



Federal Communications Commission  
Washington, D.C. 20554

November 17, 2022

State of Alaska  
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(via electronic mail)

Re: Request for Reinstatement of  
License Under Section 312(g) and  
Waiver of Tolling Rules  
K07RU, Dot Lake, AK  
K04KP, Northway, AK  
LMS File Nos. 0000151737,  
0000151756, 0000194778, 0000194781,  
0000201508 and 0000201509  
Facility ID Nos. 62709 and 62874

Dear Licensee:

This letter concerns the requests to reinstate license and waiver of tolling rules, as amended (Requests) filed by the State of Alaska (SOA), licensee of low power television (LPTV) stations K07RU, Dot Lake, Alaska (K07RU) and K04KP, Northway, Alaska (K04KP) (collectively "Stations"). For the reasons set forth below, we grant SOC's Requests, waive all applicable rules, reinstate the Stations' licenses, and toll the digital construction permits.

*Background.* Section 312(g) of the Communications Act of 1934, as amended (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."<sup>1</sup> 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."<sup>2</sup> Further, in the *Post-Incentive Auction Procedures PN* the Media Bureau

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<sup>1</sup> 47 U.S.C. § 312(g).

<sup>2</sup> *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.*, 23 FCC Rcd 603, 617, para. 27 (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.*, 21 FCC Rcd 14259 (2006); *Community Bible Church*, 23 FCC Rcd 15012, 15014 (MB 2008); *Mark Chapman, Court-Appointed Agent*, 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.*, 25 FCC Rcd 10686 (MB 2010); *Kirby Young*, 23 FCC Rcd

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.”<sup>3</sup> 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.<sup>4</sup> 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.”<sup>5</sup>

Requests for additional time to construct LPTV facilities are subject to the Commission’s tolling provisions of section 73.3598(b) of the Commission’s rules (Rules) .<sup>6</sup> 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.<sup>7</sup> 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 warranted where the licensee can demonstrate that “rare and exceptional circumstances” prevented construction by the station’s construction permit expiration date.<sup>8</sup>

*Requests.* The Stations are a part of a network of translator stations that SOA operates in rural and bush Alaska Native communities otherwise known as the Alaska Rural Communications System (ARCS). The Stations were granted applications for on-channel digital conversion (flash cut) in

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35 (MB 2008).

<sup>3</sup> *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.*, 30 FCC Rcd. 13975, 13976-77, para. 4 (2015)).

<sup>4</sup> 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*).

<sup>5</sup> *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).

<sup>6</sup> See 47 CFR § 73.3598(b).

<sup>7</sup> *Id.*

<sup>8</sup> 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).

November 2017 (Flash Cut CPs).<sup>9</sup> Because the Stations were still operating in analog at the time, the Flash Cut CPs were assigned expiration dates of July 13, 2021.<sup>10</sup> On July 6, 2021, SOC filed applications to extend the Flash Cut CPs<sup>11</sup> and subsequently sought waivers of the tolling rules and tolling of the Flash Cut CPs.<sup>12</sup> Pursuant to section 74.731(m) of the Rules, the Stations were required to discontinue analog not later than July 13, 2021 – the LPTV digital transition date.<sup>13</sup> On September 30, 2022, SOC completed construction of the Stations’ digital facilities and filed applications for license.<sup>14</sup> SOC admits in Requests that the Stations have been silent for at least one year.

SOA states that ARCS sites provide free, over-the-air television and radio programming, including the emergency alert system (EAS), across much of rural Alaska via a satellite link at the University of Alaska – Fairbanks. The Stations are often times the only over-the-air television service for the communities they serve and provide a vital link to the outside world for their viewers providing important news, public affairs, emergency alerts, and weather information. As documented in other Commission and Media Bureau decisions, SOC has struggled to convert the numerous translators in its network from analog to digital due to compelling weather and transmitter site access circumstances unique to Alaska.<sup>15</sup>

In its Requests, SOC states that is not a situation of “warehousing” spectrum – there is plenty of available TV spectrum in these remote areas as the State-licensed translators provide the only over-the-air service. Instead, SOC maintains, it has been working tirelessly to restore much-needed television service (and to provide the benefits of digital TV service) to areas and populations that are woefully underserved by any media at all. SOC states that there is no other region of the United States that faces the unique challenges for provision of any sort of media service as these remote, rural Alaska communities or would receive the same level of marginal public interest benefits continued operation of these translators. Thus, SOC concludes, it is uniquely qualified for relief under section 312(g).

*Discussion.* Upon review of the unique facts and circumstances presented, we find that SOC’s requests for reinstatement pursuant to section 312(g) satisfy the requirements of section 312(g) and are in the public interest. SOC diligently pursued construction of the Station’s digital facilities and to resume operations but encountered compelling weather and transmitter site access circumstances unique to Alaska. The Commission has recently recognized the uniqueness of such conditions in granting relief to

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<sup>9</sup> See CDBS File No. BDFCDVL-20141016ACW and BDFCDVL-20141219ACV.

<sup>10</sup> See 47 CFR § 74.788(a).

<sup>11</sup> See LMS File Nos. 0000151737 and 0000151756.

<sup>12</sup> See LMS File Nos. 0000194778 and 0000194781.

<sup>13</sup> See 47 CFR § 74.731(m).

<sup>14</sup> See LMS File Nos. 0000201508 and 0000201509.

<sup>15</sup> See *State of Alaska - Request for Waiver of Section 74.731(m) of the Commission's Rules*, 36 FCCRcd 10765 (2021) (*Alaska Analog Waivers*); Letter to State of Alaska from Barbara A. Kreisman, Chief, Video Division (Jan. 26, 2022), a copy of which is available at LMS File No. 0000179529. See also Letter to Iglesia Pentecostal Vispera del Fin (KNIK-LP) from Barbara A. Kreisman, Chief, Video Division (Oct. 11, 2022), a copy of which is available at LMS File No. 0000194892; Letter to City of Seward (K07PG) from Barbara A. Kreisman, Chief, Video Division (July 13, 2021), a copy of which is available at LMS File No. 0000151744; Letter to Unalaska Community Broadcasting, Inc. (KUCB-LP) from Barbara A. Kreisman, Chief, Video Division (July 1, 2021), a copy of which is available at LMS File No. 0000151054.

other translator stations in the SOC network and other Alaska LPTV stations.<sup>16</sup> SOC has demonstrated its diligence and commitment to working around such adverse environmental conditions and completing construction of the Station's digital facilities. For similar reasons, we find that SOC has met the standard for waiver of the tolling rules and tolling of its Flash Cut CPs. Construction of the Stations' digital facilities was recently completed and the Stations have resumed operations and are providing digital service to their viewers for the first time.

Accordingly, we find that in order to promote fairness and equity the requests filed by State of Alaska **ARE HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,<sup>17</sup> and the licenses for K07RU, Dot Lake, Alaska and K04KP, Northway, Alaska, **ARE REINSTATED**. Further, the requests for waiver of the tolling rules filed by State of Alaska **ARE GRANTED** and the construction permits (CDBS File No. BDFCDVL-20141016ACW and BDFCDVL-20141219ACV) for K07RU, Dot Lake, Alaska and K04KP, Northway, Alaska **ARE TOLLED**. In addition, the application for license filed by State of Alaska (LMS File Nos. 0000201508 and 0000201509) for K07RU, Dot Lake, Alaska and K04KP, Northway, Alaska **ARE GRANTED**.

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail):  
Derek Teslik, Esq. (Counsel for SOA)

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<sup>16</sup> *Id.*

<sup>17</sup> 47 CFR §§ 74.15(f) and 74.763(c).