



Federal Communications Commission
Washington, D.C. 20554

December 16, 2020

HC2 LPTV Holdings, Inc.
450 Park Avenue, 29th Floor
New York, NY 10022
rilhardt@hc2broadcasting.com
(via electronic mail)

Re: Request for Reinstatement and
Further Extension of License
and Silent Authority Under
Section 312(g)
KUVM-LD, Missouri City, TX
LMS File No. 0000124872
Facility ID No. 167664

Dear Licensee:

This concerns the above-referenced request to reinstate and further extend license and silent authority (Request), as amended, filed by HC2 LPTV Holdings, Inc. (HC2), licensee of low power television station KUVM-LD, Missouri City, Texas (KUVM or Station). For reasons set forth below, we grant the request, waive all applicable rules, reinstate and further extend the Station's license and silent authority for a period of 180 days to June 14, 2021.

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

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).

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.”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, KUVM’s channel 22 was displaced by KTMD, Galveston, Texas, that was repacked to channel 22.⁶ As a result, KUVM has been silent since May 4, 2019.⁷ KUVM’s previous licensee timely filed a displacement application requesting a construction permit for channel 10 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 Media Bureau determined that KUVM’s displacement application for channel 10 was mutually exclusive with an application filed by KHLM-LD, Houston, Texas (KHLM), and as a result, the Station was placed in MX Group 32 (MX 32). An opportunity to resolve mutual exclusivity through settlement or technical modification of the engineering proposals was provided and the stations submitted an interference agreement whereby they agreed to channel share on KHLM-LD’s channel 10 facilities, thus resolving their mutual exclusivity. KUVM’s application for channel 10 was dismissed and an application to share channel 10 with KHLM was granted on January 29, 2020.⁹

Since the grant of its channel sharing application, HC2 states that KHLM, the channel sharing host, diligently worked to make the new channel 10 site operational.¹⁰ However, HC2 states, the necessary antenna installation and transmission line repairs were delayed by a series of tropical storms and hurricanes that swept through the Gulf of Mexico region in the summer and fall of 2020.¹¹ HC2 represents that KHLM recently completed that phase of the station construction and is now working to

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. 0000051939.

⁷ See LMS File No. 0000074466.

⁸ See LMS File No. 0000051939.

⁹ See LMS File No. 0000067872.

¹⁰ Request at 1.

¹¹ *Id.*

install the essential encoding equipment needed for the channel-share with the Station.¹² HC2 states further that it has been told by KHLM that the shared facility should be operational shortly.¹³ HC2 was previously granted an extension of license and silent authority and the Station's license extended to October 19, 2020.¹⁴ HC2 requests reinstatement and further extension of the KUVM license and silent authority pursuant to section 312(g) to promote equity and fairness and so the Station can resume service to the public.¹⁵

Discussion. Upon review of the facts and circumstances presented, we find that HC2's request for reinstatement and extension of KUVM's license and silent authority for a period of 180 days to June 14, 2021 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 previously found to include displacement as a result of incentive auction and repack.¹⁶ KUVM was forced off the air as a result of being displaced by the incentive auction and repacking process and HC2 took steps to build its displacement facilities in a timely manner. Therefore, due to circumstances outside its control, KUVM has been unable to return to the air prior to the one-year anniversary of going silent. KUVM pledges to resume operations on the Station's shared channel as soon as possible. Grant of relief of will allow KUVM to return to the air and once again serve its viewers.

Accordingly, we find that in order to promote fairness and equity the request filed by HC2 LPTV Holdings, Inc. **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,¹⁷ and the license and silent authority for KUVM-LD, Missouri City, Texas, **IS REINSTATED AND EXTENDED** for 180 days to June 14, 2021.

¹² *Id.*

¹³ *Id.*

¹⁴ See LMS File No. 0000112357.

¹⁵ Request at 1.

¹⁶ 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).

¹⁷ 47 CFR §§ 74.15(f) and 74.763(c).

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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