



Federal Communications Commission
Washington, D.C. 20554

January 28, 2022

David Ellington
P.O. Box 617
Webb, MS 38966
david@ellingtonbroadcasting.com
(via electronic mail)

Re: Request for Reinstatement of
License Under Section 312(g)
WEBU-LD, Water Valley, MS
LMS File Nos. 0000180240 and
0000178369
Facility ID No. 15657

Dear Licensee:

David Ellington (Ellington), licensee of WEBU-LD, Water Valley, Mississippi (WEBU-LD or Station) filed the above-referenced request to reinstate the Station's license, as amended (Request). For reasons set forth below, we grant the Request, waive all applicable rules, and reinstate the Station's license.¹

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 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

¹ To extent it is necessary, we also grant the request for silent authority.

² 47 U.S.C. § 312(g).

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 (2008) (*A-O Broadcasting*) (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 Decision, 23 FCC Rcd 15012, 15014 (MB 2008); *Mark Chapman, Court-Appointed Agent*, Letter Decision, 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 Decision, 25 FCC Rcd 10686 (MB 2010); *Kirby Young*, Letter Decision, 23 FCC Rcd 35 (MB 2008).

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 repacking process, WEBU-LD's analog channel 11 was displaced by WTVA(TV), Tupelo, Mississippi, that was repacked to channel 11. As a result, WEBU-LD has been silent since July 13, 2020. WEBU-LD timely filed a displacement application requesting a construction permit for channel 22 and that application was granted on September 27, 2018.⁷ Because the Station was still operating in analog at the time, the displacement construction permit (Displacement CP) was given an expiration date of July 13, 2021.⁸ On May 10, 2021, the Station was granted an extension of the Displacement CP and its expiration date was extended to January 10, 2022.⁹

Since the grant of the Extension Application in May 2021, Ellington states that he had vendors and contractors ready to begin construction in June 2021. However, when Ellington requested authority from the Station's tower owner to move forward, the owner refused because the vendors and contractors were not on the tower owner's list of approved entities. Ellington states that he moved forward as expeditiously as possible to obtain a general contractor that was on the approved list; however, the global COVID-19 pandemic significantly reduced availability for those already-limited number of approved companies. Ellington finally found an available, approved contractor who began construction of the Station's facilities in August 2021. Ellington states that after construction commenced, supply chain issues caused by the global COVID-19 pandemic caused his equipment orders to be delayed beyond their typical dates, including the delivery dates for the Station's transmitter shelter and transmitter cabinet. As a result, the construction was delayed several times throughout the Fall of 2021 until equipment was finally delivered and installed in December 2021. The Station completed construction prior to its construction permit expiration date and filed a license application on January 3, 2022.¹⁰

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.*, Memorandum Opinion and Order, 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 1237, 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 No. 0000054535.

⁸ See 47 CFR § 74.788(a).

⁹ See LMS File No. 0000139137 (Extension Application).

¹⁰ See LMS File No. 0000178369.

Based upon the foregoing Ellington contends that grant of the Request is in the public interest as it will enable the Station to continue to serve its viewers with the benefits of a digital signal.

Discussion. Upon review of the facts and circumstances presented, we find that Ellington's request for reinstatement of license and silent authority pursuant to section 312(g) 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 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. WEBU-LD was displaced by the incentive auction and diligently pursued a new digital displacement channel. Due to circumstances outside Ellington's control, namely the inability to secure approval from the Station's tower owner for the installation of the Station's digital equipment and demonstrated equipment and tower crew shortages, WEBU-LD was unable to return to the air prior to the one-year anniversary of it going silent. Despite these obstacles, WEBU-LD successfully completed construction of its digital facility prior to its construction permit expiration date. Grant of relief will enable the Station to continue to serve its viewers and provide all the benefits of digital television for the first time.

Accordingly, we find that in order to promote fairness and equity, the request filed by David Ellington **IS HEREBY GRANTED**, all applicable Commission rules **ARE WAIVED**,¹¹ and the license for WEBU-LD, Water Valley, Mississippi, **IS REINSTATED**. In addition, the application of David Ellington for license (LMS File No. 0000178369) for WEBU-LD, Water Valley, Mississippi **IS GRANTED**.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Patrick Cross, Esq.

¹¹ See e.g., 47 CFR §§ 73.1635(a)(4), 47 CFR §§ 74.15(f), and 74.763(c). A waiver is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis. See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 CFR § 1.3 (waiver for good cause shown).