WJHJ-LP: Supplement to Request for Extension of STA and of License Under Section 312(g) of the Communications Act of 1934, as Amended, and for Tolling of Construction Permit

Jacobs Broadcasting System, Inc. ("JBS"), holder of the Commission authorization for low power television station WJHJ-LP, Newport News, Etc., VA (Facility ID 35137) (the "Station") hereby supplements its request, currently pending before the Commission (LMS File 0000163461), that the Station's STA to remain silent and the Station's license be extended until July 10, 2022 so as to permit JBS to complete work on the Station's displacement facilities and return to broadcast operations. This supplement is provided in response to an informal request by Commission staff.

The current status of the construction of the Station's displacement facilities is described in the initial filing. Since the time of that filing, JBS was informed on February 8 and 9, 2022 by the FCC Fund Repack Administrator that JBS's payment requests for funds in the amount of $51,855 and $11,850, for the costs of the antenna and installation of the antenna, respectively, had been sent to the U.S. Treasury. The antenna was ordered on or about February 17, 2022 and delivery is expected in late March or early April. The transmitter has been delivered and is being held by JBS's contractor for installation. Thus, with the receipt of funds from the Treasury construction is progressing, and the Station's displacement facilities are expected to be completed in April, 2022, and in any event by the July 10, 2022 extension date requested by JBS.

As explained in the prior filing, this is a case in which the Commission should determine that an extension of the license under Section 312(g) of the Communications Act of 1934, as amended, should be granted on equity and fairness grounds. The Commission should similarly grant a waiver of the Commission's rule on tolling of construction permits to enable the Station to take the final steps to complete construction.

Background

JBS was formerly controlled by Samuel Jacobs, who used the Station and its companion station, WYSJ-CD, to develop relationships with local pastors and members of their congregations. Many of those pastors and congregation members then became victims of a "Ponzi scheme" fraud perpetuated by Mr. Jacobs which resulted in those victims being defrauded of hundreds of thousands of dollars. Mr. Jacobs was arrested and sentenced to twelve years in federal prison. Mr. Jacobs was also ordered to pay restitution to his victims in the amount of $627,963.34 in a Restitution Order entered by the U.S. District Court.[1]

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[1] *See Restitution Order*, filed February 21, 2013, United States District Court for the Eastern District of Virginia, Criminal No. 4:10CR149-001, a copy of which is attached hereto as Exhibit A. Details regarding JBS and the background of the Station are set forth in *JBS, Inc., Licensee of Station WYSJ-CA, Yorktown, Virginia*, 29 FCC Rcd 01121 (MB 2014), a copy of which is attached hereto as Exhibit B. See also, Application for Transfer of Control of JBS, Inc., File No. BTCTTA-20120503ABK, at Exhibit 6 thereto.

The current President, Director and sole stockholder of JBS is Mr. Neal Rosenbaum. Mr. Rosenbaum did not have experience in the television broadcast industry prior to his involvement with JBS and was among the victims of Mr. Jacobs fraud. Mr. Rosenbaum essentially had the ownership and management of the Station thrust upon him in order to sell the Station and remit the proceeds thereof to the Clerk of Court to be disbursed as provided in the Restitution Order. Since 2014, Mr. Rosenbaum has worked without compensation to keep the Station afloat, frequently paying expenses for the Station and for WYSJ-CD out of his own pocket. Despite retaining a number of media brokers over the years to attempt to sell WYSJ-CD and the Station, until recently Mr. Rosenbaum was unable to find a buyer. However, as indicated in the prior filing, JBS is currently in negotiations with a potential buyer of WYSJ-CD and the Station and expects to enter into a definitive purchase agreement in the First Quarter of 2022.

The Media Bureau approved the transfer of JBS from Mr. Jacobs to Mr. Rosenbaum, notwithstanding that Mr. Jacobs' conviction raised a substantial and material question of fact regarding his qualifications to be a Commission licensee and would therefore implicate the *Jefferson Radio* doctrine. The Bureau did so by applying the *Second Thursday* exception to the *Jefferson Radio* doctrine, after having determined that that the sale of the Station and the reimbursement of defrauded parties and innocent creditors would be "consistent with precedent that recognizes the protection of victims of fraud, creditors, and lien holders as a public interest benefit."[2]

The Station's License Should be Extended Under the Section 312(g) Equity and Fairness Standard

The Commission typically has extended broadcast licenses under the equity and fairness provisions of Section 312(g) of the Communications Act of 1934, as amended, in cases where a station remained silent for longer than a year due to circumstances beyond the control of the licensee. As is explained in the prior filing, JBS has been unable to construct the Station's displacement facilities due to not having received a Notice to Proceed from the owner of the Station's tower. However, even if the Commission were to determine that delays in construction were not outside of JBS's control, there are important considerations of policy, equity and fairness which weigh heavily in favor of extension of the Station's license.

As indicated above, the Media Bureau expressly applied the *Second Thursday* exception to the transfer of the station to Mr. Rosenbaum, finding that the public interest would be served by that transfer because it would enable the Station to be sold and the proceeds used to reimburse innocent third parties.[3] The Commission, therefore, already has determined that the sale of the Station and the use of the proceeds of that sale to satisfy amounts payable under the Reimbursement Order Is a goal worthy of application of an exception to long-standing Commission policy.

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[2] *JBS, Inc.*at ¶8, citing *Mountain View Communications, Inc*., 24 FCC Rcd 13516, 13521 (2009).

[3] This fact makes the instant case dramatically different from the case recently decided by the Bureau in which a licensee argued that a *Second Thursday* type concept should be incorporated into the equity and fairness standard under Section 312(g). *See, Letter dated May 22, 2020 from Michelle Carey, Chief, Media Bureau, to G.I.G. of North Dakota, LLC, et. al*., DA 20-541 (reconsideration of cancellation of license for station DKCPM(TV)). In that case, the petitioner could show no specific public interest benefit or furtherance of any important public policy goal other than providing an additional television service to its DMA.

In addition to the public interest benefits of promoting payment to creditors and reimbursement to victims of criminal fraud, the extension of the Station's license would enable payments to be made pursuant to the U.S. District Court's Reimbursement Order, and would therefore be consistent with Commission precedent which recognizes that the Commission "is obliged to reconcile its policies under the [Communications] Act with the policies of other federal laws and statutes."[4] The Restitution Order was entered pursuant to 18 U.S.C. §3663A(a)(1), enacted as part of the Mandatory Restitution Act of 1996, which created mandatory restitution obligations in the case of certain crimes. In enacting that legislation, Congress expressed its unambiguous intent that restitution made to victims of crime was an important policy objective of federal law designed to address the impact of crime on those victims. For example, in the legislative history of the statute, the Senate Committee on the Judiciary observed that "It is essential that the criminal justice system recognize the impact that crime has on the victim, and to the extent possible, ensure that the offender is held accountable to repay these costs…It is the committee's intent that courts order full restitution to all identifiable victims."[5]

The extension of the Station's license would therefore promote a specific objective which the Commission already has found to be in the public interest and worthy of an exception to Commission policy. Moreover, extension of the license would promote the important policies under federal law embodied in the Mandatory Restitution Act of 1996. Nor would the license extension result in an opening of the floodgates to other parties requesting relief under the equity and fairness provisions of Section 312(g). The grant in this case would be based on the very narrow ground of furtherance of a specific public interest objective already found to exist by the Commission, and reconciliation of Commission policies with an important policy of another federal law as explicitly expressed by Congress. Furthermore, it would enable innocent third-party creditors and other victims of fraud to receive some compensation for their loss after having waited for nearly ten years, which is certainly consistent with any commonsense notion of equity and fairness. It would replace the resource-constrained current owner with an experienced and well-financed operator, with the benefits to the Station's viewers and the public interest which would undoubtedly result. And it would assure that the amounts which have already been expended by JBS in constructing the Station's displacement facilities, and reimbursed by the federal government, would not go to waste.

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[4] *Dale J. Parsons, Jr.*, 10 FCC Rcd 2718, 2720 ¶ 11. *See also LaRose v. FCC*, 494 F.2d 1145, 1146 n.2 (D.C. Cir. 1974) ("Agencies should constantly be alert to determine whether their policies might conflict with other federal policies and whether such conflict can be minimized."); *Fox Television Stations Inc*., 8 FCC Rcd 5341 ¶ 15 (1993) ("Under our public interest mandate, we have an obligation to consider a variety of factors, including the national policy underlying other federal laws"); *Tender Offers and Proxy Contests*, MM Docket No. 85-218, FCC 86-67 ¶ 7 Policy Statement (MMB 1986) ("While we recognize that our primary mission is to implement the Communications Act, we believe that, in doing so, it is both necessary and appropriate for us to harmonize our actions with other federal policies and objectives.").

[5] *Report from Senate Committee on the Judiciary*, S. Rprt. 104-79, to accompany H.R. 665, pp. 17 *et..seq*.; *see also, Conference Report*, H.R. Report 104-518 pp. 111-112 ("The managers intend that the Report of the Senate Committee on the Judiciary to accompany H.R. 665 (S. Rprt. 104-179) should serve as the legislative history of this subtitle.")

The Construction Period Under the Station's Construction Permit Should be Tolled

JBS has also requested that the Commission waive the provisions of Section 73.3598 of its rules and toll the construction period under its construction permit until July 10, 2022. That request is currently pending in LMS File No. 0000179194.

The Commission will grant a waiver of its rules for good cause.[6] The Commission also is required to take a "hard look" at applications for waiver,[7] and to consider all relevant factors in making its decision.[8] For its part, the Media Bureau has recognized that "long-standing precedent…establishes that unintended consequences of a Rule are a significant factor favoring a Rule waiver."[9] The intent of the Commission's construction period rules was to provide limits on the period during which a permittee could hold a permit without constructing, and to thereby prevent the "warehousing of scarce spectrum."[10]

As explained above, the Station's license should be extended under Section 312(g). However, the Station was displaced as a result of the broadcast incentive auction and can no longer operate on its licensed channel. As a result, the Station has no value unless the displacement facilities can be constructed. Once the license extension has been granted in order to enable the Station to be sold and restitution made, it would clearly be an unintended consequence of the Commission's construction period rules if the displacement facilities could not be built due to expiration of the construction permit. This case thus presents the prospect of precisely the sort of "unintended consequences" which support a waiver request.

For the above reasons, JBS urges the Commission to grant an extension of the Station's license under Section 312(g) of the Communications Act, and to toll the construction period under the Station's construction permit, in both cases until July 10, 2022.

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[6] 47 C.F.R. § 1.3. The Media Bureau is authorized to act by delegated authority on waiver requests pursuant to Sections 0.61(h) and 0.283 of the Commission's rules.

[7] *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). The court also noted the importance of the waiver process as a "safety valve procedure" in special circumstances. *Id*. at 1157.

[8] *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).

[9] *WRKH(FM), Mobile, Alabama*, 23 FCC Rcd 4526, 4530 (Audio Div. 2008).

[10] *See 1998 Regulatory Review-Streamlining of Mass Media Applications, Rules and Processes, Report & Order*, 13 FCC Rcd 23056, 23093 (1998).