



Federal Communications Commission
Washington, D.C. 20554

August 24, 2021

Saint Augustine's University
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Raleigh, NC 27610
adwilliams@st-aug.edu
(via electronic mail)

Re: Request for Extension of
License and Silent Authority Under
Section 312(g) and Waiver of Tolling
Rules
WAUG-LD, Raleigh, NC
Fac ID No. 62180
LMS File Nos. 0000157547 and
0000157487

Dear Licensee:

This concerns requests to extend license and silent authority and waiver of the tolling rules (Requests) filed by Saint Augustine's University (SAU) licensee of low power television station WAUG-LD, Raleigh, North Carolina (WAUG-LD or Station). For reasons set forth below, we grant SAU's Requests; waive all applicable rules; extend the Station's license and silent authority and toll the Station's digital construction permit to December 31, 2021.

Background. Section 312(g) of the Communications Act of 1934 (the Act) 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 Further, in the *Post-Incentive Auction Procedures PN* the Media Bureau

¹ 47 U.S.C. § 312(g). 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).

² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, GN Docket No. 12-268 et al., 29 FCC Rcd 6567, 6806-07, para. 585 (2014) (*Incentive Auction R&O*).

(Bureau) stated that, in considering requests to extend or reinstate a station's license under section 312(g) in order to promote fairness and equity, 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."³ Finally, in the *Special Displacement Window PN*, the Bureau permitted stations to file a displacement application on a contingent basis for channels in the repacked television band (channels 2-36) that full power and Class A stations would be relinquishing as a result of the Incentive Auction and repacking process.⁴ The Bureau stated that, if a conditional grant would require an LPTV or TV translator station to be silent for a consecutive 12-month period prior to discontinuation of operation by the full power or Class A station, it would "consider a request for extension or reinstatement pursuant to section 312(g) of the Act and a request for waiver of the Commission rule."⁵

A low power television station, such as WAUG-LD, that has already transitioned to digital and is subsequently granted a digital construction permit for displacement facilities is given three years to complete construction of its displacement facilities.⁶ If a station experiences delays licensing its facility, it may only obtain additional time to complete construction through the Commission's "tolling" rule.⁷ The tolling rule provides that a construction permit deadline may be tolled only for specific circumstances not under the licensee's control, such as acts of God or delays due to administrative or judicial review.⁸ Stations may also seek a waiver of the tolling rule to receive additional time to construct in the case where "rare or exceptional circumstances" prevent construction.⁹

Requests. As part of the Incentive Auction repacking process, WAUG's channel 8 was displaced by WNCN-DT, Goldsboro, North Carolina, which was repacked to channel 8. As a result, WAUG has been silent since August 29, 2019.¹⁰ WAUG timely filed a displacement application requesting a construction permit for channel 4 and that application was granted on September 5, 2018.¹¹ WAUG was

³ *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 32 FCC Rcd 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*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 33 FCC Rcd 8240, 88243, n.25 (MB/IATF 2018) (citing *Christian Broadcasting of East Point, Inc.*, 30 FCC Rcd 13975, 13976-77, para. 4 (2015)).

⁴ See *Incentive Auction Task Force and Media Bureau Announce Post Incentive Auction Special Displacement Window April 10, 2018, Through May 15, 2018, and Make Location and Channel Data Available*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 33 FCC Rcd 1234, 1237, para. 7 (IATF/MB 2018) (*Special Displacement Window PN*).

⁵ *Id.* at n.25 citing 47 U.S.C. § 312(g); *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, 32 FCC Rcd 3860, 3865-66, para. 12 (IATF/MB 2017).

⁶ See 47 CFR § 74.788(d).

⁷ See 47 CFR § 73.3598(b).

⁸ *Id.*

⁹ See *1998 Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536, para. 42 (1999).

¹⁰ See LMS File No. 0000080862.

¹¹ See LMS File No. 0000054638.

twice granted relief pursuant to section 312(g) and its license was most recently extended to August 24, 2021.¹²

Since the grant of its last license extension, SAU states that it has made progress with construction of the Station's displacement facilities. SAU represents that all purchase orders for vendor services and equipment have been approved and sent to vendors. RF line sweep services were completed in early 2021 and a report was prepared and delivered to SAU providing that the RF line may be reused for operations on channel 4 as planned. SAU states that a tower analysis and geotechnical study of WAUG-LD's tower was completed in Spring 2021 and SAU reports that the study showed that the tower needed modifications to be up to specifications and able to hold the new antenna load. SAU reports that tower modification design services, which were recommended in the tower analysis and geotechnical study, were completed in June 2021. These services included mapping structural issues with the tower and identifying materials to repair the tower.

SAU states that additional work is needed before WAUG-LD can return to the air with its displacement facilities including tower repair services and ordering of equipment, which SAU estimates should be completed by late September/October 2021. SAU notes that while the channel 4 replacement transmitter and antenna system was ordered at the end of April 2021, neither have been shipped. SAU currently expects both the transmitter and antenna system to be delivered by the end of October 2021 and installed by November 2021. SAU also states that additional electrical work on the channel 4 transmitter will be required. SAU has identified an electrician to perform the work and SAU expects this work to be scheduled and completed close to the time when the transmitter is installed. SAU maintains that the unforeseeable and unprecedented COVID-19 pandemic has delayed delivery of these pieces of equipment. Accordingly, SAU seeks further extension of the Station's license and silent authority and tolling of its displacement construction permit.

Discussion. Upon review of the facts and circumstances presented, we find that SAU's request for extension of the Station's license satisfies the requirements of section 312(g) as described in the *Incentive Auction R&O*, the *Post-Incentive Auction Procedures PN*, and the *Special Displacement Window PN* and is, therefore, in the public interest. Consistent with the public interest and prior Bureau actions, we will provide section 312(g) relief to displaced LPTV and TV translator stations that were displaced by the Incentive Auction, pursued new displacement channels, and those efforts were delayed for circumstances beyond their control. WAUD-LD was displaced by the Incentive Auction and repacking process. SAU diligently pursued construction of its displacement facilities, but its efforts to were hindered by equipment manufacturing and construction delays. For similar reasons, we find that SAU has met the standard for waiver of the tolling rules and tolling of its digital construction permit. Grant of SAU's Requests will permit the Station to once again serve its viewers. Although SAU seeks extension of its license and tolling through February 23, 2022, we find that based on the showing provided December 31, 2021 should provide a sufficient amount of time to complete construction and allow Video Division staff to more closely monitor the Station's construction progress.

We remind SAU that, pursuant to the Reimbursement Expansion Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs reasonably incurred as a result of the reorganization of broadcast television spectrum.¹³ Please note, however, that additional expenses

¹² See LMS File Nos. 0000120875 and 0000136900.

¹³ See *Consolidated Appropriations Act, 2018*, Pub. L. 115-141, at Division E, Title V, § 511, 132 Stat. 348 (2018) (codified at 47 U.S.C. § 1452(j)-(n)). See also 47 CFR § 73.3701 (Reimbursement Under the Reimbursement Expansion Act); *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and*

incurred, such as those resulting from changes in a station's plans to construct their displacement facilities that are unrelated to the displacement, may not be eligible for reimbursement from the Fund.

We further remind SAU that the deadline for submitting final expense documentation for reimbursement for eligible Stations is September 5, 2022.¹⁴ Thus, we strongly encourage the SAU to diligently pursue completion of the current deadlines to improve the likelihood that there will be sufficient funds available to reimburse the Stations for their legitimate expenses, and we encourage SAU to submit eligible invoices as soon as practicable.

Accordingly, we find that in order to promote fairness and equity the request filed by Saint Augustine's University **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,¹⁵ and the license and silent authority for WAUG-LD, Raleigh, North Carolina, **IS EXTENDED** to February 21, 2022. In addition, the request for waiver of the tolling rules of Saint Augustine's University **IS GRANTED** and the expiration date of the construction permit (LMS File No. 0000054638) for WAUG-LD, Raleigh, North Carolina **IS TOLLED** to December 31, 2021. We note that another request for extension of the Station's license under the equity and fairness provision of section 312(g) and/or tolling of a Station's construction permit under section 73.3598(b) of the Commission's rules will not be favorably viewed unless accompanied by a showing that completion of the Station's displacement facilities was prevented by additional compelling circumstances. SAU must also include with any such request(s) a detailed plan for completing construction and returning the Station to operation.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division

cc (via electronic mail): Elizabeth E. Spainhour, Esq.

Innovation Opportunities of Spectrum Through Incentive Auctions, Report and Order, 34 FCC Rcd 1690 (2019); and *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking and Order, 33 FCC Rcd 7855 (2018).

¹⁴ See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (IATF/MB Oct. 7, 2020) (setting three filing deadlines for the submission of all outstanding repack invoices, notably: 1) October 8, 2021 for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period; 2) March 22, 2022 for entities assigned completion dates in the second half of the transition period; and 3) September 5, 2022 for all other participants in the reimbursement program).

¹⁵ 47 CFR §§ 74.15(f) and 74.763(c).