KYAN-LD, Los Angeles, CA (Fac. Id. No. 128585)
HC2 Station Group, Inc.

Supplemental Request for Waiver of 47 U.S.C. § 312(g)

HC2 Station Group, licensee of KYAN-LD, Los Angeles, CA (Fac. Id. No. 128585) (the "Station"), hereby supplements its previous request for an extension of silent special temporary authority (LMS File No. 0000072592) and respectfully requests that the FCC grant a retroactive waiver extending the twelve-month off-air period permitted under 47 U.S.C. § 312(g) until November 23, 2019, the date the Station became operational.

Background. The licensee was working diligently to resume operations by the Station's 312(g) deadline of November 12, 2019. All of the engineering, equipment and deliveries necessary to resume operation of the Station were received and/or completed by that date, other than installation of the antenna. The antenna was on-site, but riggers could not be scheduled before November 19. The licensee had sought commitments from numerous riggers in September, all of whom were unavailable in the following two months. One rigger called on October 1 and committed to install the antenna by the end of October, and the licensee secured a date with a purchase order for rigging services on October 22. Due to a domino effect of delays in other jobs, which the licensee presumes were repack-related resulting from the Broadcast Incentive Auction, that rigger was not able to arrive at the site until November 21. The antenna was finally installed on November 22, 2019.

License to Cover Filed and Granted. The Station became operational on November 23, 2019, which was eleven (11) days after its 312(g) deadline of November 12, 2019. As soon as the antenna was installed, the Station became operational on its permanent facilities. The licensee filed its application for a License to Cover on November 25, 2019 (LMS File No. 0000090975), and the FCC granted it on the same day.

Equity and Fairness. In 2004, Congress amended Section 312(g) to authorize the Commission to extend or reinstate a broadcast license otherwise subject to expiration for failure to transmit for "any other reason to promote equity and fairness."[1] To be sure, the Commission has determined that its discretion under this new provision is "severely limited,"[2] and it has declined to extend the 312(g) deadline where "the failure to transmit a broadcast signal was due to the licensee's own actions, finances, and/or business judgments."[3]

[1] Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 2809, 3431 (2004).

[2] *See, e.g., KAWK(FM)*, 32 FCC Rcd 3924, 3927 (MB 2017); *A-O Broadcasting Corp.*, 23 FCC Rcd 603, 616 (2008).

[3] *E.g. KAWK(FM)*, 32 FCC Rcd at 3927; *Zacarias Serrato*, 20 FCC Rcd 17232 (MB 2005); *Kingdom of God*, 29 FCC Rcd 11589 (MB 2014), *aff'd* 31 FCC Rcd 7522 (2016). In some of these cases, the licensee's long history of intermittent operations appeared to be a factor in denying their request for a waiver of the 312(g) deadline. HC2 Broadcasting Inc. ("HC2"), which is the ultimate parent of the Station's licensee, was a signatory to a consent decree relating to intermittent operations by the licensees of a number of stations which were subsequently acquired by HC2. *DTV America Corp.*, FCC 17-1058 (MB re. Oct. 31, 2017)(*Consent Decree*). Notably, the Bureau there recognized that HC2 "was not aware of, nor involved in, any failure to comply with the Commission's rules and processes." *Consent Decree* ¶ 11. Further, the Bureau agreed that it "will not use the facts or findings developed in this investigation" in future proceedings. *Id.* ¶ 17. Thus, the failures addressed in the *Consent Decree* are not relevant to the short-term extension that is now being requested.

However, the Bureau and the Commission have exercised their discretion to waive the 312(g) deadline where the delays were the result of "compelling reasons beyond the licensee's control."[4] In applying that policy, the Bureau should consider that the Broadcast Incentive Auction and its associated repack placed unprecedented strains on the every part of the television station construction process – from engineers; to tower owners; to manufacturers of transmitters, antennas and other components; to installers and in particular, to tower rigging crews. As full power and Class A stations have absorbed the majority of industry resources and have received priority with respect to their construction needs, low power stations have borne the brunt of the resulting scarcities. Time delays and capacity shortages compound as they cascade down to low power stations, culminating in a Rubik's Cube of ever-shifting interdependent targets, for both displaced stations and others that are in the process of completing permanent facilities. The consequences of those delays in this unique situation were not ones that could be avoided by stations, and they should be regarded as factors outside of the licensees' control. Recognizing the disruption of the repack on the television construction ecosystem would not weaken Congress and the Commission's policy of ensuring that allocated spectrum is used to serve the public; rather it would acknowledge the efforts of those licensees that managed to launch new, multi-stream television services for the public *despite* the current industry constraints.

The Station's short-term failure to resume broadcasting within twelve months was not the result of delays or decisions within the Station's control; instead the delay resulted entirely from factors beyond the Station's control. KYAN-LD ordered all of the equipment and services in time to resume operation on its authorized facilities before its November 12, 2019 deadline. All of the equipment was timely delivered and, with the exception of the antenna, installed well in advance of its deadline. The rigging companies contacted by the Station were all unable to commit to an early install date; the Station contracted for installation with a rigger which promised the earliest installation – October 22, which would have been three weeks before the Station's 312(g) deadline. That rigging company, however, failed to meet its commitment (likely due to delays in installations for stations with deadlines arising out of the Broadcast Incentive Auction repack) and was unable to install the antenna until November 22, and became operational on November 23, 11 days after the deadline for KYAN-LD to resume service.

The short extension requested by KYAN-LD arises entirely out of circumstances beyond its control. The Station purchased and received all of the equipment needed to resume operations well before its deadline. It contacted multiple rigging companies once it knew its antenna delivery date and arranged for installation with one that promised to be on site three weeks in advance of the Station's deadline. As it turned out, that crew was delayed and did not arrive until almost five weeks after their projected date. This delay – all of which was caused by the tower rigging company and not the Station – resulted in the Station resuming operations 11 days late.

[4] *Christian Broadcasting of East Point, Inc.*, 30 FCC Rcd 13975, 13976 (2015); *see Universal Broadcasting of New York, Inc.*, File No. BLSTA-20190211ATT, 2019 FCC Lexis 3492 (MB 2019)(loss of tower site); *V.I. Stereo Communications Corp.*, 21 FCC Rcd 14259 (2006)(reinstatement due to destruction and delays caused by hurricanes); *Community Bible Church*, 23 FCC Rcd 15012, 15014 (MB 2008)(silence to promote air safety after discovery of incorrect tower information in FCC and FAA records); *Mark Chapman*, 22 FCC Rcd 6578 (MB 2007)(silence due to compliance with court order).

The delay was not the result of inaction, delay or business decisions made by KYAN-LD. Instead, it was caused by the inability of the tower rigger to meet its contractual deadline because of commitments to other stations. The Commission has been aware of the acute shortages of tower rigging crews throughout the repack process engendered by the Broadcast Incentive Auction, and KYAN-LD is hardly the only station that has been unable to complete construction on time as a result of antenna installation delays. When it became clear that the original tower company could not meet its deadline, it was far too late – given the national shortage of tower crews – to attempt to find another tower crew. The short delay was certainly due entirely to circumstances beyond the Station's control and supports grant of a short waiver of the Station's deadline based on equity and fairness.

Serving the Community. For almost five (5) months the Station has been broadcasting three (3) 24/7 streams of content to the Los Angeles audience without interruption. These streams include the religious network Three Angels Broadcast Network, which includes children's E/I programming. The licensee is continually exploring opportunities to add more sub-channels that would be on interest to its viewing community. For example, the licensee is planning to add three Spanish-language specialty channels, *Azteca Clic*, *Azteca Cinema*, and *Azteca Corazon*, subject to completion of rights and related contract due diligence.

Granting this request would maintain at least three (3) free, over-the-air viewing choices for the public in Los Angeles. The licensee has demonstrated its commitment to operating the Station for the local community consistently since November 23, 2019. Ordering the termination of the Station's operations would result in approximately $30,000 to $40,000 of cost to decommission the site *(i.e.*, re-engaging engineers, hiring riggers to take down the antenna, shutting down electrical, shipping and storage of some equipment, disposal fees for non-reusable materials, etc.), plus the additional costs of terminating the multi-year tower lease and internet services contract. The licensee believes that instead of spending this capital on the Station's destruction, the people of Los Angeles would be better served if this capital were to be spent on Station maintenance and improvement of programming and signal delivery.

The Station's presence in the community also supports the public safety function of the emergency alert system (EAS). The Station is equipped with a fully operational EAS, and in addition to the regular, monthly EAS test messages, the Station will participate in the annual nationwide test to be conducted in the Fall of 2020. By developing multiple subchannels, the Station is capable of delivering federal, state, and local EAS alerts through multiple outlets the community otherwise would not have, thereby enhancing opportunities to warn viewers of potential dangers to life and property.

Investment and Revenue. The licensee has invested approximately $34,000 in capital equipment, and has committed additional capital to long-term operational contracts (tower lease, internet connections, etc.), based on its reasonable expectation of meeting its 312(g) deadline, prior to the antenna installation delay. The licensee has also tied the Station into its 24/7 remote monitoring, fully-staffed data center that provides the licensee with regular up-to-date transmission reports. These reports ensure compliance and quality assurance of the Station's over-the-air signal. The subchannels are producing much-needed revenue, which supports the maintenance of the Station.

Advancing Television Technology. Licensee has made an internal commitment for its stations, including potentially the Station, to participate in the transition to ATSC 3.0. The licensee believes that low power television stations can play a critical role in assisting the industry in adopting ATSC 3.0, particularly given its ability to “flash-cut” to the new standard. Whether it is assisting one or more full power station’s transition, or offering ATSC 3.0 programming on its own behalf, the Station could serve the public interest in bringing ATSC 3.0 benefits to Los Angeles, including but not limited to advanced emergency alerts, better accessibility features, localized content, and interactive educational children’s content.

The Public Interest. Exercise of the Media Bureau’s discretion in this case will advance the public interest by preserving multiple streams of television service to viewers in the Station’s community, ensuring that Los Angeles enjoys a diversity of free, over-the-air viewing options. Permanent removal of the Station’s channel from the table of allotments would be inconsistent with the FCC’s stated policy goal of ensuring a robust broadcast television sector following the Broadcast Incentive Auction. The licensee further believes that the public interest is not served by the wasteful expenditure of capital to deconstruct a fully operational Station.

For these reasons and those described above, granting this request is in the public interest, and the circumstances faced by the Station justify the Media Bureau’s exercise of its discretion to grant the relief requested.