

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

Background

JBS, Inc. (“JBS”), holder of the Commission authorization for low power television station WJHJ-LP, Newport News, Etc., VA (Facility ID 35137) (the “Station”) hereby respectfully requests that the current special temporary authority (“STA”) for the Station to remain silent be extended for an additional six-month period, until July 10, 2022, and that a concurrent extension of the Station’s license under Section 312(g) of the Communications Act of 1934, as amended, be granted, so as to permit JBS to complete work on the Station’s displacement facilities.¹

As a result of the Broadcast Incentive Auction, the Station was displaced from analog Channel 39 and was granted a construction permit to build digital displacement facilities on Channel 34 (LMS File 0000054621).² The Station also went silent on April 15, 2020 in order to prevent interference on Channel 39 with the 600 MHz operations of T-Mobile USA, Inc., and was granted STA to remain silent until October 12, 2021 (LMS File No. 0000143967, further extension request currently pending in LMS File No. 0000163461).

JBS has made substantial progress in constructing the Station’s displacement facilities. After extensive discussions with local authorities and American Tower Company (“ATC”), JBS’s contractor, Carrick Construction, confirmed that no building permits were required for construction. JBS has not yet obtained a Notice to Proceed (“NTP”) with construction from ATC, the owner of the Station’s tower, but has provided all necessary information to ATC to obtain the NTP, except for the submission of a Class 4 rigging plan for the antenna installation by Carrick Construction.

The transmitter for the Station’s displacement facilities has been ordered and paid for and is expected to be delivered in late January or February of 2022. Installation of the transmitter will need to be co-ordinated with the installation of the antenna as discussed below.

The electrical and HVAC work for the transmitter site has been paid for and is in process. JBS expects all such work to have been completed by the time the antenna and transmitter are ready for installation.

The primary cause of the continued delay is that JBS has not yet received funds from the U.S. Treasury to pay the costs of the antenna (\$11,850) and the installation of the antenna (\$51,855). Requests and invoices for these amounts were submitted to the Commission with Form 399 on or about July 16, 2021 for the antenna invoice, and on or about September 20, 2021 for the installation invoice. Requests for Information (“RFIs”) requesting additional information or corrections to those reimbursement submissions were sent by the Commission. JBS understands that its consultants, Widelity and Pro Service, Inc., have now resolved the issues in those RFIs with the Commission.

¹ JBS also requests that any other applicable Commission rules be waived to the extent necessary to grant the relief hereby requested.

² Concurrently with this filing, JBS is also filing a request for extension of that construction permit.

Until funds are released to JBS for payment of the costs of the antenna and the antenna installation, the antenna cannot be ordered and the installation work cannot be scheduled. In addition, Carrick will not prepare and submit the Class 4 rigging plan for the installation, which is a prerequisite to issuance of the NTP by ATC, until it has been paid for its services. So, although the electrical and HVAC work at the site is proceeding, the construction process essentially has halted pending receipt of the necessary funds for the antenna and installation.

JBS anticipates that funds will be released to it by the Treasury at some point in January, and at that point the antenna will be ordered. The antenna manufacturer estimates that delivery will take approximately 4-6 weeks, although supply chain issues which have delayed the availability of materials made in the People's Republic of China and used in the radomes installed on the antenna may cause further delays in delivery of the antenna. Assuming the funds are released and the antenna can be ordered in January, 2022, and can be delivered in the projected 4-6 week time frame, the antenna should be available sometime in February or March, 2022. As indicated above, the transmitter is expected to be delivered in late January or early February, 2022. Subject to the availability of the Carrick tower crew, and the need to co-ordinate antenna and transmitter installation, JBS anticipates that construction of the Station's displacement facilities should be completed by the end of April, 2022.

Request for STA Extension and Section 312(g) License Extension

Section 312(g) of the Communications Act of 1934, as amended, states as follows:

If a broadcasting station fails to transmit 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 if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness.³

The Commission has stated that in considering requests for extensions under of Section 312(g) in the television repack context, it "will take 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."⁴ Similarly, the Media Bureau has stated that in considering such requests, the Bureau "will 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."⁵

³ 47 U.S.C. §312(g).

⁴ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report & Order, 29 FCC Rcd 6567 (2014), at ¶1585.

⁵ *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd 858 (IATF/MB 2017), at ¶49.

The Station clearly has been forced to remain silent as a result of having been displaced due to the repack process, because until it can operate on its displacement Channel 34 facilities it would cause impermissible predicted interference with T-Mobile 600 MHz operations. The circumstances preventing completion of construction of those post-repack facilities are also clearly outside of JBS's control as they relate to delays in obtaining the NTP, which is a consent from the third-party tower owner, and receipt of funds from the Treasury. JBS lacks sufficient financial resources to pay for the antenna and installation without access to those funds.

In addition, the history of the Station and the circumstances under which its current President and sole stockholder, Neal Rosenbaum, came to acquire control of the Station, support a license extension under Section 312(g) on equity and fairness grounds.⁶ The Station (along with Class A television station WYSJ-CD) previously was controlled and operated by one Samuel Jacobs who used it to further a so-called "Ponzi scheme" in which numerous innocent individuals, including Mr. Rosenbaum, were defrauded. Mr. Jacobs was convicted in Federal court, sentenced to 12 years in prison and ordered to pay restitution to victims of his fraudulent activities. After Mr. Jacobs' conviction, Mr. Rosenbaum assumed control of JBS. The Commission, JBS and Mr. Rosenbaum entered into a Consent Decree pursuant to which JBS would attempt to sell the Station and to use the proceeds from such sale, after payment of certain expenses, to satisfy a portion of Mr. Jacobs' restitution obligations under the court order and to pay obligations to innocent creditors of JBS.⁷

Since the time the Consent Decree was entered into, Mr. Rosenbaum has pursued the sale of the Station without success. The Station has generated very little, if any, revenue since Mr. Rosenbaum took control, and Mr. Rosenbaum has paid Station expenses from his own pocket in an effort to obtain some compensation for persons defrauded by Mr. Jacobs and for creditors. Mr. Rosenbaum and JBS have devoted a considerable amount of time and resources to preserve the Station's value and in the belief that if the Station can be built with new equipment on its displacement channel, it will be more attractive to potential buyers. Repack facilities for the Station's companion station, WYSJ-CD, have been constructed and operating since June, 2021. JBS currently is in negotiations with a prospective buyer of WYSJ-CD and the Station and expects to enter into a definitive purchase agreement and file an assignment application with the Commission in the First Quarter of 2022.

A license extension under Section 312(g) would be consistent with the criteria set forth by the Commission and the Media Bureau for such extensions, as described above. It also would be consistent with extensions under Section 312(g) recently granted by the Bureau.⁸

⁶ See *JBS, Inc., Licensee of Station WYSJ-CA, Yorktown, Virginia*, 29 FCC Rcd 01121 (MB 2014), and Application for Transfer of Control of JBS, Inc., File No. BTCTTA-20120503ABK, at Exhibit 6.

⁷ See *JBS, Inc.*

⁸ See, e.g., *Letter dated October 16, 2020 from Barbara A. Kreisman, Chief, Video Division, to Local Media TV Chicago, LLC* (granting Section 312(g) waiver on equity and fairness grounds where permittee was subject to unanticipated construction delays, including due to compliance with local building codes); *Letter dated October 16, 2020 from Barbara A. Kreisman, Chief, Video Division, to Sanford Broadcasting Group, Inc.* (granting Section 312(g) waiver on equity and fairness grounds where permittee was subject to unanticipated delays in receipt of equipment and in obtaining required local permits).

Moreover, the extension would enable JBS to complete construction on the Station's displacement channel, and to proceed with the prospective sale of the Station as indicated above. This result would promote equity and fairness because the net proceeds of that sale would be used to pay down the restitution obligations imposed on Mr. Jacobs by the Federal court, thereby reimbursing victims of Mr. Jacobs' fraud, and to make payments to innocent creditors of JBS. It would also serve to further the intent of the court order and the Consent Decree. If the Station's license were to be terminated on the other hand, the practical possibility that those victims and creditors might obtain restitution or payment would be jeopardized.

In addition, JBS has expended considerable amounts provided by the Treasury to order equipment and pay the fees of consultants and advisors to construct the Station's displacement facilities. An extension of the Station's license would also serve the public interest because without such an extension the expenditure of those funds will have been wasted.

For the reasons set forth above, JBS asserts that an extension of STA for the Station to remain silent for an additional six months, until July 10, 2022, would serve the public interest. In addition, an extension under Section 312(g) of the Communications Act of 1934, as amended, to permit the Commission license for the Station to remain in effect for an additional six months, until July 10, 2022 notwithstanding that it is silent, would promote equity and fairness and would also be in the public interest.