

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

Lilly Broadcasting, L.L.C. ("Lilly"), holder of the Commission authorization for television translator station W34FR-D (analog station W07BJ), Ithaca, NY (Facility ID 71512) (the "Station"), hereby requests that the current special temporary authority ("STA") for the Station to remain silent (LMS File 0000163459) be extended for a period of six months from January 10, 2022 (i.e., 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 until July 10, 2022 so as to permit Lilly to complete work on the Station's digital displacement facilities.¹ Lilly also requests that any other applicable Commission rules be waived to the extent necessary to grant the relief hereby requested.

In the Station's most recent STA and license extension request,² Lilly recounted how it had been unable to locate the owner of the site at which the Station's current analog facilities are located, which is also the site at which the Channel 34 digital displacement facilities are to be built under the Station's digital displacement construction permit ("CP"). Lilly sought an alternative site and explored constructing the Station's displacement facilities on a tower owned by Ithaca College but ultimately determined that the only space available on that tower was too low above ground level to provide adequate signal coverage. Lilly subsequently located a newly-constructed tower from which the Station could operate. This site was not previously available because construction of the tower was completed in late 2021.

Lilly has negotiated a lease with the owner of that tower and is prepared to file an application for minor modification of its CP to specify the new site and order equipment promptly upon grant by the Commission of this request and the concurrent request for extension of the Station's CP. Lilly anticipates that if equipment is ordered in January the equipment could be on site within 60 days thereafter and, subject to grant of a minor modification of the Station's construction permit, construction could commence in the Spring at which time weather conditions should permit installation of the antenna on the tower. Barring supply chain delays in the production and shipping of necessary equipment, and assuming a timely grant of a modified CP, Lilly expects construction to be completed by mid-June, 2022. In the meantime, an extension of the Station's license and STA to remain silent will be necessary to provide time to order and install equipment and obtain a modification to the CP.

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

¹ As a result of the Broadcast Incentive Auction and the associated repack of full power television stations, the Station was displaced and was granted a construction permit to build digital facilities on Channel 34 in place of its existing Channel 7 analog facilities. A request to extend that construction permit for an addition six months until July 10, 2022 is being filed contemporaneously with this filing.

² STA extension granted in LMS File 0000163459; License extended under Section 312(g) by Letter dated May 3, 2021 from Barbara Kreisman, Chief, Video Division, Media Bureau.

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 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

The Station clearly has been forced to remain dark due to its displacement as a result of the repack process. It cannot operate analog facilities on Channel 7 because such facilities are predicted to cause 4.3% interference to the Channel 7 post-repack facilities of station WICZ-TV, Binghamton, NY, which was granted a license to operate on Channel 7 on July 27, 2020. The Station cannot operate on its digital displacement channel 34 because of the above-described delays in locating an alternative site for the Station’s facilities. The circumstances preventing completion of construction of the digital displacement facilities are also clearly outside of Lilly’s control, as Lilly used its best efforts to locate the landlord for its site, and when it was unable to do so used its best efforts to secure an alternative site for the Station.

Consequently, 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.⁶

Because the Station currently is silent, and will remain silent until its Channel 34 digital facilities have been completed, the extension of the Station’s license will have no impact on the operations of station WICZ-TV or any other television broadcast station. Moreover, the requested extension of the Station’s license and silent STA would serve the public interest by helping to assure that the Station completes construction of its digital facilities so that it can recommence broadcast service to viewers in Ithaca and the surrounding area.

For the reasons set forth above, Lilly asserts that an extension of STA for the Station to remain silent until July 10, 2022, would serve the public interest. In addition, an extension under Section 312(g) of the

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.

⁶ 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).

Communications Act of 1934, as amended, to permit the Commission license for the Station to remain in effect until July 10, 2022 notwithstanding that it is silent, would promote equity and fairness and would also be in the public interest. The Station's digital displacement CP is currently scheduled to expire on January 10, 2022, and Lilly is filing a separate request for extension of that CP for a period of six months.