



Federal Communications Commission
Washington, D.C. 20554

May 25, 2022

Lilly Broadcasting, LLC
2 East Leigh Lane
Natick, MA 01760
kevin@lillytv.com
(via electronic mail)

Re: Request for Reinstatement and
Extension of License and Silent
Authority Under Section 312(g)
and Application for Tolling
Waiver
W07BJ, Ithaca, New York
LMS File Nos. 0000179421 and
0000179437
Facility ID No. 71512

Dear Licensee:

This letter concerns the requests to reinstate and extend license, extend silent authority, and provide waiver of the tolling rules, as amended (Requests), filed by Lilly Broadcasting, LLC (Lilly) licensee of low power television (LPTV) station W07BJ, Ithaca, New York (W07BJ or Station). For reasons set forth below, we grant Lilly's Requests, waive all applicable rules, reinstate and extend the Station's license and silent authority, and toll the Station's digital construction permit to July 11, 2022.¹

Background. Section 312(g) of the Communications Act of 1934 (the Act) 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."² 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

¹ Because the date requested by Lilly for an extension of the Station's license, silent authority and digital construction permit, July 10, 2022, is a Sunday, we extend the Station's license and digital construction permit to the next business day, Monday, July 11, 2022. See 47 CFR § 1.4.

² 47 U.S.C. § 312(g). 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 (2008) ("This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited") (*A-O Broad. Corp.*). 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).

process and whether, in light of the facts presented, equity and fairness dictate a license extension or reinstatement and a waiver.”³

Further, in the *Post-Incentive Auction Procedures PN* the Media Bureau (Bureau) 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.”⁴ 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.⁵ 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, it would “consider a request for extension or reinstatement pursuant to section 312(g) of the Act and a request for waiver of the Commission rule.”⁶

Requests for additional time to construct LPTV facilities are subject to the Commission’s tolling provisions of section 73.3598(b) of the Rules.⁷ The Commission’s tolling provisions provide that a construction permit deadline may be tolled under specific circumstances such as acts of God, delays due to administrative or judicial review, or construction that is delayed by any cause of action pending before a court of competent jurisdiction relating to any necessary local, state, or federal requirement for the construction or operation of the station, including any zoning or environmental requirement.⁸ If a station does not qualify for tolling under these criteria, good cause may exist to waive the Commission’s tolling provisions and tolling may still be warranted where the licensee can demonstrate that “rare and exceptional circumstances” prevented construction by the station’s construction permit expiration date.⁹

³ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, GN Docket No. 12-268 et al., 29 FCC Rcd 6567, 6806-07, para. 585 (2014) (*Incentive Auction R&O*).

⁴ *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, MB Docket No. 16-306 and GN Docket No. 12-268, 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*, MB Docket No. 16-306 and GN Docket No. 12-268, 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)).

⁵ 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*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 33 FCC Rcd 1234, 1237, para. 7 (IATF/MB 2018) (*Special Displacement Window PN*).

⁶ *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).

⁷ See 47 CFR § 73.3598(b).

⁸ *Id.*

⁹ See *1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17542, para. 42 (1999) (*Streamlining MO&O*) (recognizing that there may be “rare and exceptional circumstances” beyond the control of the licensee that do not fall under the tolling provisions, but “which would warrant the tolling of construction time.” The Commission concluded that in such “limited circumstances,” it would entertain requests for waiver of its “strict tolling provisions”); *Northeast*

Requests. As part of the Incentive Auction and repacking process, W07BJ's analog channel 7 was displaced by full power television station WICZ-TV, Binghamton, New York, that was repacked to channel 7. As a result, W07BJ subsequently went silent on April 30, 2020 and is no longer able to operate on its analog channel.¹⁰ W07BJ's displacement application for channel 34¹¹ was granted on October 23, 2019, and because the Station was still operating in analog, the displacement construction permit (Displacement CP) was assigned an expiration date of July 13, 2021.¹² On May 3, 2021, the Station was granted relief under section 312(g), its license was reinstated and extended and its Displacement CP was extended to January 10, 2022.¹³

Since the grant of section 312(g) relief and extension of the Displacement CP in May 2021, Lilly maintains that it has diligently pursued a new tower site for the Station's digital facilities. Initially, Lilly reports that it planned to relocate the displacement facilities to a tower owned by Ithaca College and entered into discussions with the College to lease space on that tower. However, in June, 2021, Lilly states that its chief engineer made a visual inspection of the Ithaca College tower and determined that the location on the tower at which the Station's antenna would have to be placed (approximately 60 feet above ground level) was too close to the tree line and would not allow for a good quality signal to be broadcast to viewers. Lilly then entered into discussions to lease space from Saga Communications, which owns a tower for its FM station WHCU-FM, Ithaca, New York (WHCU Tower). While the WHCU Tower initially appeared promising, Lilly states that, after further investigation it was determined that the WHCU Tower did not have the ability to support the equipment necessary for the Station's facilities.

Lilly then turned its attention to a new tower being constructed in the area by Family Life. Lilly began discussions with Family Life in early September 2021 regarding locating to its new tower. The Family Life tower was completed in December 2021 and Lilly reports that it has negotiated a lease and has provided supporting documentation that an agreement has been reached. Lilly has filed an application for minor modification specifying the new Family Life tower.¹⁴ Lilly states that the Station's antenna manufacturer expects to deliver the antenna to the site on or about June 15, 2022, and Lilly expects that the transmitter and transmission line will also have been delivered to the site by mid-June 2022. Lilly represents that it will schedule a tower crew for the latter part of June 2022. Absent unforeseen circumstances Lilly believes that the construction can be completed by July 10, 2022.

Lilly has also filed a request for special temporary authority (STA) and states that, following a grant of its Requests, it intends to begin operating from the Family Life tower site with temporary facilities so that the Station can resume operations while it completes construction of the permanent displacement facilities.¹⁵

Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown).

¹⁰ See LMS File No. 0000112585.

¹¹ See LMS File No. 0000054763.

¹² See 47 CFR § 74.788(a).

¹³ See LMS File Nos. 0000124308 and 0000140086.

¹⁴ See LMS File No. 0000187436.

¹⁵ See LMS File No. 0000189742.

Lilly concludes that grant of its Requests 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 in digital. Therefore, Lilly requests reinstatement and extension of the Station's license and silent authority pursuant to the equity and fairness provision of section 312(g), waiver of the tolling rules, and tolling of the Displacement CP, as modified.

Discussion. Upon review of the facts and circumstances presented, we find that Lilly's request for reinstatement and extension of the Station's license 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, therefore, in the public interest. Consistent with the public interest and prior Bureau actions, we will provide section 312(g) relief to displaced LPTV and TV translator stations that were displaced by the Incentive Auction, pursued new displacement channels, and those efforts were delayed for circumstances beyond their control. W07BJ was displaced by the Incentive Auction and repacking process. Lilly diligently pursued construction of its displacement facilities, but its efforts were hindered by construction delays involving its tower. For similar reasons, we find that Lilly has met the standard for waiver of the tolling rules and tolling of its Displacement CP, as well as extension of the Station's silent authority. Grant of Lilly's Requests will permit the Station to complete its transition to digital and once again serve its viewers on its digital displacement channel.

Accordingly, we find that in order to promote fairness and equity the request filed Lilly Broadcasting, LLC **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,¹⁶ and the license and silent authority for W07BJ, Ithaca, New York, **ARE REINSTATED AND EXTENDED** to July 11, 2022. In addition, the request for waiver of the tolling rules of Lilly Broadcasting, LLC **IS GRANTED** and the expiration date of the construction permit (LMS File No. 0000054763) for W07BJ, Ithaca, New York, **IS TOLLED** to July 11, 2022. While we anticipate this will be the Stations' final requests for tolling and section 312(g) relief, we note that another request for extension of the Station's license under the equity and fairness provision of section 312(g)¹⁷ and/or tolling of a Station's construction permit under section 73.3598(b) of the Commission's rules¹⁸ will not be viewed favorably unless accompanied by a showing that completion of the Station's displacement facilities was prevented by additional compelling circumstances. Lilly must also include with any such request(s) a detailed plan for completing construction and returning the Station to operation.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division

cc (via electronic mail): David Burns, Esq.

¹⁶ 47 CFR §§ 74.15(f) and 74.763(c).

¹⁷ 47 U.S.C. § 312(g).

¹⁸ 47 CFR § 73.3598(b). A station may also seek a waiver of the tolling rule to receive additional time to construct in the case where "rare or exceptional circumstances" prevent construction. See *Streamlining MO&O*, 14 FCC Rcd at 17536, para. 42.