



Federal Communications Commission
Washington, D.C. 20554

December 10, 2021

Ministerio Oscar Aguero, Inc.
3120 W. 84th St., #9
Hialeah, FL 33018
roger@tvwol.com
(via electronic mail)

Re: Request for Reinstatement and
Extension of License and Silent
Authority Under Section 312(g) and
Waiver of Tolling Rules
W43CB-D, Miami, FL
Fac ID No. 6044
LMS File Nos. 0000150560 and
0000163413

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 by Ministerio Oscar Aguero, Inc. (MOA) licensee of low power television (LPTV) station W43CB-D, Miami, Florida (W43CB-D or Station). For reasons set forth below, we grant MOA's Requests, waive all applicable rules, reinstate and extend the Station's license and silent authority, and toll the Station's digital construction permit to January 13, 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 W43CB-D, 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 and repacking process, W43CB-D’s channel 43 was reallocated for use by wireless operator T-Mobile USA (T-Mobile). W43CB-D subsequently went silent on August 24, 2018, as a result of notification by T-Mobile that it intended to commence wireless broadband operations in the portion of the 600 MHz spectrum that it acquired in the incentive auction.

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).

This included W43CB-D's channel 43.¹⁰ W43CB-D's displacement application for channel 3 was granted on June 25, 2018 (Displacement CP).¹¹ W43CB-D was previously granted license extensions pursuant to the equity and fairness provision of section 312(g) and its license most recently extended to October 13, 2021.¹²

Since the grant of its last license extension in April 2021, MOA states that it has been diligently pursuing construction of its channel 43 displacement facilities and has received all equipment needed to resume operations on its displacement channel except a specially fabricated antenna mount. MOA states that final engineering details for the mount was completed in August 2021 and an order for the fabrication of the antenna mount was subsequently submitted to a supplier. However, MOA explains, its antenna must be mounted using a special size galvanized steel tubing that has to be special ordered and crafted. Manufacturing of the tubing was delayed and that has resulted in a delay in mounting the antenna. MOA estimates that it should receive delivery of the special antenna mount and be able to complete construction of the displacement facilities by January 13, 2022.

Therefore, MOA requests reinstatement and further extension of its license and silent authority pursuant to the equity and fairness provision of section 312(g) and waiver of the tolling rules and tolling of the Displacement CP.

Discussion. Upon review of the facts and circumstances presented, we find that MOA's 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. W43CB-D was displaced by the Incentive Auction and repacking process. MOA diligently pursued construction of its displacement facilities, but its efforts were hindered by an equipment manufacturing delay. For similar reasons, we find that MOA has met the standard for waiver of the tolling rules and tolling of its Displacement CP, as well as extension of the Station's silent authority. Grant of MOA's Requests will permit the Station to once again serve its viewers.

We remind MOA 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

¹⁰ See LMS File No. 0000059143.

¹¹ See LMS File No. 0000042705. The Station was assigned a construction permit expiration date of June 21, 2021. The station timely filed a request for tolling of its construction permit on June 21, 2021, which we are considering herein. See LMS File No. 0000150560 (as amended).

¹² See LMS File Nos. 0000080206, 0000112308, 0000124751 and 0000143248.

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 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).

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 MOA that the deadline for submitting final expense documentation for reimbursement for the Stations is September 5, 2022.¹⁴ Thus, we strongly encourage MOA 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 Ministerio Oscar Aguero, Inc. **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,¹⁵ and the license and silent authority for W43CB-D, Miami, Florida, **ARE REINSTATED AND EXTENDED** to January 13, 2022. In addition, the request for waiver of the tolling rules of Ministerio Oscar Aguero, Inc. **IS GRANTED** and the expiration date of the construction permit (LMS File No. 0000052705) for W43CB-D, Miami, Florida, **IS TOLLED** to January 13, 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. MOA 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
Media Bureau

cc (via electronic mail): Francisco Montero, Esq.

¹⁴ See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, Public Notice, 35 FCCRcd 11273, 11277, paras. 10-11 (IATF/MB 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).