



Federal Communications Commission
Washington, D.C. 20554

March 31, 2022

Ventana Television, Inc.
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(via electronic mail)

Re: Request for Reinstatement and
Extension of License and Silent
Authority Under Section 312(g) and
Waiver of Tolling Rules
W45DX-D, Atlanta, GA
Fac ID No. 61199
LMS File Nos. 0000186936 and
0000185312

Dear Licensee:

This letter concerns the requests to reinstate and extend license and silent authority and waiver of the tolling rules, as amended (Requests), filed by Ventana Television, Inc. (Ventana), licensee of low power television (LPTV) station W45DX-D, Atlanta, Georgia (W45DX-D or Station). For reasons set forth below, we grant Ventana'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 August 29, 2022.¹

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."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

¹ Because Ventana requests extension of the Station's license and tolling of its construction permit for 180 days through Sunday, August 28, 2022, we will extend the license and construction permit to the next business day, which would be Monday, August 29, 2022. See 47 CFR § 1.4.

² 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).

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 (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, 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.”⁶

A LPTV station, such as W45DX-D, that has already transitioned to digital and is subsequently granted a digital construction permit for displacement facilities was given three years to complete construction of its displacement facilities.⁷ If a station experiences delays licensing its facility, it may only obtain additional time to complete construction through the Commission’s “tolling” rule.⁸ 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.⁹ 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.¹⁰

Requests. W45DX-D’s digital channel 45 was displaced by the Incentive Auction and repacking process and was designated as portion of the new wireless “duplex gap.” W45DX-D has been silent as a

³ *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*).

⁴ *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)).

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*, 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*).

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 47 CFR § 74.788(d).

⁸ See 47 CFR § 73.3598(b).

⁹ *Id.*

¹⁰ See *1998 Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536, para. 42 (1999).

result since July 13, 2020.¹¹ Ventana timely filed a displacement application for the Station for channel 13 and that application was granted on September 28, 2018 and had an expiration date of September 28, 2021 (Displacement CP).¹² The Station's license was previously extended pursuant to section 312(g) and the Displacement CP tolled until March 1, 2022.¹³

Since the grant of its license extension and tolling in November 2021, Ventana states that it has been diligently pursuing construction of the Station's displacement facilities and resuming operations. Ventana states that all of the equipment for the displacement facilities has been delivered to the tower site and an installation crew has been retained. On January 11, 2022, Ventana's tower installation company began the process of obtaining local approval from DeKalb County to complete work at the tower site. As documented in a series of emails from the tower installation company to Ventana it has not been able to obtain the necessary permit to commence the installation of the antenna. The tower installation company reports that, despite repeated contact with local officials, it has been unable to obtain any type of estimate for how long it will take for DeKalb County to issue the necessary local approval other than that approval process "shouldn't take too much longer." The tower installation company states that it ready to promptly complete construction the second that local approval is obtained. Based upon these facts, and the fact that the Dekalb County has not provided any guidance as to how long its permitting process may take before a permit is issued, Ventana requests reinstatement and extension of the Station's license, waiver of the tolling rules and tolling of the Displacement CP for 180 days.

Discussion. Upon review of the facts and circumstances presented, we find that Ventana'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. W45DX-D was displaced by the Incentive Auction and repacking process. Ventana diligently pursued construction of its displacement facilities, but its efforts have been hindered by delays with the local approval process. For similar reasons, we find that Ventana 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 Ventana's Requests will permit the Station to once again serve its viewers on its digital displacement channel.

We remind Ventana 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.¹⁴ Please note, however, that additional expenses

¹¹ See *Incentive Auction R&O*, 29 FCC Rcd at 6841, para. 672 (requiring stations in the duplex gap to cease operation by 11:59pm on July 13, 2020),

¹² See LMS File No. 0000053166.

¹³ See LMS File Nos. 0000159475 and 0000151626.

¹⁴ 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 its displacement facilities that are unrelated to the displacement, may not be eligible for reimbursement from the Fund.

We further remind Ventana of the deadline for submitting final expense documentation for reimbursement for the Station is September 6, 2022.¹⁵ **We caution Ventana that we do not anticipate allowing extensions of the final September 6, 2022 invoice filing deadline. A station's failure to complete any remaining construction in a timely manner and to make final submissions by the assigned invoice filing assignment deadline could preclude that station from receiving full reimbursement.** Unobligated amounts in the Fund must be rescinded to Treasury and the Commission staff (with the support of the Fund Administrator) must have sufficient time to fully process all reimbursement requests and complete close-out procedures prior to July 3, 2023.¹⁶ The Fund Administrator will initiate close out procedures for any entity that has failed to initiate interim close-out procedures by the September 6, 2022 invoice filing deadline. Any unused allocations made to that entity's account will be returned to the Fund and made available for allocation to other program participants or rescinded to Treasury. Thus, we strongly encourage Ventana to diligently pursue satisfaction of the current deadline and we encourage Ventana to submit eligible invoices as soon as practicable.

Accordingly, we find that in order to promote fairness and equity the request filed Ventana Television, Inc. **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,¹⁷ and the license and silent authority for W45DX-D, Atlanta, Georgia **IS EXTENDED** to August 29, 2022. In addition, the request for waiver of the tolling rules of Ventana Television, Inc. **IS GRANTED** and the expiration date of the construction permit (LMS File No. 0000151607) for W45DX-D, Atlanta, Georgia **IS TOLLED** to August 29, 2022. We note that another request for extension of the Station's license under the equity and fairness provision of section 312(g)¹⁸ and/or tolling of a Station's construction permit under section 73.3598(b) of the Commission's rules¹⁹ will not be favorably viewed unless accompanied by a showing that completion of the Station's displacement facilities was prevented by additional compelling

¹⁵ See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (IATF/MB 2020) (setting three filing deadlines for submission of all remaining repack invoices: for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period, the deadline for submitting all remaining invoices is October 8, 2021; the deadline for entities assigned completion dates in the second half of the transition period is March 22, 2022; and the deadline for all other participants in the reimbursement program is September 6, 2022).

¹⁶ See *id.* at 11277-78, para 13.

¹⁷ 47 CFR §§ 74.15(f) and 74.763(c).

¹⁸ 47 U.S.C. § 312(g).

¹⁹ 47 CFR § 73.3598(b). A station 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. See *Streamlining MO&O*, 14 FCC Rcd at 17536, para. 42.

circumstances. Ventana 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): Gregg Skall, Esq.