



Federal Communications Commission
Washington, D.C. 20554

December 4, 2020

In Reply Refer to: 1800B3-VM

SENT VIA EMAIL ONLY to sjohnson@fccworld.com

M. Scott Johnson, Esq.
Smithwick & Belendiuk, PC
5028 Wisconsin Avenue N.W., Suite 301
Washington, DC 20016

In re: W205BR, Elmira, NY

Facility ID No. 88492
File No. 00000126959

Pensacola Christian College, Inc.

Dear Mr. Johnson:

On November 23, 2020, you requested an extension of license on behalf of Pensacola Christian College, Inc. (PCC), licensee of FM Translator Station W205BR, Elmira, New York (Station).¹ Based on the discussion below, we have determined that your request has merit, and we reinstate the license after its expiration pursuant to section 312(g) of the Communications Act of 1934, as amended (Act).²

In support of PCC's request, you state that the Station's antenna was destroyed in a windstorm on October 3, 2019, and the station was taken silent on that date.³ In the process of replacing the Station's antenna, the tower owner determined that the existing tower was overloaded, and that the new antenna could not be mounted on the tower.⁴ Starting on November 19, 2019, and through February 12, 2020, PCC unsuccessfully attempted to secure use of the tower owned by a local television station.

PCC states that its efforts to find a new site were hindered by the COVID-19 pandemic starting in March 2020. It concluded in April that its existing tower site was no longer available, that the television station site was not possible nor were other efforts successful. Consequently, PCC continued looking for a viable tower site. PCC states that it was able to narrow its search to a tower managed by GRI Telecom, Inc. (GRI), which owns or manages a number of towers. GRI and PCC negotiated the terms of the lease in June and July 2020 and signed a lease in late July. On July 27, 2020, GRI agreed to find a tower crew to install the antenna and station equipment. On August 3, 2020, PCC filed an application for minor modification of license,⁵ which we granted on August 18, 2020.

PCC further states that the equipment necessary to complete construction of the station was shipped on September 6, 2020 to Elmira, and its satellite dish and transmitter were moved from the old site to the new tower site. It was on track to complete construction before the October 4, 2020 deadline,

¹ Attachment 1, FCC File No. 00000126959 (Nov. 23, 2020) (Request).

² 47 U.S.C. §312(g).

³ See File Nos BLSTA-20191101AAQ (granted Dec. 2, 2019), BLESTA-20200519AAL (granted June 12, 2020).

⁴ See Attachment 3, FCC File No. 00000126959 (Statement of Jeff Surgeon for PCC).

⁵ FCC File No. 0000119966.

however, the statement PCC submitted from Gordon Ichikawa at GRI, notes that the COVID lockdown in Chemung County, and throughout other parts of New York State delayed construction.⁶ Specifically, the Ichikawa statement highlights that some tower crews were subject to COVID-related lockdown and could not travel and others were reluctant to deploy. Crews who were willing to work were overwhelmed with meeting the Phase 10 deadline for TV Repack tower work and not immediately available. PCC states that construction on the station was completed on November 20, 2020.

The Commission's discretion under section 312(g) is severely limited. *See A-O Broad. Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617, para.27 (2008) ("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 Commc'ns Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006)(hurricane destruction); *Community Bible Church*, Letter, 23 FCC Rcd 15012, 15014 (MB 2008) (FCC and FAA records contained incorrect tower information); *Mark Chapman, Court-Appointed Agent*, Letter, 22 FCC Rcd 6578 (MB 2007) (compliance with a court order). Conversely, 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 judgments. *See, e.g., A-O Broad.*, 23 FCC Rcd 608 (failure to complete construction at an alternate site); *ETC Communications, Inc.*, Letter, 25 FCC Rcd 10686 (MB 2010) (chose not to operate station while offering it for sale); *Kirby Young*, Letter, 23 FCC Rcd 35 (MB 2008) (not financially able to restore operations after transmitter failed). *See also Kingdom of God*, Letter, 29 FCC Rcd 11589 (MB 2014) (failure to promptly find a permanent and suitable transmitter site).

Here, although we would have expected a request for us to exercise discretion under section 312(g) prior to the Station's expiration date, we have determined that PCC's showing warrants reinstatement to promote equity and fairness due to compelling reasons beyond the licensee's control. We are basing this determination on the following factors. First, the Station's original silence was caused by circumstances beyond the licensee's control—the windstorm that destroyed the Station's antenna. Second COVID closures and restrictions in spring 2020 during the height of COVID infections in N.Y. State served as another circumstance beyond the licensee's control that delayed PCC from timely locating an alternate site after learning that its original site was no longer usable. Third, PCC and GRI diligently worked to rebuild the facility. Fourth, the unavailability of crews to complete construction due to COVID restrictions and the unusual demands of the TV repack.

Accordingly, IT IS ORDERED that the license for FM Translator Station W205BR, Elmira, New York, IS REINSTATED and the license to cover will be granted upon receipt of notice of resumption of operation within the next 5 days.

Please direct any questions concerning the content of this letter to Victoria McCauley, Attorney, phone (202-418-2136), or e-mail (Victoria.McCauley@fcc.gov).

Sincerely,

Albert Shuldiner

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁶ ⁶ *See* Attachment 2, FCC File No. 00000126959 (GRI Statement).