



Federal Communications Commission
Washington, D.C. 20554

December 13, 2021

Prism Broadcasting Network, Inc.
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Suite 200-22
Alphretta, GA 30022
dommi.dtv@gmail.com
(via electronic mail)

Re: Requests for Extension of
License and Silent Authority Under
Section 312(g)
K23HB, Flagstaff, AZ; K23HI, Billings,
MT; KLMC-LP, Jefferson City, MO;
W23CX, Salisbury, MD; and WANX-
LP, Columbus, GA
Facility ID Nos. 127190, 126881,
127741, 126937, and 130320

Dear Licensee:

This concerns the requests to reinstate and extend the licenses and silent authority filed by Prism Broadcasting Network, Inc. (Prism), licensee of low power television stations K23HB, Flagstaff, Arizona; K23HI, Billings, Montana; KLMC-LP, Jefferson City, Missouri; W23CX, Salisbury, Maryland; and WANX-LP, Columbus, Georgia (collectively, “Stations”).¹ For reasons set forth below, we deny Prism’s Requests and pursuant to section 312(g) of the Communications Act of 1934, as amended (the Act)² the Stations’ licenses have been automatically cancelled and their call signs deleted.

Background. Section 312(g) of 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.”³ As discussed in greater detail below, the Commission has exercised its discretion under section 312(g) to extend or reinstate a station’s expired license “to promote equity and fairness” only in limited circumstances where a station’s failure to transmit a broadcast signals for 12 consecutive months is due to “compelling circumstances” that were beyond the licensee’s control.⁴ For example, the Commission has granted section 312(g) relief to stations whose facilities were destroyed by natural disasters such as hurricanes;⁵ where silence was necessary in

¹ Each of the Stations has pending requests to extend silent authority that included a request to reinstate and extend license pursuant to section 312(g) of the communications Act of 1934, as amended (Requests). *See* LMS File Nos. 0000081064, 0000144407, 0000081065, 0000082080, and 0000137464.

² 47 U.S.C. § 312(g).

³ *Id.* *See also* 47 CFR § 74.15(f).

⁴ *See A-O Broadcasting Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617, para. 27 (2008) (*A-O Broadcasting*) (“This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited”).

⁵ *V.I. Stereo Communications Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259, 14262, para. 8 (2006) (reinstating license where silence due to destruction of towers in hurricanes).

furtherance of public safety,⁶ where reinstatement of the station's license was necessitated by court order;⁷ where stations were actually displaced by the Incentive Auction and repacking process;⁸ or where station silence was the result of governmental closure.⁹ The Commission has declined to exercise its section 312(g) discretion when a station's silence is the result of a licensee's own action or inaction, finances, and/or business judgment.¹⁰

Requests. All five Stations went silent between March and May 2020 and remain silent to date.¹¹ When each of the Stations initially went silent, Prism filed a request for silent authority that contained no explanation for their silence. The Stations have not yet completed construction of their digital facilities and, had they continued to operate their analog facilities, they would have been required to cease analog operations by July 13, 2021, the deadline by which all analog low power stations were required to cease analog operation and commence digital operations.

In March and April 2021 Prism filed the Requests that are the subject of this proceeding seeking reinstatement and extension of the Station's licenses and silent authority. In its Requests, Prism stated that it went silent because the Stations': "old analog equipment has been unreliable in the last few years

⁶ *Community Bible Church*, Letter Order, 23 FCC Rcd 15012, 15014 (MB 2008) (*Community Bible*) (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).

⁷ *Mark Chapman, Court-Appointed Agent*, Letter Order, 22 FCC Rcd 6578, 6580 (MB 2007) (*Mark Chapman*) (reinstating license where silence necessitated by licensee's compliance with court order).

⁸ *See, e.g., 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) (displaced LPTV station that remains silent for more than one year may request an extension or reinstatement of license where station can demonstrate that its silence is the result of compelling reasons beyond the station's control including facts that relate to the post-auction transition process); *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) (displaced LPTV station receiving conditional grant of its displacement construction permit that results in station remaining silent for more than one year may request extension or reinstatement of license pursuant to section 312(g)).

⁹ *Universal Broadcasting of New York, Inc.*, Letter Order, 34 FCC Rcd 10319 (MB 2019) (station unable to file STA to resume service due to a federal government shutdown).

¹⁰ *See, e.g., New Visalia Broadcasting, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9744 (2014) (record did not show that health problems prevented the principals from resuming operations); *A-O Broadcasting*, 23 FCC Rcd 603 (transmission from unauthorized location not sufficient to avoid the consequences of section 312(g)); *Eagle Broadcasting Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, 589-90 (2008) (operation from unauthorized site insufficient to avoid the consequences of section 312(g)); *Mt. Rushmore Broadcasting, Inc.*, Letter Order, 32 FCC Rcd 3924, 3927 (MB 2017) (discretion unwarranted when station was either silent or engaging in brief periods of unauthorized operation for six years); *Zacarias Serrato*, Letter Order, 20 FCC Rcd 17232 (MB 2005) (station taken off the air due to a business decision); *Kingdom of God*, Letter Order, 29 FCC Rcd 11589 (MB 2014) (station's numerous periods of extended silence were a direct result of licensee's own business decisions); *Christian Broadcasting*, 30 FCC Rcd at 13976 (2015) (licensee provided no evidence that station's silence was beyond its control).

¹¹ WANK-LP went silent on March 2, 2020; W23CX, KLMC-LP, and K23HB went silent on March 23, 2020; and K23HI went silent on May 4, 2020. *See* LMS File Nos. 0000106870, 0000108633, 0000108632, 0000108631 and 0000113069.

and has required continued maintenance”¹² and the equipment was “deemed to be unusable.”¹³ Prism further explained that the reason the Stations continued to remain silent for more than one year was due to an inability to obtain the necessary equipment to construct the Stations digital facilities as a result of stemming from the Commission’s 2018 post-Incentive Auction special displacement window.¹⁴ Prism stated that “equipment installers are effectively backlogged” and current “demand exceed[s] available crews.”¹⁵ Prism stated further that it “relies solely on independent contractors to install and maintain equipment, as well as the major equipment suppliers of transmitters, antenna, etc.”¹⁶ and due to the continuing high demand for equipment and labor “scheduling has been difficult.”¹⁷

Prism goes on to note that, because the Stations were not displaced by the Incentive Auction and repacking, they were not eligible to participate in the Commission’s LPTV reimbursement program and, as such, Prism “has limited financial resources for the (digital) build out of stations, and must plan carefully due to the present cash flow.”¹⁸ In addition, Prism stated that the Stations’ revenues “have taken a significant hit with reduced demand for advertising during the economic downturn caused in part due to the Pandemic.”¹⁹ Prism notably stated that: “*it does not make economic sense to return an analog station to service with the impending July 13, 2021 cutoff for analog stations.*”²⁰ Prism predicted that it would be able to purchase and schedule installation of the Stations’ digital facilities by January 13, 2022, but provides no supporting evidence for this claim.²¹

In June 2021, in an amendment to its digital construction permit extension applications, Prism contended that, although it has made good faith efforts to complete construction of its digital facilities, its sole principal shareholder has had “many struggles due to chronic medical conditions that additionally caused extra vulnerability to COVID-19.”²² According to Prism, because their sole shareholder was forced to self-quarantine for an extended period of time, “managing these properties in this highly unanticipated situation was very difficult.”²³

¹² See Amendments to the Requests, filed April 5, 2021 (April 5, 2021 Amendments).

¹³ *Id.*

¹⁴ Requests at 1.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ April 5, 2021 Amendments at 1 *Id.*

¹⁸ *Id.*

¹⁹ Requests at 1.

²⁰ *Id.* (emphasis added).

²¹ *Id.*

²² See LMS File Nos. 0000139765, 0000139692, 0000139699 and 0000137459, amended June 18, 2021 (Digital Extensions).

²³ See Digital Extensions, Exhibit at 1.

Prism was afforded an opportunity to amend its pending Requests to provide additional information about its extended silence and plans for constructing its digital facilities, but did not respond.²⁴

Discussion. Upon review of the facts and circumstances presented, we find that Prism's Requests fail to satisfy the requirements of section 312(g). Based on its showings, we find the Stations' extended silence were a direct result of Prism's voluntary business decision to take them silent. We have previously determined that such voluntary business judgments do not warrant reinstatement or extension under section 312(g).²⁵ The Commission has also made this point clear in numerous items related to the LPTV digital transition that stations who remain silent for 12-consecutive months will be subject to the automatic cancellation provision of Section 312(g).²⁶

We find that Prism voluntarily took the Stations silent in March and May 2020. Prism argues that it took the Stations silent because its analog equipment was "unreliable," required "continued maintenance" and was ultimately deemed "unusable." However, while Prism contends that it relies "solely on independent contractors to...maintain equipment" it does not provide any supporting documentation for its conclusion that the equipment was no longer usable. Prism, notably, does not state that the Stations' analog equipment had completely failed or that it was completely prevented from continuing to operate the Stations in analog.

Further, Prism argues that the Stations continued to remain silent for more than one year due to its inability to obtain the necessary digital equipment as a result of equipment shortages stemming from the Commission's 2018 post-Incentive Auction special displacement window.²⁷ We are unsympathetic to the fact that Prism ran out of time to reconstruct these Stations' prior to their one-year silent anniversary. At the time Prism voluntarily took the Stations silent in March and May 2020, Prism should have known that the post-incentive auction transition was ongoing and been aware of the strains on equipment shortages.

²⁴ See Letter to Prism Broadcasting Network, Inc. from Barbara A. Kreisman, Chief, Video Division, Media Bureau (July 28, 2021) available at 0000081064, 0000144407, 0000081065, 0000082080 and 0000137464.

²⁵ See e.g., *Zacarias Serrato*, *supra* n. 10 (station taken off the air due to a business decision); *Kingdom of God*, *supra* n. 10 (station's numerous periods of extended silence were a direct result of licensee's own business decisions).

²⁶ See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Second Report and Order, 26 FCC Rcd 10732, 10740, n. 45 (2011); *The Incentive Auction Task Force and Media Bureau Announce Procedures for Low Power Television, Television Translator and Replacement Translator Stations*, Public Notice, 32 FCC Rcd 3860, 3869, para. 20 (IATF/MB 2017); *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, 1238-9, para. 7 (IATF/MB 2018)(*Special Displacement Window PN*); *Media Bureau Reminds Low Power Television and Television Translator Stations of July 13, 2021, Digital Transition Date*, Public Notice, 35 FCC Rcd 6977, 6980 (MB 2020); *Media Bureau Reminds Low Power Television and Television Translator Stations Operating on the Guard Band/Duplex Gap Channels of Upcoming July 13, 2020 Deadline to Cease Operations*, Public Notice, 35 FCC Rcd 5495, 5496 (MB 2020); *Media Bureau Reminds Low Power Television and Television Translator Stations of July 13, 2021, Digital Transition Date*, Public Notice, 36 FCC Rcd 4771, 4774 (MB 2021); *Analog Warning PN at 2-3 and n.11*; *Media Bureau Reminds Low Power Television And Television Translator Stations That The July 13, 2021, Digital Transition Date And Other Important Deadlines Are One Week Away*, Public Notice, DA 21-786 (released July 6, 2021).

²⁷ *Special Displacement Window PN*, 33 FCC Rcd at 1238-9, para. 7.

The incentive auction concluded and the post-incentive auction transition commenced in April 2017.²⁸ None of the Stations were displaced and as such it did not need to wait for the special displacement window to proceed with its transition. In addition, the lack of funding from the Commission's post-incentive auction reimbursement fund is irrelevant to these Stations as the fund has nothing to do with the analog to digital transition. Finally, the Station's lack of funds as a result of the pandemic does not explain Prism's inaction prior to March 2020.

Prism had over four years to undertake efforts to complete the Stations' digital facilities and should have done so knowing there would be an increased demand for low power television equipment and services. It is unclear what, if any efforts Prism undertook to complete its digital transition. To the extent Prism decided to wait to undertake efforts, such inaction was solely the decision of Prism and not outside of its control. Not only should have Prism undertaken construction efforts sooner, but prior to taking the Stations silent, Prism should have known whether it was able to obtain the necessary equipment to complete construction of the Stations' digital facilities and whether it was likely to be able to complete construction prior to their section 312(g) deadlines.

Moreover, Prism's explanation that it decided to keep the Stations' analog facilities off the air because resuming analog operation did "not make economic sense...with the impending July 13, 2021 cutoff for analog stations" clearly indicates its extended silence was a private business decision. By its own admission Prism made the business decision to keep the Stations silent instead of taking other actions that could have preserved their licenses, such as resuming analog operations while the Stations' digital facilities were constructed or constructing reduced facilities.

Prism goes on to argue that the COVID-19 pandemic prevented the Stations' timely resumption of service. Prism took the Station's silent after the start of the pandemic and implementation of nationwide shutdowns.²⁹ At that time, the potential impact on resource constraints and other obstacles related to the pandemic that may have prevented construction were obvious, as evidenced by shortages that had already occurred overseas and had started to or were already occurring in the United States at the time the Stations went silent.³⁰ Prism assumed the risk, based on information before it, that it would be able to complete construction of digital facilities without remaining silent for 12-consecutive months. Prism also states that chronic health issues experienced by its principal, made it more difficult to manage the Stations, however, it does not specifically show how its principal's health issues directly delayed any construction efforts nor does it show why the principal was prevented from hiring outside parties or delegating these tasks to other company employees.

²⁸ *Closing and Channel Reassignment Public Notice. Id. See Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (IATF and MB 2018).

²⁹ The United States government declared a national State of Emergency on March 13, 2021, with travel restrictions being implemented across the country shortly thereafter. *See Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, Presidential Executive Order 9994, March 13, 2020; 85 FR 15337 (March 18, 2020).

³⁰ *See Guidance for Stations in Phase 9 of the Post-Incentive Auction Transition As A Result Of The Novel Coronavirus (COVID-19) Pandemic*, Public Notice, 35 FCC Rcd 2720 (MB 2020) (offering guidance to stations in phase 9 of the post-Incentive Auction transition and noting the grant of construction permit extensions to phase 8 station in light of delivery delays of equipment being manufactured outside the United States as a result of the COVID-19 pandemic).

Prism does not provide any evidence that it even attempted to construct the Stations nor does it explain specifically how the pandemic or other factors impacted its specific construction requirements. We find that the Stations continued silence stemmed from Prism's inaction and voluntary business decision to take the Stations silent and remain silent despite knowing that time was limited and that their licenses would expire after one-year of continued silence. In order to find the compelling circumstances prevented the Stations from resuming operations, Prism should have included documentation demonstrating the specific steps it had taken to complete construction, resume operation, and how COVID-19 had specifically impacted those efforts. For example, Prism could have provided (i) evidence that equipment was ordered on time but had been delayed due to shipment constraints or supply chain issues; (ii) correspondence from its engineers indicating that they were scheduled to install equipment, but could not proceed due to the COVID-19 pandemic; and/or (iii) invoices demonstrating expenditures to further construction and resume operation. Prism has offered no such evidence. Further, Prism does not explain why the Stations needed to remain silent as the pandemic continued to worsen and fails to explain what efforts, if any, it undertook to resume operations – be it analog or digital. As noted above, Prism was provided an opportunity to provide such information, but failed to reply to the Division's inquiry.³¹

Conclusion. Given the totality of the circumstances, we find that Prism has failed to demonstrate that compelling circumstances warrant a finding of equity and fairness to justify reinstatement and extension of the Stations' licenses pursuant to section 312(g).

Accordingly, the requests to reinstate and extend licenses filed by Prism Broadcasting Network, Inc. for K23HB, Flagstaff, Arizona; K23HI, Billings, Montana; KLMC-LP, Jefferson City, Missouri; W23CX, Salisbury, Maryland; and WANX-LP, Columbus, Georgia **ARE DENIED** and the requests for extension of silent authority **ARE DISMISSED**.³² Further, the licenses of K23HB, Flagstaff, Arizona; K23HI, Billings, Montana; KLMC-LP, Jefferson City, Missouri; W23CX, Salisbury, Maryland; and WANX-LP, Columbus, Georgia **ARE CANCELLED**,³³ their call signs **DELETED**, and all pending applications, including its requests for extension of digital construction permits **ARE DISMISSED**.³⁴ All authority to operate these facilities **IS TERMINATED** and any operation of these facilities **MUST CEASE IMMEDIATELY**.³⁵ Finally, pursuant to section 74.788(b) of the Commission's rules, the

³¹ See *supra* note 24.

³² LMS File Nos. 0000081064, 0000144407, 0000081065, 0000082080 and 0000137464.

³³ CDBS File Nos. BLTTL-20070209AAS, BLTTL-20070809ABT, BLTTL-20050613AFP, BLTTL-20070730AKY and BLTTL-20070813AAT.

³⁴ LMS File Nos. 0000139765, 0000139692, 0000139699, and 0000137459.

³⁵ We remind Prism that it must continue to adhere to the requirements in the former station's authorizations pertaining to lighting of antenna structures. See 47 U.S.C. §303(q); 47 CFR §§17.1 *et seq.*, 73.1213 and 73.1740(a)(4). See also *Streamlining the Commission's Antenna Structure Clearance Procedure*, Report and Order, 11 FCC Rcd 4272, 4293 (1995) (tower owner bears primary responsibility for maintaining tower painting and/or lighting). In addition, because digital construction of these facilities was not completed they were only authorized to operate in analog. As such, all operation of these facilities should have ceased on July 13, 2021 and any operation would have been in violation of Commission rules. See 47 CFR § 74.731(m).

digital construction permits for Stations have been **AUTOMATICALLY FORFEITED** and all authority to construct digital facilities have been **TERMINATED**.³⁶

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

³⁶ See LMS File Nos. 0000069294, 0000069012, and 0000071786 and CDBS File No. BDFCDTL-20120625ACS. In addition, the digital construction permit for W30DT-D, Salisbury, Maryland, Facility ID No. 190682 (the digital companion channel for W23CX, Salisbury, Maryland) is also cancelled. See CDBS File No. BDCCDTL-20120628AAS.