



Federal Communications Commission
Washington, D.C. 20554

September 21, 2021

UHF TV Association
Michael Whitesides
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michaelwhitesides@gmail.com
(via electronic mail)

Re: Request for Reinstatement of
License Under Section 312(g)
K50CX-D, Tucumcari, NM
K38FP-D, Tucumcari, NM
K40DK-D, Tucumcari, NM
K46BU-D, Tucumcari, NM
LMS File Nos. 0000156723
0000156724, 0000156725,
and 0000156726
Facility ID Nos. 68702
68703, 68704 and 68705

Dear Licensee:

This concerns the above-referenced Requests filed by UHF TV Association (UTA) to reinstate and extend the licenses of low power television stations K50CX-D, K38FP-D, K40DK-D and K46BU-D, all licensed to Tucumcari, New Mexico (collectively Stations).¹ For reasons set forth below, we grant the Requests, waive all applicable rules, and reinstate the Stations' licenses.

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.”² 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

¹ The call sign for station K38FP-D was recently changed to K21OF-D, the call sign for K46BU-D changed to K26OJ-D, and the call sign for K40DK-D changed to K24NF-D. For purposes of this letter, we refer to these stations by their former call signs.

² 47 U.S.C. § 312(g).

reinstatement and a waiver.”³ Further, in the *Post-Incentive Auction Procedures PN* the Media Bureau stated that, in considering requests to extend or reinstate a stations 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 stations’ control, including facts that relate to the post-auction transition process.”⁴ 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.⁵ 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, the Bureau would “consider a request for extension or reinstatement pursuant to section 312(g) of the Communications Act and a request for waiver of the Commission rule.”⁶

Request. As part of the Incentive Auction and repacking process, each of the Stations’ pre-auction digital channels was reallocated for use by wireless operator T-Mobile USA (T-Mobile). After receiving notices from T-Mobile of its intent to begin operating, the Stations went silent on October 2, 2018. On August 10, 2018, the Stations were granted construction permits for new displacement channels – K38FP-D for channel 21, K40DK-D for channel 24, K46BU-D for channel 26, and K50CX-D for channel 23, all with construction permits expiration dates of August 10, 2021.⁷

Upon the grant of the Stations’ displacement applications, UTA states that it immediately began working with manufacturers to order equipment for the Station’s displacement facilities. However, due to production back-ups and the lack of engineers, UTA was not able to fully move forward with its construction efforts until late 2019. UTA states that it began working with a third-party company to order

³ *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).

⁴ *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 (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 Rcd 8240, 88243, n.25 (MB/IATF 2018) (citing *Christian Broadcasting of East Point, Inc.*, 30 FCC Rcd. 13975, 13976-77, para. 4 (2015)).

⁵ 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*, Public Notice, 33 FCC Rcd 1234, 1237, para. 7 (IATF/MB 2018) (*Special Displacement Window PN*).

⁶ *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).

⁷ See LMS File Nos. 0000053140, 0000053141, 0000053142, and 0000053143.

the Stations equipment and that process continued through December 2020. According to UTA, the equipment ordering process was subsequently delayed several times in 2020 due to COVID-19 travel restrictions between Texas and New Mexico. UTA states that these restrictions were lifted toward the end of 2020 and while it immediately proceeded with completing the equipment ordering process, manufacturing and delivery were delayed further due to the COVID-19 pandemic supply chain interruptions and shortages. UTA states that the equipment was finally delivered on July 30, 2021 and August 2, 2021, and installed on August 3, 2021. The Stations resumed operations on their displacement channels on August 10, 2021 and filed licenses to cover.⁸

UTA argues that it is in the public interest to grant its Requests as the Stations' silence was fully attributable to circumstances beyond its control relating to the post-Incentive Auction transition and subsequent impacts of the COVID-19 pandemic. UTA argues further that grant of its Requests will promote equity and fairness and serve the public interest by allowing the station's to continue to serve its over-the-air viewers who rely on its broadcasts for not just entertainment, but timely notifications of lifesaving emergency broadcasts.

Discussion. Upon review of the facts and circumstances presented, we find that UTA's Requests for reinstatement of the Stations' licenses satisfy 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 in the public interest. Consistent with the public interest, we will provide section 312(g) relief to displaced LPTV and TV translator stations that are forced off the air by circumstances beyond their control, which we have previously found to include displacement as a result of incentive auction and repack.⁹ The Stations were displaced by the incentive auction, diligently pursued new displacement channels, and completed construction prior to their construction permit expiration dates. The Stations were unable to return to the air prior to their one-year anniversaries of going silent due to circumstances outside their control that were directly related to the Stations being displaced by the incentive auction and subsequent delays directly attributable to the COVID-19 pandemic.

We remind UTA that, pursuant to the Reimbursement Expansion Act, the Stations are eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs reasonably incurred as a result of

⁸ See LMS File Nos. 0000156875, 0000156876, 0000156877 and 0000156878.

⁹ 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, a gain sustained substantial damage from three more hurricanes); *Community Bible Church, Letter*, 23 FCC Rcd 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 Rcd 6578 (MB 2007) (reinstatement warranted where extended silence resulted from licensee's compliance with a court order); see Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, Federal Communications Commission to Renee Ilhardt, DTV America Corporation and HC2 Broadcasting Holdings, Inc., LMS File Nos. 0000072656, et al., (Mar. 23, 2020) (reinstatement and extension is appropriate where the stations' silence was a result of being displaced by the Incentive Auction and repacking process).

the reorganization of broadcast television spectrum.¹⁰ Please note, however, that additional expenses incurred, such as those resulting from changes in a Stations' plans to construct their displacement facilities that are unrelated to the displacement, may not be eligible for reimbursement from the Fund.

We further remind UTA that the deadline for submitting final expense documentation for reimbursement for the Stations is September 5, 2022.¹¹ Thus, we strongly encourage the UTA to diligently to submit eligible invoices as soon as practicable to improve the likelihood that there will be sufficient funds available to reimburse the Stations for their legitimate expenses.

Accordingly, we find that in order to promote fairness and equity the requests filed UHF TV Association **ARE HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,¹² the licenses for K50CX-D, K38FP-D, K40DK-D and K46BU-D, all Tucumcari, New Mexico **ARE REINSTATED**, and the Stations' applications for license to cover (File Nos. 0000156875, 0000156876, 0000156877 and 0000156878) **ARE GRANTED**.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Donald Martin, Esq.

¹⁰ 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 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).

¹¹ 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).

¹² 47 CFR §§ 74.15(f) and 74.763(c).