



Federal Communications Commission
Washington, D.C. 20554

December 16, 2020

DTV America Corporation
450 Park Avenue, 29th Floor
New York, NY 10022
rilhaardt@hc2broadcasting.com
(via electronic mail)

Re: Request for Reinstatement of
License Under Section 312(g)
WVDM-LD, Quincy, IL
LMS File No. 0000068557
Facility ID No. 188767

Dear Licensee:

This concerns the above-referenced request to reinstate license (Request), as amended, filed by DTV America Corporation (DTV), licensee of low power television station WVDM-LD, Quincy, Illinois (WVDM or Station). For reasons set forth below, we grant the request, waive all applicable rules, and reinstate the Station's license.

Background. Section 312(g) of the Communications Act of 1934 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 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.”² Further, in the *Post-Incentive Auction Procedures PN* the Media Bureau 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

¹ 47 U.S.C. § 312(g).

² *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.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 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 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.*, Letter, 25 FCC Rcd 10686 (MB 2010); *Kirby Young, Letter*, 23 FCC Rcd 35 (MB 2008).

result of compelling reasons beyond the stations' control, including facts that relate to the post-auction transition process."³ 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.⁴ 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."⁵

Request. As part of the Incentive Auction and repacking process, WVDM was displaced from channel 40, which was reallocated for wireless broadband services.⁶ WVDM went silent on channel 40 on September 24, 2018.⁷ WVDM timely filed a displacement application requesting a construction permit for channel 22 in the Commission's displacement application filing window for low power television stations that were displaced by the incentive auction and repacking process.⁸ The displacement application was granted September 27, 2018. Almost a year later, in the instant Request filed on September 19, 2019, DTV America reported that it was working diligently to resume operations by the Station's one-year silent anniversary.⁹ DTV America reported that all of the engineering, equipment, and deliveries necessary to resume operation of the Station have been received and/or completed, other than installation of the transmitter.¹⁰ DTV America stated that the transmitter delivery was delayed in Europe for reasons beyond its control, but DTV America expected that it would be delivered and installed within a matter of weeks, at which point the Station would be made operational.¹¹ DTV America completed construction of the Station's displacement facilities and the Station returned to the air on October 3, 2019, 9 days after its one-year silent anniversary.

³ *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)).

⁴ 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*).

⁵ *Id.* at 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).

⁶ See LMS File No. 0000052701. We note that WVDM was one of the stations that was the subject of the Media Bureau's 2017 order concerning its investigation into potential violations of the Commission's rules by DTV America. See *DTV America Corporation*, Order, 32 FCC Rcd 9129 (MB 2017) (DTV America Consent Decree). WVDM was one of the stations listed in Appendix E to the DTV America Consent Decree and was subject to a separate 18-month construction deadline with specific terms and conditions governing its construction.

⁷ See LMS File No. 0000059824.

⁸ See LMS File No. 000052701; *Special Displacement Window PN; Incentive Auction Task Force and Media Bureau Extend Post Incentive Auction Special Displacement Window Through June 1, 2018*, Public Notice, 33 FCC Rcd 3794 (IATF/MB 2018).

⁹ Request at 1.

¹⁰ *Id.*

¹¹ *Id.*

DTV America requests reinstatement of WVDM license pursuant to section 312(g) to promote equity and fairness. DTV America argues that exercise of the Commission's discretion in this case will advance the public interest by preserving service to viewers in the Station's community, ensuring that this community enjoys a diversity of free, over-the-air viewing options. DTV America also notes that it is unlikely that the Commission intends to open a window for new low power television licenses and allotments in the foreseeable future. DTV America concludes that a failure to reinstate the Station's license would result in a loss of valuable service to viewers, contrary to the public interest.

Discussion. Upon review of the facts and circumstances presented, we find that DTV America's request for reinstatement of WVDM's license satisfies the requirements of section 312(g) as described in the *Incentive Auction R&O*, the *Post-Incentive Auction Procedures PN*, and the *Special Displacement Window PN*, and is in the public interest. Consistent with the public interest, we will provide section 312(g) relief to displaced LPTV and TV translator stations that are forced off the air by circumstances beyond their control, which we have found to include displacement as a result of incentive auction and repack.¹² WVDM was forced off the air as a result of being displaced by the incentive auction and repacking process and DTV America took steps to build its displacement facilities completing construction and resuming operations just 9 days after the Station's one-year silent anniversary. Therefore, due to circumstances outside its control, WVDM has been unable to return to the air prior to the one-year anniversary of going silent. WVDM has resumed operations and is serving its viewers and grant of relief will allow it to continue to do so.

Accordingly, we find that in order to promote fairness and equity the request filed by DTV America Corporation **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,¹³ and the license for WVDM-LD, Quincy, Illinois, **IS REINSTATED**.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): David O'Connor, Esq.

¹² See *V.I. Stereo Communications Corp.*, 21 FCC Rcd. 14259 (2006) (granting a request to reinstate a station's license when the station's tower had been destroyed by a hurricane and after it was rebuilt, again sustained substantial damage from three more hurricanes); *Community Bible Church, Letter*, 23 FCC Red 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); *Mark Chapman, Court-Appointed Agent, Letter*, 22 FCC Red 6578 (MB 2007) (reinstatement warranted where extended silence resulted from licensee's compliance with a court order); see Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, Federal Communications Commission to Renee Ilhardt, DTV America Corporation and HC2 Broadcasting Holdings, Inc., LMS File Nos. 0000072656, et al., (Mar. 23, 2020) (reinstatement and extension is appropriate where the stations' silence was a result of being displaced by the Incentive Auction and repacking process).

¹³ 47 CFR §§ 74.15(f) and 74.763(c).