



Federal Communications Commission
Washington, D.C. 20554

April 29, 2021

JBS, Inc.
708-C Thimble Shoals Blvd.
Suite 704
Newport News, VA 23606
NEALROSENBAUM@GMAIL.COM
(via electronic mail)

Re: Request for Reinstatement and
Extension of License and Silent
Authority Under Section 312(g)
and Application for Extension of
Digital Construction Permit
WJHJ-LP, Newport News, etc.,
VA
LMS File Nos. 0000143967 and
0000139629
Facility ID No. 35137

Dear Licensee:

This concerns the above-referenced request to reinstate and extend license (Request) and silent authority, as amended, and application for extension of digital construction permit filed by JBS, Inc. (JBS), licensee of analog low power television station WJHJ-LP, Newport News, etc., Virginia (WJHJ or Station). For reasons set forth below, we grant the request, waive all applicable rules, reinstate and extend the Station's license, grant the stations construction permit extension application, and extend the stations digital construction permit to January 10, 2022. We also grant the request for silent authority until October 12, 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

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

In addition, analog low power television stations are required to cease analog operation and construction their digital facility by July 13, 2021.⁶ Stations that require additional time to complete construction of their digital facilities prior to the July 13, 2021 digital transition deadline were permitted to seek one last extension of their digital construction permits of not more than 180 days.⁷ An application for extension of time to construct a station’s digital facility must include an exhibit demonstrating that failure to meet the construction deadline is due to circumstances that are either unforeseeable or beyond

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).

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* 47 CFR § 74.731(m); *see also Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Third Report and Order and Fourth Notice of Proposed Rulemaking, 30 FCC Rcd 14927, 14932-33, para. 9 (2015) (*LPTV DTV Third R&O*) (extending the LPTV digital transition date until July 13, 2021 - 12 months following the completion of the 39-month post-Incentive Auction transition period); *see also Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (IATF and MB 2018).

⁷ *See* 47 CFR § 74.788(c)(3).

the licensee's control and that the licensee has taken all reasonable steps to resolve the problem expeditiously.⁸

Requests. As part of the Incentive Auction and repacking process, WJHJ's analog channel 39 was reallocated for wireless broadband use. As a result, WJHJ went silent on April 15, 2020 and is no longer able to operate on its analog channel.⁹ Prior to going silent, JBS timely filed a digital 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.¹⁰ WJHJ's digital displacement application for channel 34 was granted on February 7, 2019. The Station plans to return to the air on its digital displacement channel 34.

Since the grant of its digital displacement application, JBS states that, due to delays in obtaining municipal building and electrical permits, construction of the digital channel 34 facilities has not yet commenced. In addition, JBS states that the tower on which the Station's facilities are located was sold and the change in ownership of the tower has further delayed the construction process. JBS concludes that grant of its requests for relief would serve the public interest by helping to assure that the Station completes construction of its digital facilities so that it can recommence broadcast service to viewers in Newport News and the surrounding area.

Discussion. Upon review of the facts and circumstances presented, we find that JBS's request for reinstatement and extension of WJHJ's license to January 10, 2022, 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.¹¹ WJHJ was displaced by the incentive auction and took steps to build its digital displacement facilities in a timely manner. Therefore, due to circumstances outside its control, WJHJ has been unable to return to the air. For similar reasons, we find that JBS has met the standard for extension of its digital construction permit and for silent authority. Grant of JBS's requests for relief will allow WJHJ to complete its transition to digital, and once again serve its viewers.

⁸ *Id.*

⁹ See LMS File No. 0000112668.

¹⁰ See LMS File No. 0000054621; *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).

¹¹ 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, a gain sustained substantial damage from three more hurricanes); *Community Bible Church, Letter*, 23 FCC Rcd 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 Rcd 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).

We remind JBS that additional time to construct the Station's digital facilities may be sought only pursuant to the Commission's tolling rule that provides that a construction permit deadline may be tolled only for specific circumstances not under the licensee's control, such as acts of God or delays due to administrative or judicial review.¹²

Accordingly, we find that in order to promote fairness and equity the request filed by JBS, Inc. **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,¹³ and the license for WJHJ, Newport News, Virginia, **IS REINSTATED AND EXTENDED** to January 10, 2022. In addition, the application for extension of digital construction permit **IS GRANTED** and the construction permit **IS EXTENDED** to January 10, 2022. Furthermore, the Station's application for silent authority **IS GRANTED** to October 12, 2021.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): David D. Burns, Esq.

¹² See 47 CFR § 73.3598(b). See *Media Bureau Reminds Low Power Television and Television Translator Stations of July 13, 2021, Digital Transition Date*, Public Notice, DA 21-260 (rel. Mar. 4, 2021). We note that the Section 73.3598(b) tolling standard does not provide relief for financial hardship, except that paragraph (b)(2) would toll the construction deadline for a station that could not build because of a pending bankruptcy court action. See *Implementation of the DTV Delay Act*, MB Docket No. 09-17, Third Report and Order and Order on Reconsideration, 24 FCC Rcd 3399, 3429 n.156 (2009). Stations must electronically file tolling requests via LMS.

¹³ 47 CFR §§ 74.15(f) and 74.763(c).