding that a license should be extended for fair and equitable reasons. This is also consistent with recent Commission actions in similar cases.[[12]](#footnote-12)

For the reasons set forth above, an STA should be granted for K45IE-D to remain silent. In addition, the Commission should permit the station an additional six months of silence before the license of the station expires under Section 312(g) given the current extraordinary circumstances. These actions are respectfully requested.

1. *The Incentive Auction Task Force and Media Bureau Announce Procedures for Low Power Television, Television Translator and Replacement Translator Stations During the Post-Incentive Auction Transition*, Public Notice, DA-17-442 (rel. May 12, 2017) <https://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0512/DA-17-442A1.pdf>. [↑](#footnote-ref-1)
2. LMS File No 0000053947, granted September 13, 2018, providing 36 months until the permit expires. <https://enterpriseefiling.fcc.gov/dataentry/api/download/draftcopy/cdbs/2015938>. [↑](#footnote-ref-2)
3. *See Media Bureau Reminds Low Power Television and Television Translator Stations Operating on the Guard Band/Duplex Gap Channels Of Upcoming July 13, 2020 Deadline To Cease Operations*, Public Notice, DA 20-573 (rel. June 1, 2020) <https://docs.fcc.gov/public/attachments/DA-20-573A1.pdf>. [↑](#footnote-ref-3)
4. Colo. Exec. Order No. D 2020 006 (Mar. 18, 2020) <https://www.colorado.gov/governor/sites/default/files/inline-files/D%202020%20006%20Amending%20Executive%20Order%20D%202020%20004%20Ordering%20Closure%20of%20Downhill%20Ski%20Areas_0.pdf> [↑](#footnote-ref-4)
5. Colo. Exec. Order No. D 2020 026 (Apr. 6, 2020) <https://www.colorado.gov/governor/sites/default/files/inline-files/D%202020%20026%20Amending%20and%20Extending%20Ski%20Closures_0.pdf> [↑](#footnote-ref-5)
6. Colo. Exec. Order No. D 2020 049 (Apr. 30, 2020) <https://www.colorado.gov/governor/sites/default/files/inline-files/D%202020%20049%20Amending%20and%20Extending%20Ski%20Closures.pdf> [↑](#footnote-ref-6)
7. *See generally* *Public Health and Executive Orders*, COVID-19 in Colorado, <https://covid19.colorado.gov/covid-19-in-colorado/public-health-executive-orders> (last visited July 1, 2020). [↑](#footnote-ref-7)
8. 47 U.S.C. § 312(g). [↑](#footnote-ref-8)
9. *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6806-07, para. 585 (rel. June 2, 2014) <https://docs.fcc.gov/public/attachments/FCC-14-50A1.pdf>. [↑](#footnote-ref-9)
10. *Id.* [↑](#footnote-ref-10)
11. *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post‐Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd 858, 873-74, para. 49 (rel. Jan. 27, 2017) <https://docs.fcc.gov/public/attachments/DA-17-106A1.pdf>; *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post‐Auction Transition Requirements and Deadlines*, Public Notice, 33 FCC Rcd 8240, 88243, n.25 (rel. Aug. 27, 2018) (citing *Christian Broadcasting of East Point, Inc.,* 30 FCC Rcd. 13975, 13976‐77, para. 4 (2015)) <https://docs.fcc.gov/public/attachments/DA-18-884A1.pdf>. [↑](#footnote-ref-11)
12. *See* *Request for Reinstatement and Extension of License and Silent Authority Under Section 312(g), KZCS-LP, Colorado Springs, CO, Facility ID No. 67544*, Letter, [LMS File No. 0000088135](https://enterpriseefiling.fcc.gov/dataentry/public/tv/draftCopy.html?displayType=html&appKey=25076ff36e0518c2016e17d4d6050d5b&id=25076ff36e0518c2016e17d4d6050d5b&goBack=N) (June 17, 2020); Request for Reinstatement and Extension of License and Silent Authority Under Section 312(g), WXNY-LD, New York, NY, Facility ID No. 29231, Letter, [LMS File No. 0000116425](https://enterpriseefiling.fcc.gov/dataentry/public/tv/draftCopy.html?displayType=html&appKey=25076ff3729b1e0a0172e18813195678&id=25076ff3729b1e0a0172e18813195678&goBack=N) (June 24, 2020). [↑](#footnote-ref-12)