

Request for Waiver of Section 312(g)

West Virginia Educational Broadcasting Authority (“WVEBA”), licensee of low-power television translator station W51EG-D, Parkersburg, West Virginia (“W51EG” or “Station”), respectfully submits the instant application to request a waiver of Section 312(g) of the Communications Act of 1934, as amended (“Section 312(g)”), to enable W51EG to remain silent for an additional 180 day period, from February 18, 2021 to August 17, 2021. As explained herein, W51EG went silent in connection with the transition of the 600 MHz band to flexible use. Specifically, the Station ceased broadcasting at the request of T-Mobile USA (“T-Mobile”) that W51EG vacate the spectrum to accommodate T-Mobile’s use of channel 51 in Parkersburg. Grant of the requested waiver is in the public interest because it will preserve the status quo while providing the Station with the time needed to construct the facility authorized in its channel 34 displacement construction permit, which does not expire until August 14, 2021.

Background. Section 312(g) provides that a broadcast station license expires as a matter of law if the station fails to transmit any signals for a consecutive twelve-month period.¹ The Federal Communication Commission (“FCC” or “Commission”), however, is authorized to extend or reinstate such a license “for any reason to promote equity and fairness.”² To this end, the FCC has stated that, in the context of the incentive auction, it would be receptive to requests to extend a station 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.”³ In considering requests for waiver of Section 312(g), the Media Bureau has stated that it “will examine whether the station has demonstrated that its silence is the result of compelling reasons beyond the station’s control, including facts that relate to the post-auction transition process.”⁴ The Media Bureau has granted requests to waive Section 312(g) and extend the licenses of low-power stations, like the Station, that have been displaced due to the incentive auction and repack.⁵

Request. The Station is licensed to WVEBA, a public benefit corporation established by the State of West Virginia for the purpose of providing non-commercial educational radio and television broadcasting services to residents of West Virginia.⁶ W51EG operates as part of the WVEBA television network, which also includes three full-power television stations that were repacked, as well as several television translator stations, all but one of which has been displaced

¹ 47 U.S.C. § 312(g).

² 47 U.S.C. § 312(g).

³ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6806-07, para. 585 (2014) (“*Incentive Auction R&O*”).

⁴ *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Red 858, 873-74, para. 49 (IATF/MB 2017) (Post-Incentive Auction Procedures PN); *see also Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, 33 FCC Red 8240, 88243, n.25 (MB/IA TF 2018) (citing *Christian Broadcasting of East Point, Inc.*, 30 FCC Red. 13975, 13976-77, para. 4 (2015)).

⁵ *See* LMS File Nos. 0000059940, 0000078353, 0000063795, 0000075874, 0000074720.

⁶ *See* W. Va. Code § 10-5-1.

as part of the incentive auction. In addition, WVEBA holds the licenses for twelve full-power non-commercial educational radio stations and associated FM translator and FM booster stations.

W51EG historically operated on channel 51. Channel 51 was reallocated as part of the incentive auction for use by T-Mobile. As a result, during the FCC's Special Displacement Window, WVEBA submitted an application for authority to construct displacement facilities for the Station on channel 34. *See* LMS File No. 0000073090. The FCC granted this application on June 17, 2019 and specified a three-year period for W51EG to construct the channel 34 displacement facility. Just eight months later, and well before the construction permit deadline for the channel 34 displacement facility, T-Mobile notified the Station that it intended to commence operations on its 600 MHz spectrum. As a result of T-Mobile's notification to the Station, W51EG went silent on February 20, 2020. WVEBA obtained FCC authority to remain silent, and has been silent since this time. LMS File No. 0000106340, as extended by LMS File No. 0000120257. W51EG's silent authority presently is scheduled to expire on February 18, 2021, at which time the Station license will expire as a matter of law absent favorable action on the instant application. This is the case notwithstanding that W51EG's displacement construction permit is not scheduled to expire until August 14, 2021.

Although the Station was required to cease broadcasts to accommodate T-Mobile's use of its spectrum, it has been working to construct its displacement facility on channel 34. To this end, WVEBA has completed the engineering drawings and initial structural analysis of the tower upon which the Station's channel 34 antenna will be installed, and has a contract for the tower services necessary to install the antenna once delivered. WVEBA is currently working to complete a second structural analysis of the tower and is working with the State procurement office to purchase the channel 34 antenna, transmission line and transmitter for W51EG.⁷ Even if the aforementioned tasks are complete before February 2021, it is not certain whether WVEBA will be able to complete construction of the channel 34 displacement facility for W51EG given that the antenna and transmission line would need to be hung in the middle of winter in West Virginia.⁸ Thus, W51EG is submitting the instant request for a waiver of Section 312(g) to extend its license and silent authority for an additional 180-day period, until August 17, 2021.

The Media Bureau should grant the instant request to extend W51EG's license and silent authority because the Station was "involuntarily forced to remain dark as a result of the repacking process" when it went silent on February 20, 2020 due to T-Mobile's commencement

⁷ As a state-funded governmental entity, WVEBA is required to comply with the State's laws and procedures regarding procurement of goods and services. *See* W. Va. Code § 5A-1-10 (2019) (requiring that all spending units use a competitive bidding process to purchase commodities wherever possible). These laws require, *inter alia*, that certain contracts be put out for competitive bidding, a process that is time and resource intensive, and is managed by the state procurement office, and is thus largely outside of WVEBA's control. *See* W. Va. Code § 5A-3-11.

⁸ WVEBA also is concurrently working to complete construction of the main post-auction facilities of WSWP and WVPB, both of which are currently operating on their respective post-auction channels pursuant to special temporary authority while their construction permit facilities are being built. The timeline for construction of the channel 34 displacement facility is impacted by the need for WVEBA's very small engineering staff to balance these multiple, large-scale construction projects. At this time, WVEBA anticipates that it can complete construction of W51EG's channel 34 displacement facility in the spring or early summer of 2021 and, in any event, by the August 14, 2021 construction deadline set forth in the channel 34 displacement construction permit.

of operations on channel 51. W51EG timely took the necessary actions to obtain a displacement channel in accordance with the FCC's Special Displacement Window procedures. The Station was displaced by T-Mobile only eight months after obtaining its channel 34 displacement construction permit, such that it has not had ample time under the channel 34 construction permit to construct its displacement facility, particularly given the need for WVEBA to transition all three of its full-power television stations to their respective post-incentive auction channels, while simultaneously managing the day-to-day engineering tasks for WVEBA's statewide network of television and radio stations, addressing unforeseen repairs (e.g., replacing two failed radio transmitters), and finding vacant channels for its five television translator stations that were displaced by the repack.⁹

In short, the instant request for waiver falls within the scope of the Commission's stated parameters for granting relief under Section 312(g). Moreover and importantly, grant of the instant request to waive Section 312(g) and extend W51EG's license and silent authority for 180 days is consistent with the public interest because, absent favorable action on this application, the Station would be required to remain off-air permanently, thereby depriving its viewers of access to the programming services it provides.¹⁰ Indeed, where, as here, the Station ceased broadcasts to accommodate the Commission's goal of freeing up 600 MHz spectrum for wireless use, waiver of Section 312(g) to permit W51EG to remain silent promotes equity and fairness.

⁹ WVEBA has effectively only 1 ½ engineers to support the entire statewide radio and television network.

¹⁰ If necessary, WVEBA anticipates that it can temporarily resume operations of W51EG using a legacy transmitter. However, in this case, WVEBA believes that this would be a very short term fix, as it expects that the aging transmitter will fail within a few weeks after being brought into service for W51EG. Rather than expend scarce resources to implement a solution that is unlikely to provide long-term relief, WVEBA is requesting the instant authority to remain silent as described herein so that it can focus its efforts on completing construction of the displacement facility as well as the main post-auction facilities of WSWP and WVPB, both of which are currently broadcasting on their post-transition channels using interim facilities.