



Federal Communications Commission
Washington, D.C. 20554

February 1, 2021

West Virginia Educational Broadcasting Authority
Chuck Roberts
600 Capitol Street
Charleston, WV 25301
croberts@wvpublic.org
(via electronic mail)

Re: Request for Extension of
License and Silent Authority
Under Section 312(g)
W51EG-D, Parkersburg, WV
LMS File No. 0000128002
Facility ID No. 167359

Dear Licensee:

This concerns the above-referenced request to extend license (Request) and silent authority filed by West Virginia Educational Broadcasting Authority (WVEBA), licensee of low power television station W51EG-D, Parkersburg, West Virginia (W51EG or Station). For reasons set forth below, we grant the request, waive all applicable rules, and extend the Station's license and silent authority to August 17, 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, W51EG’s channel 51 was reallocated for use by wireless operator T-Mobile USA (T-Mobile). As a result, W51EG has been silent since February 18, 2020.⁶ W51EG timely filed a displacement application requesting a construction permit for channel 34 in the Commission’s displacement application filing window for low power television stations that were displaced by the incentive auction and repacking process.⁷

Since the grant of the construction permit for channel 34, WVEBA states that it has been working to construct its displacement facilities. WVEBA states that it has completed the engineering drawings and initial structural analysis of the tower upon which the Station’s channel 34 antenna will be installed and has a contract for the tower services necessary to install the antenna once delivered. WVEBA states that it is currently working to complete a second structural analysis of the tower and is working with the State of West Virginia procurement office to purchase the channel 34 antenna, transmission line and transmitter. Even if the aforementioned tasks are completed soon, WVEBA does not believe it will be able to complete construction of the channel 34 displacement facility before the Station’s one-year silent anniversary on February 18, 2021. Thus, WVEBA requests extension of the Station’s license and silent authority for 180 days.

Discussion. Upon review of the facts and circumstances presented, we find that WVEBA’s request for extension of W51EG’s license and silent authority for a period of 180 days 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

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. 0000106340.

⁷ See LMS File No. 0000073090; *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).

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.⁸ W51EG was displaced by the incentive auction and repacking process and took steps to build its displacement facilities in a timely manner. Therefore, due to circumstances outside its control, W51EG has been unable to return to the air. Grant of relief of will allow W51EG 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 West Virginia Educational Broadcasting Authority **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,⁹ and the license and silent authority for W51EG-D, Parkersburg, West Virginia **IS EXTENDED** to August 17, 2021.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Tom W. Davidson, Esq.

⁸ 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).

⁹ 47 CFR §§ 74.15(f) and 74.763(c).