

EXHIBIT- JUSTIFICATION

As the attached document demonstrates, the applicant has been waiting for the required equipment. The equipment is ready to ship. Upon receipt, applicant is prepared to immediately commence installation.

**Re: Request to Reinstate and Extend
License and Silent Authority
W45BZ, Jacksonville, FL
Facility ID No. 16394
LMS File No. 0000150248**

AMENDMENT

The instant Amendment is filed pursuant to the Commission's January 29, 2022 letter (Attachment A). In that letter, the Commission requested an amendment to the pending extension application to address, *inter alia*, the following:

- Confirmation of the operating status of the Station and a detailed accounting of all steps taken to resume operations, including supporting documentation.
- A detailed accounting of any and all compelling circumstances outside of the licensee's control that prevented the resumption of service, including dates of each circumstance and supporting documentation.
- Accounting of what construction remains and a detailed timeline of how and when construction is anticipated to be completed.
- A request for tolling.

The pending request for extension states that COVID-19, an event beyond the control of the licensee, has significantly delayed receipt of equipment. Attached to that extension request is an invoice from the transmitter manufacturer and also a letter concerning the antenna to be utilized with the Station. In that document, the following was represented:

"I regret to inform you that we have been delayed on construction of the W45BZ Jacksonville, FL Transmitter Site, Antenna and the 1-5/8" Coaxial Cable. Delays have been caused by the Corona19 Virus, this Winters Deep Freeze weather event, and shipping challenges which have created a backlog of projects for us to finish. Assuming everything is mostly back to normal now, we should be able to begin construction in approximately 6 months."

Attached to the instant submission is a letter from Alive Telecom, who is manufacturing the W45BZ antenna (Attachment B). Specifically, Daniel Barton, President, states as follows:

“Alive Telecom was requested to build Channel 26 H-POL LPTV antenna to be used for the operation of W45BZ, Jacksonville, FL. Antenna Part Number ATC-BCH512EC-26 can be delivered in 7 weeks. A broadband cavity slot 4 bay auxiliary antenna can ship out next week.

Mr. Viswanath has had regular conversations with us as to when the required antenna would be available.”

Attachment C is a letter from Elettronika America, the manufacturer of the transmitter. It states that it “is prepared to ship the transmitter to be used with W45BZ, Jacksonville, FL, immediately.” It also states that it has been in regular contact with Mr. Viswanath.

Attachment D is a Tolling Request.

Finally, attached is a Declaration of Deepak Viswanath, in which Mr. Viswanath recounts his contacts with both the transmitter supplier and the antenna supplier. Furthermore, Mr. Viswanath provides an estimate of when the construction would be completed. *See* Attachment E.

ATTACHMENT A



Federal Communications Commission
Washington, D.C. 20554

June 29, 2022

Sent via Certified Mail and Electronic Mail

Deepak Viswanath
120 Commerce Drive
Suite 120-A
Plano, TX 75093
deepakv@dallas44.com

Re: Request To Reinstate and Extend
License and Silent Authority
W45BZ, Jacksonville, FL
Facility ID No. 16394
LMS File No. 0000150248

Dear Licensee,

This concerns the requests filed by Deepak Viswanath, licensee of the above-captioned low power television station (Station), to extend the Station's digital displacement construction permit (Displacement CP), reinstate and extend the Station's license, and grant special temporary authority for the Station to commence operations on its digital channel. W45BZ was an analog LPTV station operating on channel 45. The Station's analog channel 45 facilities were displaced by the Incentive Auction and repacking process and was designated as portion of the new wireless "duplex gap." As a result, W45BZ was required to discontinue operations on channel 45 no later than July 13, 2020,¹ but failed to do so until February 7, 2021.² Viswanath timely filed a displacement application for the Station for channel 26³ and that application was granted on October 30, 2018 (Displacement CP). Because the Station was still analog and had yet to transition to digital, the Displacement CP was assigned a July 13, 2021 expiration construction permit expiration date.⁴ In a request for extension⁵ filed June 21, 2021 (CP Extension), Viswanath requested the Displacement CP be extended to January 2022.⁶ On July 14, 2021, a request for special temporary authority was filed seeking to commence operations on its new digital channel.⁷

¹ See *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, 6841, para. 672 (2014).

² See LMS File No. 0000150695.

³ See LMS File No. 0000054939.

⁴ See 47 CFR § 74.788(a); see also *Media Bureau Reminds Low Power Television and Television Translator Stations of July 13, 2021, Digital Transition Date*, Public Notice, 36 FCC Rcd 4771 (MB 2021).

⁵ See File No. 0000150129.

⁶ See LMS File No. 0000150248. An analog LPTV station transitioning to digital that experienced delays in completing its digital facilities was permitted to seek one last extension of time of its digital construction permit, of not more than 180 days. Such request was due no later than **March 15, 2021**, which was four months prior to the **July 13, 2021**, digital transition deadline. See 47 CFR § 74.788(c)(3). Late-filed applications for extension of time were permitted so long as the applicant included a request for waiver of the March 15, 2021 filing deadline, explained its reason for late-filing and the application was filed no later than July 13, 2021. See *Media Bureau Reminds Low Power Television and Television Translator Stations of July 13, 2021, Digital Transition Date*, Public Notice, 36 FCC Rcd 4771 (MB 2021).

⁷ See LMS File No. 00001528835.

We are unable to process your request for extension of the Station's construction permit and reinstatement and extension of the Station's license without additional information. Therefore, please provide the following information within 30 days:

1. Please confirm that the Station continues to be silent and please provide a detailed accounting of all steps taken to resume operations including dates for each action and supporting documentation. **Note: any operation on channel 45 after July 13, 2020 does not constitute authorized operations for purposes of preventing automatic cancellation of a station's license under section 312(g) of the Communications Act of 1934, as amended.**⁸
2. Since the Station went silent, please provide a detailed accounting of any and all compelling circumstances outside of your control that prevented the resumption of service including dates of each circumstance and supporting documentation. Please describe how such circumstance(s) directly prevented the Station from resuming service.
3. Please provide a detailed accounting of what construction remains and a detailed timeline of how and when you expect to complete construction and begin authorized operations either in accordance with the STA and/or digital construction permit on file.
4. Even if we were to find that reinstatement and extension of the Station's license is warranted, in order to extend the Station's construction permit beyond January 10, 2022, you must include with your amended CP Extension, a request for tolling. Requests for additional time to construct LPTV facilities are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.⁹ The Commission's tolling provisions provide that a construction permit deadline may be tolled under specific circumstances such as acts of God, delays due to administrative or judicial review, or construction that is delayed by any cause of action pending before a court of competent jurisdiction relating to any necessary local, state, or federal requirement for the construction or operation of the station, including any zoning or environmental requirement.¹⁰ If a station does not qualify for tolling under these criteria, good cause may exist to waive the Commission's tolling provisions and tolling may still be

⁸ 47 U.S.C. § 312(g). The Commission does not recognize unauthorized operation for purposes preventing automatic cancellation under section 312(g) of the Act. *See e.g., A-O Broad. Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603 (2007) (*A-O Broad.*) (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). The Commission also does not recognize unauthorized service for purposes of evaluating the public interest benefits of a broadcaster. *See e.g., In Re Jerry Szoka Cleveland, Ohio*, Decision, 14 FCC Rcd 9857, 9862 (1999) (stating that providing service to a "niche audience that is not otherwise being served adequately by licensed broadcasters" does not establish "a right to broadcast without a license and in contravention of the Commission's rules"); *C.J. Community Services, Inc., Bridgeport, Washington*, Decision, 20 FCC 860, 868 (1956) (noting that "Considerations of . . . alleged benefits of the augmented service made possible by the boosters are irrelevant to a determination as to whether an unlicensed operation causing interference to a authorized service should be allowed to continue operation").

⁹ *See* 47 CFR § 73.3598(b). *See also supra* note 6.

¹⁰ *Id.*

warranted where the licensee can demonstrate that "rare and exceptional circumstances" prevented construction by the station's construction permit expiration date.¹¹

Please file the above-outlined information in the form of an amendment to the CP Extension. You are reminded that all statements must be truthful and are being filed under penalty of perjury.¹² If you fail to provide such information within 30 days from the date of this letter or fail to provide a showing that reinstatement is warranted pursuant to the equity and fairness provision of section 312(g),¹³ the Commission's public and internal databases **WILL BE MODIFIED** to indicate that the broadcast license for the referenced station **IS EXPIRED**, that the station's license **IS CANCELED** as a matter of law, and that the station's call sign **IS DELETED**. As an alternative to a written response, the Licensee may submit its license for cancellation.

Documents sent in response to this letter shall be addressed to FCC, Office of the Secretary, 45 L Street, NE, Washington, DC 20554, and emailed to Shaun Maher at the address below.

For questions or additional information on this matter, please contact Shaun Maher, Video Division, Media Bureau at 202-418-2324 or Shaun.Maher@fcc.gov.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

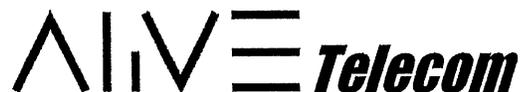
cc (via electronic mail): Aaron Shainis, Esq.

¹¹ See 1998 Biennial Regulatory Review--Streamlining of Mass Media Applications, Rules, and Processes, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17542, para. 42 (1999) (*Streamlining MO&O*) (recognizing that there may be "rare and exceptional circumstances" beyond the control of the licensee that do not fall under the tolling provisions, but "which would warrant the tolling of construction time." The Commission concluded that in such "limited circumstances," it would entertain requests for waiver of its "strict tolling provisions"); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown).

¹² See 47 CFR § 1.16.

¹³ See e.g. *A-O Broad.*, 23 FCC Rcd at 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 failure to transmit a broadcast signal was due to the licensee's own actions, finances, and/or business judgment. See, e.g., *A-O Broad.*, 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).

ATTACHMENT B



Date: June 29, 2022
Subject: LPTV Antenna W45BZ
Facility ID: 16394

Alive Telecom
9850 W. 190th Street, Suite F
Mokena, IL 60448
ph: 708-478-6886
info@alivetele.com
www.alivetele.com

To Whom it May Concern:

Alive Telecom was requested to build Channel 26 H-POL LPTV antenna to be used for the operation of W45BZ, Jacksonville, FL. Antenna Part Number ATC-BCH512EC-26 can be delivered in 7 weeks. A broadband cavity slot 4 bay auxiliary antenna can ship out next week.

Mr. Viswanath has had regular conversations with us as to when the required antenna would be available.

Regards,

Daniel Barton

President, Alive Telecom

ATTACHMENT C

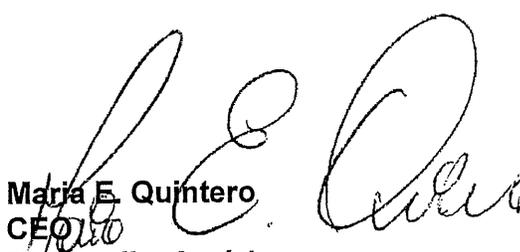


Miami, July 6, 2022

To Whom it may concern.

Gentlemen:

This letter is to Elettronika is prepared to ship the transmitter to be used with W45BZ, Jacksonville, FL , immediately.
We have been in contact on a regular basis with Mr. Viswanath as to the availability and status of the order.


Maria E. Quintero
CEO
Elettronika América

2201 NW 102 Place. Unit 5 MIAMI, FL. U.S.A. 33172
Ph: (305) 5924506 Fax: (305) 5943499
E-mail: marketing@elettronika.com
Web: www.elettronika.com

ATTACHMENT D

ATTACHMENT E

DECLARATION OF DEEPAK VISWANATH

Deepak Viswanath hereby states, under penalty of perjury, the following:

Since the filing of the W45BZ, Jacksonville, FL extension request, I have had regular telephone contacts with the transmitter supplier and the antenna supplier in order to attempt to put more pressure on them relative to receipt of the equipment. While I did not call on a daily basis, I believe I did call every two to three weeks in order to ascertain status. Under the current timeframe, with the information supplied by Elettronika and Alive Telecom, I would anticipate receipt of the equipment necessary to complete construction within approximately 30 days. Once the equipment is received, I believe final assembly and installation would take an additional 60 days. Accordingly, I anticipate that, from the time the extension is granted, I would be able to file a license to cover within 120 days.



Deepak Viswanath

July 26, 2022