



Federal Communications Commission
Washington, D.C. 20554

June 16, 2021

VCY America, Inc.
3434 W Kilbourn Avenue
Milwaukee, WI 53208
JIMS@VCYAMERICA.ORG
(via electronic mail)

Re: Request for Reinstatement and
Extension of License and Silent
Authority Under Section 312(g)
WDMY-LP, Toledo, OH
LMS File No. 0000142690
Facility ID No. 49188

Dear Licensee:

This concerns the above-referenced request to reinstate and extend license and silent authority (Request) filed on April 1, 2021 by VCY America, Inc. (VCY), licensee of low power television station WDMY-LP, Toledo, OH (WDMY 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 to October 16, 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 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

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).

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. The Station went silent on December 28, 2016 after its tower lease was not renewed.⁶ At that time, the Station was forced to remove its antenna and equipment.⁷ The Station also had a construction permit to move its operations to channel 23, which the previous licensee had hoped to construct.⁸ However, less than four months after the Station went silent, it was displaced from both its licensed channel and construction permit channel as part of the Incentive Auction and repacking process. WDMY’s analog channel 38 was reallocated for wireless broadband use and its channel 23 displacement channel was reassigned to full power station WNWO, Toledo, Ohio, as part of the repack.⁹ The previous licensee subsequently timely filed a digital displacement application requesting a construction permit for channel 6 in the Commission’s displacement application filing window for low power television stations that were displaced by the incentive auction and repacking process.¹⁰ The construction permit has an expiration of October 16, 2021.

Since the grant of its displacement application, the previous licensee discovered the need to modify the Station’s proposed displacement facilities and filed an application seeking authority to modify the Station’s construction permit to specify a new tower and antenna. The Station was then subsequently sold to VCY. In conjunction with its acquisition of the Station, VCY conducted a tower study of the site identified in the Station’s modified displacement construction permit. VCY states that, due to logistical

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. 0000019610; Petition for Reinstatement and Waiver filed by Marquee Broadcasting, Inc. (Feb. 8, 2018) available at LMS File No. 0000054742 (Reinstatement Petition). The Petition states that prior to December 2016 the Station had been operational since licensed in 1992 with a brief period of silence in 2002. Reinstatement Petition at 1.

⁷ *Id.* at 2.

⁸ *Id.* VCY acquired the Station on January 22, 2021. See CDBS File No. BAL-20200604AAG.

⁹ Reinstatement Petition at t 2-3.

¹⁰ See LMS File No. 0000054740; *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).

and personnel delays related to the COVID-19 pandemic, that study took nearly a year to complete, and ultimately resulted in a determination that the Station's proposed tower location could not accommodate another antenna. VCY has now identified an alternative site and reports that a further tower study is underway. VCY argues that grant of section 312(g) relief will allow VCY time to complete the tower study, file a minor change application, construct the Station's displacement facilities, and restore service, thus completing the Station's transition to digital.

Discussion. Upon review of the facts and circumstances presented, we find that VCY's request for reinstatement and extension the WDMY license and silent authority 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.¹¹ WDMY's analog channel was displaced by the incentive auction and its current and previous owners took steps to build its digital displacement facilities in a timely manner. Therefore, due to circumstances outside its control, WDMY has been unable to return to the air. Grant of a relief will allow WDMY to return to the air and once again serve its viewers and complete its transition to digital.

Accordingly, we find that in order to promote fairness and equity the request filed by VCY America, LLC **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,¹² and the license and silent authority for WDMY-LP, Toledo, Ohio, **IS REINSTATED AND EXTENDED to October 16, 2021**. We also remind VCY that any requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹³ Further requests for extension of license under section 312(g) or tolling of the Station's construction permit will not be favorably viewed unless accompanied by a showing that completion of the Station's permanent displacement facilities was prevented by additional compelling circumstances as well as a detailed plan for completing construction and returning the Station to operation.

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, again 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).

¹² 47 CFR §§ 74.15(f) and 74.763(c).

¹³ See 47 § CFR 73.3598(b). 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. Stations may also seek a waiver of the tolling rule to receive additional time to construct in the case where "rare or exceptional circumstances" prevent construction. See *1998 Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536, para. 42 (1999).

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Kathryn Dickerson, Esq.