



Federal Communications Commission
Washington, D.C. 20554

October 15, 2021

Joan and Kenneth Wright
WGBS TV7
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joan.wright83@gmail.com
(via electronic mail)

Re: Request for Reinstatement and
Extension of License and Silent
Authority Under Section 312(g) and
Waiver of Tolling Rules
WGBS-LD, Carrollton, Virginia
Fac ID No. 31350
LMS File Nos. 0000151773 and
0000162860

Dear Licensee:

This letter concerns the requests to reinstate and extend license, extend silent authority, and provide waiver of the tolling rules, as amended (Requests) filed Joan and Kenneth Wright (the Wrights), the licensee of low power television station WGBS-LD, Carrollton, Virginia (WGBS-LD or Station). For reasons set forth below, we grant the Wrights' Requests; waive all applicable rules; reinstate and extend the Station's license, extend the Station's silent authority, and toll the Station's digital construction permit to January 26, 2022.

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

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).

reinstatement and a waiver.”² Further, in the *Post-Incentive Auction Procedures PN* the Media Bureau (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.”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 WGBS-LD, that has already transitioned to a digital facility and is subsequently granted a digital construction permit for displacement facility is given three years to complete construction of its displacement facility.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, WGBS-LD’s channel 11 was displaced by WVEC(TV), Hampton, Virginia, which was repacked to channel 11. Up until June 12, 2020, WGBS-LD was able to continue operating on channel 11 and accepting the additional interference from WVEC(TV). However, after that date WVEC(TV) requested that the Station cease operating on channel 11 to avoid causing interference to it. WGBS-LD timely filed a displacement application

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*).

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).

requesting a construction permit for channel 12 and that application was granted and a construction permit issued on July 30, 2018 (Displacement CP).¹⁰ Because channel 12 was the pre-auction channel of repacked station WWBT(TV), Richmond, Virginia, WGBS-LD was unable to begin operating on channel 12 until March 13, 2020, when WWBT discontinued operation on the channel.

In support of its Request, the Wrights state that the COVID-19 pandemic contributed to both significant logistical delays in completing the Station's Displacement CP facilities whereby it could return to operations. For example, the Wrights state that the RF engineer WGBS-LD uses was reluctant to fly or stay at hotels during the pandemic, which delayed WGBS-LD's construction progress. In addition, the Wrights state that physical construction in WGBS-LD's transmitter room was delayed because of the necessity of accommodating COVID-19 health and safety precautions. The Wrights claim that WGBS-LD's transmitter room is a small, enclosed space, precisely the type of space health experts have said are susceptible to the spread of COVID-19. Therefore, the Wrights state that WGBS-LD has conducted work in its transmitter room in stages to avoid having multiple people working in the enclosed space at the same time. Finally, the Wrights state that the pandemic's impact on travel also caused delays in shipments, especially for any overseas parts needed to complete transition work.

Further delaying completion of the Station's displacement facility was the discovery in April 2020 that the tower on which the displacement facility was to be located had structural issues. The Wrights state that installation work on the tower was delayed pending a structural analysis by the tower owner. As a result of this analysis, the Wrights state that they subsequently determined that a structurally smaller antenna would better suit the WGBS-LD tower's structural limits.

In April 2021, the Wrights obtained a final proposal for the purchase of all remaining equipment. On September 24, 2021, the new antenna array was ordered and is currently in production. The Wrights expect delivery of the antenna on or around October 25, 2021. The Wrights go on to state that the new transmitter for WGBS-LD will not be delivered until late December 2021. The Wrights report that WGBS-LD's engineers have retrofitted the Station's existing transmitter to operate on the Station's displacement channel 12 at reduced power in order to perform testing on the Station's new antenna once installed and to potentially begin operating and again serving the public prior to delivery and installation of its new transmitter.

Based on this schedule, the Wrights believe construction of the Station will be completed by the end of January 2022. Accordingly, the Wrights request reinstatement and extension of the Station's license and silent authority, and waiver and tolling of the Displacement CP for 180 days through January 26, 2022.

Discussion. Upon review of the facts and circumstances presented, we find that the Wrights' request for reinstatement and 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. WGBS-LD was displaced by the Incentive Auction and repacking process. The Wrights diligently pursued construction of their displacement facilities, but their efforts were hindered by a variety of construction delays. For similar reasons, we find that the Wrights have met the standard for waiver of the tolling rules and tolling of their

¹⁰ See LMS File No. 0000053236.

Displacement CP as well as extension of the Station's silent authority. Grant of the Wrights' Requests will permit the Station to once again serve its viewers.

We remind the Wrights 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.¹¹ Please note, however, that additional expenses 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 the Wrights that the deadline for submitting final expense documentation for reimbursement for the Stations is September 5, 2022.¹² Thus, we strongly encourage the Wrights to diligently to submit eligible invoices as soon as practicable to improve the likelihood that there will be sufficient funds available to reimburse the Station for its legitimate expenses.

Accordingly, we find that in order to promote fairness and equity the request filed Joan and Kenneth Wright **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,¹³ and the license and silent authority for WGBS-LD, Carrollton, Virginia, **ARE REINSTATED AND EXTENDED** to January 26, 2022. In addition, the request for waiver of the tolling rules of Joan and Kenneth Wright **IS GRANTED** and the expiration date of the construction permit (LMS File No. 0000053236) for WGBS-LD, Carrollton, Virginia, **IS TOLLED** to January 26, 2022. 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 viewed favorably unless accompanied by a showing that completion of the Station's displacement facilities was prevented by additional compelling circumstances. The Wrights must also

¹¹ 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).

¹² 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).

¹³ 47 CFR §§ 74.15(f) and 74.763(c).

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): Paul J. Feldman, Esq.