



Federal Communications Commission
Washington, D.C. 20554

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Sent via Certified Mail and Electronic Mail

Brenda Barnhart, Executrix
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Re: Request for Reinstatement and
Extension of License and Silent
Authority and Tolling Waiver
WJOS-LD, Pomeroy, OH
Facility ID No. 72479
LMS File Nos. 0000159722 and
0000159551

Dear Licensee:

This concerns requests to extend license and silent authority and waiver of the tolling rules, (Requests) filed by Brenda Barnhart, Executrix (Barnhart), licensee of low power television (LPTV) station WJOS-LD, Pomeroy, Ohio (WJOS-LD or Station). For reasons set forth below, we deny Barnhart's request and, pursuant to section 312(g) of the Act, the Station's license has been automatically cancelled and its call sign 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."¹ 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.² For example, the Commission has granted section 312(g) relief to stations whose facilities were destroyed by natural disasters such as hurricanes;³ where silence was necessary in

¹ 47 U.S.C. § 312(g). *See also* 47 CFR § 74.15(f).

² *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").

³ *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,⁴ where reinstatement of the station's license was necessitated by court order;⁵ where stations were actually displaced by the Incentive Auction and repacking process;⁶ or where station silence was the result of governmental closure.⁷ 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.⁸

A LPTV station, such as WJOS-LD, that has already transitioned to digital and is subsequently granted a digital construction permit for displacement facilities, is given three years to complete construction of its displacement facilities.⁹ If a station experiences delays licensing its facility, it may only obtain additional time to complete construction through the Commission's "tolling" rule.¹⁰ 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.¹¹

⁴ *Community Bible Church*, Letter Order, 23 FCC Rcd 15012, 15014 (MB 2008) (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).

⁵ *Mark Chapman, Court-Appointed Agent*, Letter Order, 22 FCC Rcd 6578, 6580 (MB 2007) (reinstating license where silence necessitated by licensee's compliance with court order).

⁶ *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)).

⁷ *Universal Broadcasting of New York, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 10319 (MB 2019) (finding that station's inability to file an STA to resume service due to a federal government shutdown was a compelling circumstance under section 312(g)).

⁸ *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).

⁹ *See* 47 CFR § 74.788(d).

¹⁰ *See* 47 CFR § 73.3598(b).

¹¹ *Id.*

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.¹²

Requests. WJOS-LD’s digital channel 45 was displaced by the Incentive Auction and repacking process and was designated as a portion of the new wireless “duplex gap.” As a result, the Station was required to cease operations on July 13, 2020 (Duplex Gap Channel Deadline).¹³ Barnhart timely filed a displacement application for the Station for channel 31 and that application was granted on September 21, 2018 and the construction permit was issued with an expiration date of September 21, 2021 (Displacement CP).¹⁴

Barnhart requests reinstatement and extension of the Station’s license and silent authority and waiver of the tolling rules and tolling of the Displacement CP. Barnhart explains that she was not aware of the Duplex Gap Channel Deadline for LPTV stations operating on channels that had been designated part of the new “duplex gap” and inadvertently continued to operate the Station on channel 45 through May 2021. After losing the services of two individuals who previously provided technical assistance to the Station and recognizing that she could not operate the Station herself, Barnhart maintains (without providing a specific timeframe) that she contacted a third party to help complete the transition to displacement channel 31. Barnhart states that she is actively working with the third party (who may also purchase the station) to complete construction and restore service on the Station’s displacement channel as quickly as possible. According to Barnhart, the Station can be completed within 30 days of the Commission reinstating the Station’s license.¹⁵

Barnhart states that she has ordered and received a transmitter, antenna, and coaxial cable. Barnhart states further that she is working to identify a new tower site for the Station to utilize because the Station’s existing site is located on a hill with no access other than a vertical hike and she no longer owns the property on which the existing site is located. Barnhart argues that the Station’s continued silence was fully attributable to circumstances beyond her control relating to the post-Incentive Auction transition. Specifically, Barnhart cites to the fact that the prior licensee of the Station (her husband) passed away in 2017 shortly before the opening of the Special Displacement Window for LPTV stations. Finally, Barnhart argues that a grant of her requested relief will promote equity and fairness. Barnhart argues that a grant of relief in this case would be consistent with past Commission decisions where a station’s silence was a result of being displaced by the Incentive Auction and repacking process.¹⁶

¹² See *1998 Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536, para. 42 (1999).

¹³ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, et al., Report and Order, 29 FCC Rcd 6567, 6841, para. 672 (2014) (subsequent history omitted).

¹⁴ See LMS File No. 0000054324.

¹⁵ Barnhart states that she is waiting until the Commission acts on her requests to reinstate the Station’s license before she files a minor modification application to specify a new tower site. However, it is unclear from the Requests whether a new tower site has in fact been identified.

¹⁶ See Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Word of God Fellowship, Inc., LMS File No. 0000150558 (Sept. 2, 2021); Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, to Renee Ilhardt, DTV America Corporation and HC2 Broadcasting Holdings, Inc., LMS File Nos. 0000072656, et al., (Mar. 23, 2020); Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to KRCA License LLC, LMS File No. 0000059940 (Mar. 15 2019).

Discussion. Upon review of the facts and circumstances presented, we find that the Station's license has automatically expired pursuant to section 312(g) of the Act. Based on her showings, we find that Barnhart has failed to adequately demonstrate that her failure to return the Station to air before its one-year silent deadline was due to compelling circumstances beyond the licensee's control and reinstatement is not warranted under the "equity and fairness" provision of section 312(g). We find the Station's continued silence to date was a direct result of inattentiveness, a misunderstanding of the Commission's rules, and subsequent voluntary business decisions.

It is well settled precedent that ignorance of a rule or law does not excuse a violation or noncompliance.¹⁷ The July 13, 2020 Duplex Gap Deadline was adopted in 2014 as part of the Commission's *Incentive Auction Report and Order*.¹⁸ The Media Bureau reminded stations of the Duplex Gap Deadline in its *LPTV Procedures PN* released in May 2017, following the completion of the Incentive Auction.¹⁹ Again, in June 2020, one-month prior, the Media Bureau issued a Public Notice reminding stations of the deadline.²⁰ It's the responsibility of licensees to stay informed of important deadlines and to ensure compliance.²¹ Whether intentional or not, Barnhart continued to operate the Station for over 10 months after the Duplex Gap Deadline, a clear violation of the rules. Barnhart may not rely on her noncompliance with the rules to excuse her failure to complete construction of the Station's displacement facilities in a timely manner. We also note that the Commission has found that unauthorized operation of a station does not prevent the automatic cancellation of a license under section 312(g).²²

Notably absent from Barnhart's showing is any progress toward construction of the Station's displacement facilities from the time the construction permit was issued in September 2018 until May

¹⁷ See, e.g., *Adrian Abramovitch, Marketing Strategy Leaders, Inc. and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4674, para. 32 & n.79 (2018) ("[O]ne may not 'claim ignorance of the law as a defense'" (internal cites omitted); *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14704, para. 10 (2015) ("PTT's purported ignorance of the law certainly does not excuse the fact that it . . . [was] out of compliance with all of the provisions of the Act and the [Commission's] [r]ules to which it was subject."); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para 3 (1991), recon. denied, 7 FCC Rcd 3454 (1992) (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance") (internal cite omitted); see also *Townsquare Media of El Paso, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6661, 6665, para. 5 & n. 37 (EB 2020) ("It is immaterial whether . . . violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight.") (internal cites omitted); *Rufus Resources, LLC*, Forfeiture Order, 33 FCC Rcd 6793, 6794, para. 5 (MB 2018) ("It is well settled that ignorance of the [Commission's] [r]ules does not excuse a violation.") (internal cites omitted).

¹⁸ See *Incentive Auction R&O*, 29 FCC Rcd at 6841, para. 672.

¹⁹ See *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 (MB 2017) (*LPTV Procedures PN*).

²⁰ See *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 (MB 2020).

²¹ See 47 CFR § 74.769.

²² See, e.g., *Kingdom of God, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd 3654 (2017); *Eagle Broad. Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, para. 9 (2008), aff'd sub nom. *Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543, 553 (D.C. Cir. 2009) (unauthorized, unlicensed broadcasts cannot constitute transmission of broadcast signals to avoid termination under Section 312(g)).

2021 when, upon discovering she had been illegally continuing to operate on channel 45, she finally took steps to pursue construction. With the one-year silent deadline of July 13, 2021, and construction permit deadline of September 18, 2021, looming, Barnhart attempted to quickly construct the displacement facilities and simply ran out of time. This distinguishes her case from those cases cited in her Request.²³ In each of those cases, the licensee demonstrated that they had diligently pursued construction of their facilities and that compelling circumstances prevented them from completing construction prior to their station's one-year silent anniversary. Here, Barnhart can only cite to her lack of attention and misunderstanding of the rules to explain why the Station's displacement facilities were not timely constructed. We are unsympathetic to the fact that Barnhart ran out of time to reconstruct the Station prior to its one-year silent anniversary and expiration of its digital construction permit. The Commission has, on numerous occasions, made abundantly clear that LPTV stations that are silent for more than 12 consecutive months are subject to automatic cancellation under section 312(g) of the Act.²⁴ Barnhart had three years to undertake efforts to complete the Station's facilities and failed to do so. To the extent she decided to wait to undertake efforts, such inaction was solely her decision and not outside of her control.²⁵

Barnhart also cites to the need to relocate to a new tower site and her desire to sell the station as additional factors that support her Request. We are not persuaded that the change in tower site was anything more than a business decision to not remain at a site that she no longer owned and would likely have to lease space for the Station to remain there. Barnhart also does not show that she diligently pursued a new tower site for the Station, waiting until May 2021 to begin the search. Finally, desiring to sell the Station is clearly a private business decision that does not qualify as a compelling circumstance preventing a resumption of service. We have previously determined that voluntary business judgments do not warrant reinstatement or extension of a station's license under section 312(g) of the Act.²⁶

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

Accordingly, the request to reinstate and extend license filed by Brenda Barnhart, Executrix's for WJOS-LD, Pomeroy, Ohio **IS DENIED** and the request for extension of silent authority **IS DISMISSED**.²⁷ Further, the license of WJOS-LD, Pomeroy, Ohio **IS CANCELLED**,²⁸ its call sign **DELETED**, and all pending applications, including its request for tolling waiver, application for minor

²³ See *supra* note 16.

²⁴ See, e.g., *LPTV Procedures PN*, 32 FCC Rcd at 3869, para. 20; *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); *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).

²⁵ See Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Prism Broadcasting Network, Inc., LMS File Nos. 0000081064, 0000144407, 0000081065, 0000082080, and 0000137464 (Dec. 13, 2021).

²⁶ See e.g., *Zacarias Serrato*, *supra* note 8 (station taken off the air due to a business decision); *Kingdom of God*, *supra* note 8 (station's numerous periods of extended silence were a direct result of licensee's own business decisions).

²⁷ LMS File No. 0000159551.

²⁸ CDBS File No. BLDTL-20120614ABJ.

modification and renewal of license **ARE DISMISSED**.²⁹ All authority to operate these facilities **IS TERMINATED** and any operation of these facilities **MUST CEASE IMMEDIATELY**.³⁰ Finally, pursuant to section 74.788(b) of the Commission's rules, the digital construction permit for the Station has been **AUTOMATICALLY FORFEITED**³¹ and all authority to construct digital facilities has been **TERMINATED**.³²

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Benjamin Perez, Esq.

²⁹ LMS File Nos. 0000149111 and 0000159459 and 0000159722.

³⁰ We remind Barnhart that she must continue to adhere to the requirements in the former station's authorization 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).

³¹ Cancellation of a permittee's construction permits and deletion of call signs by Media Bureau staff in the Licensing and Management System (LMS) is an administrative function and does not constitute an official Commission action. *See e.g., Media Bureau Reminds Remaining 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 (rel. July 6, 2021); *Media Bureau Reminds Remaining Analog Low Power Television and Television Translator Stations Without Digital Construction Permits to File Immediately in Order to Ensure A Successful Digital Transition*, Public Notice, DA 21-684 (rel. June 11, 2021); 86 FR 32262 (June 17, 2021).

³² *See* LMS File No. 0000054745.