

**Request for Silent STA  
and Request for Section 312(g) Relief from 1-Year Silence**

David Ellington, licensee of WEBU-LD, Water Valley, MS (the “Station”), files this Request for Silent STA and for Section 312(g) Relief from 1-Year Silence to preserve the nearly 34-year-old, locally-focused Station’s ability to continue to serve its small, historic communities. Mr. Ellington only just learned that such a filing was needed; this filing is being made as promptly as possible given those circumstances.

*Request for Silent Authority*

The licensee respectfully requests Silent STA covering the period from July 13, 2020, to the date on which action is taken on this filing. Because this STA request is being filed belatedly, the licensee respectfully requests *nunc pro tunc* treatment of the filing.

Prior to July 13, 2020, the Station was operational on analog Channel 11. Indeed, the Station has been broadcasting consistently since 1988—the year of its inaugural broadcast. *See* CDBS File No. BLTVL-19880822IF. However, after more than 30 years of operations on Channel 11, in July 2020 the Station was displaced by full-power station WTVA, Facility ID No. 74148, Tupelo, MS, as part of the recently concluded spectrum repack. *See, e.g.*, LMS File No. 0000113508 (engineering exhibit noting that WTVA was assigned a Phase 10 transition date); LMS File No. 0000117299 (WTVA license to cover CP for Channel 11 operations granted on July 13, 2020).

Not willing to abandon the communities served by WEBU-LD, the licensee engaged a consulting engineer to assist with identifying a viable displacement channel for the Station, and submitted an application for digital channel 22. LMS File No. 0000054535. That application was granted; however—despite using all best efforts—due to unforeseeable circumstances (including the global COVID-19 pandemic) the licensee was unable to construct its displacement facilities until recently, in late December 2021. As a result, and because as of July 13, 2020, the Station was no longer permitted to broadcast on its historical, analog Channel 11, during the relevant period of silence the licensee had no other recourse but to keep the Station dark and diligently work toward constructing its displacement facilities.

Notably, the licensee diligently monitored the expiration date for the Station’s displacement CP and requested an extension of the construction deadline in light of the aforementioned unforeseeable circumstances that prevented construction within the timeframe the licensee originally anticipated. *See* LMS File No. 0000139137 (granted extension request explaining in detail all steps taken to construct facilities prior to CP expiration and corresponding need for additional time). Despite further complications outlined below, the licensee constructed the Station’s digital facilities prior to the extended CP expiration deadline. The licensee, however, did not have the benefit of FCC counsel and did not realize that it also needed to request STA to cover the Station’s required silence during the construction period, and instead operated under the (regrettably erroneous) assumption that displacement automatically authorized the Station to maintain its required silence until it was able to construct its new digital facilities, at a new location,

and on a new channel. The licensee's good faith, albeit mistaken, belief of such authorization is evidenced by its January 25, 2021, renewal application filing, in which the licensee truthfully indicated that the Station was silent "[d]ue to displacement" and that its new digital facilities were "in the process of being constructed." *See* LMS File No. 0000131990 (silent station exhibit stating same).

In light of all the foregoing, the licensee respectfully requests Silent STA covering the period from July 13, 2020, to the date on which action is taken on this filing, as well as *nunc pro tunc* treatment of this request.

*Request for Section 312(g) Relief from 1-Year Silence*

In addition, the licensee respectfully requests waiver of the application of Section 312(g) of the Communications Act to permit the licensee to return the Station to operations with the authorized WEBU-LD displacement facility. As discussed above, the Station went silent on **July 13, 2020**.

Section 312(g) 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 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> Additionally, in the *Post-Incentive Auction Procedures Public Notice*, the Media Bureau committed to "examine whether the station has demonstrated that its silence is the result of compelling reasons beyond the station's control, including facts that relate to the post-auction transition process"<sup>3</sup> when considering requests to extend or reinstate a stations license under Section 312(g) in order to promote fairness and equity. Finally, in the *Special Displacement Window PN*, the Media 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

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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*, Report and Order, FCC 14-50, 29 FCC Rcd 6567, ¶ 585 (2014) (hereinafter *Incentive Auction R&O*).

<sup>3</sup> *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, DA 17-106, 32 FCC Rcd 858, ¶ 49 (IATF/MB 2017) (hereinafter *Post-Incentive Auction Procedures Public Notice*); *see also Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, DA 18-884, 33 FCC Rcd 8240, n.25 (MB/IATF 2018) (citing *Christian Broadcasting of East Point, Inc.*, FCC 15-158, 30 FCC Rcd 13975, ¶ 4 (2015)).

stations would be relinquishing as a result of the incentive auction and repacking process.<sup>4</sup> The Media 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, it 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>

As demonstrated herein, good cause exists for waiver of and relief under Section 312(g) to promote fairness and equity in this circumstance. Among the reasons that support the Media Bureau taking action favorable to the applicant are as follows:

- WEBU-LD was involuntarily displaced by full power station WTVA, Facility ID No. 74148, Tupelo, MS, near the end of the Phase 10 repack transition. WEBU-LD diligently pursued a displacement channel and obtained a displacement CP in 2018.
- The licensee took all reasonable efforts to construct the Station by the deadline established by the displacement CP. However, due to circumstances beyond the licensee’s control, the Station was unable to be constructed by the initial displacement CP construction deadline. In April 2021, the licensee diligently sought (and in May 2021 obtained) an extension of the displacement CP construction deadline. *See* LMS File No. 0000139137. In that filing, the licensee detailed the numerous unforeseeable circumstances that prevented construction,<sup>6</sup> including:
  - In 2018, the licensee obtained reasonable assurances that it could build WEBU-LD’s displacement facilities on a tower owned by Cellular South. However, several months after the Station was displaced in 2020 the licensee received notice that the tower site had been sold to American Tower Corporation. The licensee promptly pursued a lease with American Tower, but American Tower responded that the lease would cost the licensee three times more than Cellular South’s 2018 proposal. That greatly-increased cost precluded the licensee’s ability to move forward with

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<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, ¶ 7 (IATF/MB 2018) (hereinafter *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, ¶ 12 (IATF/MB 2017).

<sup>6</sup> By this reference, the licensee respectfully incorporates the full content of the “WEBU-LD CP Extension Amendment” attachment from that prior extension filing (LMS File No. 0000139137).

construction—the Station would not have been economically viable at the cost proposed by American Tower.

- In the same year all the foregoing was occurring, the licensee unexpectedly lost his wife of 46 years, Nellie, due to a massive heart attack. Nellie had been the licensee's primary support mechanism throughout WEBU-LD's more-than-30-year broadcast career, and the licensee understandably had difficulty attending to all pending matters during 2020 as a result of that unexpected tragedy.
- The global COVID-19 pandemic also began in the same year in which all of the foregoing occurred and caused the licensee to suffer great financial stress. As a result, the licensee was forced to dedicate much of his limited time and resources to ensuring the continued financial viability of the Station going forward, while simultaneously being placed in the difficult position of having to pursue construction of the Station's displacement facilities with a new tower-site owner who had proposed a financially non-viable path forward.
- After the displacement CP extension was granted, the licensee did everything within his power to construct the authorized facilities by the January 10, 2022, extended construction deadline. The licensee succeeded in meeting that deadline, and filed a license to cover application on January 3, 2022. LMS File No. 0000178369.<sup>7</sup> To meet the January 10, 2022, construction deadline, the licensee had to overcome the following additional unanticipated difficulties:
  - As indicated in the licensee's prior extension filing, as of April 2021 the licensee had worked through weeks of back-and-forth negotiation with American Tower such that he had eventually been able to secure an economically-viable proposal for the tower site. However, American Tower required the licensee to use its online portal to complete the Station's lease application, which the licensee could not do until after American Tower's On Air Support team set up the licensee with access to the portal. Once the licensee finally gained access to the portal, there were additional lengthy wait times between the date on which the licensee submitted documents for approval and the date on which American Tower approved of those documents. Due to the foregoing delays and complications, the

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<sup>7</sup> The licensee also has a renewal application currently pending for WEBU-LP. LMS File No. 0000131990.

licensee did not receive approval to proceed from American Tower until August 17, 2021.

- By April 2021 the licensee also had spent months contacting all vendors and contractors necessary to construct the Station's displacement facilities. That team of vendors and contractors was ready to begin construction in June 2021. However, when the licensee requested authority from American Tower to move forward, American Tower refused because the vendors and contractors the licensee had secured were not on American Tower's "approved" list.
- The licensee moved forward as expeditiously as possible to obtain a general contractor that was on American Tower's approved list. However, the global COVID-19 pandemic significantly reduced availability for those already-limited number of American-Tower "approved" individuals and companies. Of the multiple general contractors the licensee contacted only one—Mid-South Communications ("Mid-South")—was willing to consider the job.
- Supply chain issues caused by the global COVID-19 pandemic caused the licensee's equipment orders to be delayed beyond their typical dates, including the delivery dates for the Station's transmitter shelter and transmitter cabinet.
- As noted above, on August 17, 2021, the licensee received approval from American Tower to proceed with construction. However, throughout the entire period prior to August 17th American Tower would not permit the licensee to access the tower site. As a result, the licensee was forced to use distant pictures and satellite images to plan out the construction particulars and process. This significantly delayed construction due to the fact that the licensee was unable to physically evaluate the tower site for compliant and best locations for required equipment, including the transmitter shelter, until after the August 17, 2021, approval date. Although the licensee moved as expeditiously as possible after August 17th, the necessary physical evaluations and resulting planning with Mid-South further delayed construction until September 21, 2021.
- Multiple additional delays were caused by constraints on Mid-South's resources. Given the COVID-19 pandemic and the greatly increased demand for competent contractors, Mid-South experienced a shortage of workers. Put simply, Mid-South had more jobs than crews available to perform the necessary work and did not

have sufficient time to train additional workers to the extent that would have been necessary to ensure safe and competent construction. As a result, the construction of WEBU-LD's digital facilities was delayed several times until a Mid-South crew was available to perform the relevant work.

- The licensee is 74 years old and—given Nellie's unfortunate death—operates the Station primarily with only the help of his son. Throughout the licensee's nearly 34 years of operating the Station, the licensee has been a diligent broadcaster who has taken his FCC compliance obligations and public service obligations extremely seriously.
- The licensee is extremely proud of the Station and its long history of providing locally-focused programming to the small historical communities it serves. WEBU-LP was historically licensed to Webb, MS, and provided coverage to Webb and most of Tallahatchie County. If the Station's digital license is granted, the Station will continue to be able to serve Webb with an even stronger, digital signal, and will also be able to reach nearby Water Valley and Batesville, MS, as well as much of Yalobusa and Panola counties.<sup>8</sup> All of these communities would benefit greatly from free local over-the-air programming, as each community is located far away from major metropolitan areas and generally lacks meaningful coverage by commercial television stations.<sup>9</sup>
- The licensee covers issues and events that matter greatly to Webb's approximately 400 residents, and intends to provide similar coverage to Water Valley's approximately 3,400 residents and Batesville's approximately 7,500 residents.<sup>10</sup> Indeed, as Water Valley itself puts it, these communities are home to residents who value "a hometown with an

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<sup>8</sup> Webb and Water Valley are separated by approximately 48 miles; Water Valley and Batesville are separated by approximately 26 miles. See Google Maps, Webb to Water Valley to Batesville (last visited Jan. 18, 2022), <https://www.google.com/maps/dir/webb+mississippi/water+valley+mississippi/Batesville,+MS/@34.1296233,-90.1277038,11z/am=t/data=!4m20!4m19!1m5!1m1!1s0x862af25cc49ef9bd:0xa981e3ab93c0d63f!2m2!1d-90.3442576!2d33.9473356!1m5!1m1!1s0x88806a06cda46635:0x2d9345e2e005184a!2m2!1d-89.6314736!2d34.1514989!1m5!1m1!1s0x88801caf9caf0009:0x24200468e3030b3a!2m2!1d-89.9442567!2d34.3114982!3e2>. The location of the station's permitted digital facilities are relatively equidistant between the three communities, despite the fact that the station's historical, analog community of license was Webb and the station's new digital community of license would be Water Valley.

<sup>9</sup> LMS does not currently indicate another authorized TV station licensed to any of these communities.

<sup>10</sup> See, e.g., U.S. Census Bureau, *Batesville, MS* (last visited Jan. 18, 2022), <https://data.census.gov/cedsci/all?q=Batesville%20city,%20Mississippi>; U.S. Census Bureau, *Water Valley, MS* (last visited Jan. 18, 2022), <https://data.census.gov/cedsci/profile?g=1600000US2878000>; U.S. Census Bureau, *Webb, MS* (last visited Jan. 18, 2022), <https://data.census.gov/cedsci/all?q=Webb%20town,%20Mississippi>.

invaluable sense of community.”<sup>11</sup> To further that community focus, the licensee historically has covered—among other things—local University sports and campus events, city government meetings, county supervisors’ meetings, high school sports and events, community festivals, local talent shows, holiday parades, and local church services. And the licensee provides coverage and low-cost advertising to local businesses that otherwise might not be able to afford advertising on more expensive media outlets. The licensee seeks to preserve the Station’s license to ensure that it can continue to provide such coverage and benefits, as well as other informational and entertainment programming, to these local communities.

- No interference issues would be caused by a grant of this request for relief, and a grant would not delay, alter, or affect in any way the nationwide transition of full power and Class A stations nor the construction of displacement facilities by low power television operators, nor the offering of new 600 MHz wireless services by new 600 MHz wireless licensees.
- No party would be injured or prejudiced by a grant of the requested relief. To the contrary, the licensee powered down WEBU-LD to make way for WTVA to begin serving viewers near the conclusion of Phase 10. Grant of the requested relief will not undermine or delay any post-auction transition goals.

Given all the foregoing, the licensee respectfully requests waiver of and relief pursuant to Section 312(g) to permit WEBU-LD to resume broadcasting with its now-completed displacement facilities. Grant of this Section 312(g) request for relief is supported by the *Incentive Auction R&O*, the *Post-Incentive Auction Procedures Public Notice*, and the *Special Displacement Window PN*, and, because it will allow WEBU-LD to return to service and broadcast programming of local interest to viewers in the Water Valley and Webb areas, is in the public interest.

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<sup>11</sup> Water Valley Chamber of Commerce, *About Water Valley* (last visited Jan. 14, 2022), <https://www.watervalleychamber.com/about-water-valley>.