



Federal Communications Commission
Washington, D.C. 20554

July 30, 2021

Cayo Hueso Networks, LLC
P.O. Box 1471
Evergreen, CO 80437
DDRUCKER@WILDBLUE.NET
(via electronic mail)

Re: Request for Reinstatement and
Extension of License and Silent
Authority Under Section 312(g)
W16CA-D, Homestead, FL
LMS File No. 0000146979
Facility ID No. 126708

Dear Licensee:

This concerns the above-referenced request to reinstate and extend license and silent authority (Request) filed on May 25, 2021, by Cayo Hueso Network, LLC (CHN), licensee of low power television station W16CA-D, Homestead, Florida (W16CA or Station). For reasons set forth below, we grant the request, waive all applicable rules, and reinstate and extend the Station's license and silent authority 60 days from date of this letter.

Background. 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.”¹ In the *Incentive Auction R&O*, 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.”²

¹ 47 U.S.C. § 312(g).

² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6806-07, para. 585 (2014) (*Incentive Auction R&O*). The Bureau's discretion under that provision of section 312(g) is severely limited. See e.g., *A-O Broad. Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617, para. 27 (“This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited”). The Commission has exercised its authority to reinstate an expired license to “promote equity and fairness” only where the station failed to provide service for 12 consecutive months due to compelling reasons beyond the licensee's control. See, e.g., *V.I. Stereo Communications Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006); *Community Bible Church*, Letter, 23 FCC Rcd 15012, 15014 (MB 2008); *Mark Chapman, Court-Appointed Agent*, Letter, 22 FCC Rcd 6578 (MB 2007). The Commission has declined to reinstate licenses where the failure to transmit a broadcast signal was due to the licensee's own actions, finances, and/or business judgment. See, e.g., *A-O Broadcasting*, 23 FCC Rcd at 617, para. 27; *ETC Communications, Inc.*, Letter, 25 FCC Rcd 10686 (MB 2010); *Kirby Young, Letter*, 23 FCC Rcd 35 (MB 2008).

Request. In its Request, CHN notes that the Station originally went silent on September 17, 2017, as a result of damage incurred from Hurricane Irma. The Station's tower/transmitter site was completely destroyed by Hurricane Irma and there was extensive flooding that caused major infrastructure damage. According to CHN the Station's previously licensed tower site remains unusable and it has had to look for a new site from which to operate.³ While working to construct new permanent facilities, CHN was able to resume operations using temporary facilities on March 4, 2020, however the Station again went silent on March 15, 2020. CHN states that since March 15, 2020, the Station has remained silent "because of COVID and unavailability of technical staff." CHN goes on to state that for nearly a year from March 2020, W16CA's station manager, Mr. Oscar Ibarra, who was overseeing construction, was "caught" in Peru due to COVID-19 travel restrictions and was unable to travel to the United States to work on the project. According to an e-mail from Mr. Ibarra, while in Peru he had limited access to communications infrastructure and had "no electronics with which to do more than basic email."⁴ To further complicate matters, upon his return to the United States, Mr. Ibarra suffered a severe leg injury that again prevented him from being able to get the station back on-air. As a result, CHN employed a new station manager to oversee construction of the Station's facilities. CHN reports that a new transmitter, antenna, and all hardware were delivered to Florida in May 2021. CHN has found a new permanent tower location and filed a minor change application specifying the new location, which was granted on June 30, 2021.⁵ CHN has also filed an application for engineering STA to resume service to the public and operate a temporary facility while it finishes construction of the Station's permanent facility.⁶ CHN anticipates that it will be able to complete construction and resume operation within the next three to six months. Accordingly, CHN requests that the Commission reinstate and extend the Station's license and silent authority pursuant to section 312(g) to "promote equity and fairness."

Discussion. Upon review of the facts and circumstances presented, we find that CHN's request for reinstatement and extension of the W16CA license and silent authority satisfies the requirements of section 312(g). Consistent with the public interest, we will provide section 312(g) relief to stations that are forced off the air by circumstances beyond their control.⁷ While W16CA was initially forced off the air as a result of hurricane damage, its efforts to rebuild its facilities and resume operations were subsequently complicated by the need to ultimately find a new transmission site and the unique circumstances caused by the COVID-19 pandemic. Despite these obstacles, since it last went silent on March 15, 2020, the Station has been able to hire a new station manager, identify a new tower site, file the necessary construction permit modification application, order and receive all necessary equipment, and arrange for installation of that equipment.

³ The Station was previously granted reinstatement and extension of its license. See LMS File No. 0000059526.

⁴ See LMS File No. 0000059526.

⁵ See LMS File No. 0000151310.

⁶ See LMS File No. 0000151307.

⁷ See *V.I. Stereo Communications Corp.*, 21 FCC Rcd. 14259 (2006) (granting a request to reinstate a station's license when the station's tower had been destroyed by a hurricane and after it was rebuilt, again sustained substantial damage from three more hurricanes); *Community Bible Church, Letter*, 23 FCC Red 15012, 15014 (MB 2008) (reinstatement warranted where licensee took all steps needed to return to air, but remained off air to promote air safety after discovering and reporting that FCC and FAA records contained incorrect tower information); *Mark Chapman, Court-Appointed Agent, Letter*, 22 FCC Red 6578 (MB 2007) (reinstatement warranted where extended silence resulted from licensee's compliance with a court order).

Accordingly, we find that in order to promote fairness and equity the requests filed by Cayo Hueso Networks, LLC **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,⁸ the license for W16CA-D, Homestead, Florida, **IS REINSTATED** and license and silent authority **ARE EXTENDED/GRANTED to September 30, 2021**. We note that another request for extension of silent authority and license under section 312(g) will not be favorably viewed unless accompanied by a showing and written support that completion of the station's permanent displacement facilities was prevented by additional compelling circumstances and further extension is warranted under the equity and fairness provision of section 312(g). CHN must also include with any such request a detailed plan for completing construction and returning the Station to operation. We also note that although the Station's construction permit is not scheduled to expire until July 8, 2024, our expectation, based on the representations provided by the CHN in the instant request, is that it will complete construction of the Station's facility no later than **September 30, 2021**. The expiration date of the station's construction permit will not be viewed as justification for any further extension of the Station's license and should the Station's license expire the construction permit will be automatically forfeited.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): James Talens, Esq.

⁸ 47 CFR §§ 74.15(f) and 74.763(c).