



Federal Communications Commission  
Washington, D.C. 20554

February 10, 2021

RSN West, LLC  
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[jdumais@outsidetv.com](mailto:jdumais@outsidetv.com)  
(via electronic mail)

Re: Request for Reinstatement and  
Extension of License and Under  
Section 312(g)  
K38FW, Stateline, NV  
LMS File No. 0000135838  
Facility ID No. 125590

Dear Licensee:

This concerns the above-referenced request to reinstate and extend license (Request) and silent authority, as amended, filed by RSN West, LLC (RSN), licensee of low power television station K38FW, Stateline, Nevada (K38FW or Station). For reasons set forth below, we grant the request, waive all applicable rules, reinstate and extend the Station's license and silent authority.

*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."<sup>1</sup> 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."<sup>2</sup> 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

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<sup>1</sup> 47 U.S.C. § 312(g).

<sup>2</sup> *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).

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.”<sup>3</sup> 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.<sup>4</sup> 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.”<sup>5</sup>

*Request.* In its Request, RSN notes K38FW initially suspended analog operations on channel 38 on December 16, 2016, due to an equipment failure.<sup>6</sup> As part of the Incentive Auction and repacking process, K38FW’s channel 38 was reallocated. RSN timely filed a displacement application requesting a construction permit for digital channel 24 in the Commission’s displacement application filing window for low power television stations that were displaced by the incentive auction and repacking process.<sup>7</sup> K38FW’s displacement application for channel 24 was granted on September 28, 2018.

Since the grant of its displacement application, RSN states that it has been engaged in discussions with the local cable provider over its carriage of this station in certain cable packages offered to hospitality customers, which RSN maintains is a very important audience in the resort market served by the station. RSN states that the outcome of these discussions was important because RSN was considering technical changes to its channel 24 digital displacement construction permit to better serve areas not reached by the cable service. Given the uncertain outcome of the discussions and the potential facilities change, and other issues including disruptions to local business caused by the COVID-19 pandemic, RSN states that it has not yet completed the build out of its displacement facilities. RSN represents that it expects to complete construction of the Station’s new digital facilities by the July 13, 2021 low power television analog-to-digital conversion deadline. RSN notes that, while it has been silent, the Station’s programming has continued to be aired pursuant to a temporary channel sharing arrangement with co-owned digital low power television station K31KH-D, Stateline, Nevada.<sup>8</sup>

*Discussion.* Upon review of the facts and circumstances presented, we find that RSN’s request for reinstatement and extension of K38FW’s license and silent authority for a period of 180 days from the date of this letter satisfies the requirements of section 312(g) as described in the *Incentive Auction R&O*,

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<sup>3</sup> *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)).

<sup>4</sup> 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*).

<sup>5</sup> *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).

<sup>6</sup> See LMS File No. 0000019286.

<sup>7</sup> See LMS File No. 0000053623; *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).

<sup>8</sup> See LMS File No. 0000135144.

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.<sup>9</sup> K38FW's analog operation was initially forced off the air by an equipment failure and then subsequently displaced by the incentive auction and repacking process and took steps to build its digital displacement facilities in a timely manner. Therefore, due to circumstances outside its control, K38FW has been unable to return to the air. Grant of relief of will allow K38FW to return to the air and once again serve its viewers and complete its conversion to digital.

Accordingly, we find that in order to promote fairness and equity the request filed by RSN West, LLC **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,<sup>10</sup> and the license and silent authority for K38FW, Stateline, Nevada **IS REINSTATED AND EXTENDED** for 180 days from the date of this letter.

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): David Oxenford, Esq.

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<sup>9</sup> 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).

<sup>10</sup> 47 CFR §§ 74.15(f) and 74.763(c).