



Federal Communications Commission
Washington, D.C. 20554

August 11, 2021

Ventana Television, Inc.
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(via electronic mail)

Re: Request for Reinstatement and
Extension of License and Silent
Authority Under Section 312(g)
K25FW-D, Corsicana, TX
LMS File No. 0000142923
Facility ID No. 42342

Dear Licensee:

This concerns the above-referenced request to reinstate and further extend license and silent authority (Request), as amended, filed by Ventana Television, Inc. (VTI), licensee of analog low power television station K25FW-D, Corsicana, Texas (K25FW 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 for a period of 180 days from the date of this letter.

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, K25FW’s channel 25 was displaced by KPXD-DT, that was repacked to channel 25. As a result, K25FW has been silent since April 12, 2019.⁶ K25FW timely filed a displacement application requesting a construction permit for channel 7 on May 31, 2018, in the Commission’s displacement application filing window for low power television stations that were displaced by the incentive auction and repacking process.⁷ The Media Bureau determined that K25FW’s displacement application for channel 7 was mutually exclusive with three other applications filed by: K31MU-D, Lingleville-Crowley, Texas; K31GL-D, De Soto, Texas; and KVFWD, Fort Worth, Texas; and as a result, the Station was placed in MX Group 60 (MX 60).⁸ 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 accept interference from each other, thus resolving their mutual exclusivity. K25FW’s application for channel 7 was granted on January 15, 2019. The Station’s license and silent authority were previously extended to April 5, 2021.⁹

Since the grant of its displacement application, VTI reports that it has worked diligently on the complex issues required to resolve the mutual interference between the various channel 7 stations.

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. 0000072064.

⁷ See LMS File No. 0000054800; *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).

⁸ See *Incentive Auction Task Force and Media Bureau Announce Settlement Opportunity for Mutually Exclusive Displacement Applications Filed During the Special Displacement Window: October 30, 2018 to January 10, 2019*, Public Notice, 33 FCC Rcd 10748, (MB/IATF, rel. Oct. 30, 2018).

⁹ See LMS File Nos. 0000086945 and 0000122766.

Unfortunately, VTI states that the parties have been unable to reach agreement on a resolution of those issues and K25FW is not yet able to return to broadcast operations. As an alternative means to return the Station to the air, VTI states that on November 20, 2020, it filed an application to change to channel 28 and relocate the station, which remains pending.¹⁰ VTI has requested a waiver of the filing freeze for applications for major change. VTI states that it has made arrangements for a tower and has selected the necessary equipment to be ready to rebuild quickly upon grant the channel 28 application. VTI concludes that good cause exists for the Commission to exercise its discretion to reinstate and further extend K25FW's license and silent authority so that it can provide service in the public interest.

VTI states that, in a recent conference with Commission staff, all parties agreed that it would be useful for VTI to reevaluate its options and consider other solutions. VTI states that it is committed to doing so but will require additional time to complete its further studies. Included among the options VTI is willing to consider is a renewed effort to obtain consensus for all stations to relocate to a common tower, given the amount of time since the previous negotiations failed and since most of the original parties seem to have been unable to resume broadcasting. VTI maintains that grant of its request for relief will provide an opportunity to reopen these negotiations.

Discussion. Upon review of the facts and circumstances presented, we find that VTI's request for reinstatement and extension of license and silent authority pursuant to section 312(g) 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*, 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. K25FW was displaced by the incentive auction and diligently pursued a new displacement channel. However, due to circumstances outside its control, namely the inability to come to an agreement with the other channel 7 stations to co-locate the stations' facilities, K25FW has been unable to return to the air. Grant of relief will enable K25FW to continue to find a resolution to the interference issue and resume operations.

Accordingly, we find that in order to promote fairness and equity the request filed by Ventana Television, Inc. **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,¹¹ and the license and silent authority for K25FW-D, Corsicana, Texas **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): Gregg P. Skall, Esq.

¹⁰ LMS File No. 0000126784. The application was put on public notice on Nov. 24, 2020. MB Report No. PN-1-201124-01 (MB rel. Nov. 24, 2020).

¹¹ 47 CFR §§ 74.15(f) and 74.763(c).