

From: Victoria McCauley
Sent: Monday, April 6, 2020 5:05 PM
To: Kathleen Victory <victory@fhhlaw.com>
Cc: Tom Hutton <Tom.Hutton@fcc.gov>; Albert Shuldiner <Albert.Shuldiner@fcc.gov>
Subject: W232AL Pomona NY 312(g) waiver request

Dear Ms. Victory:

We have reviewed your filing requesting a “waiver” of Section 312(g) of the Communications Act of 1934, as amended (Act). We note that we cannot “waive” the statute. Rather, we can consider the filing as a request for the Commission to exercise its discretion under Section 312(g) to extend or reinstate an expired license “to promote equity and fairness.”

Prior to exercising our discretion under Section 312(g), we require additional documentation and proof that the licensee had taken tangible steps to get the station back on the air prior to the national emergency and an explanation of what prevents them from getting the station back on the air. Broadcast stations are deemed essential facilities. With appropriate safety gear, there shouldn’t be anything that prohibits construction. In fact, getting stations back on the air is more important than ever.

The Commission’s discretion under Section 312(g) is severely limited (*See A-O Broad.*, 23 FCC Rcd at 617, para. 27 (“This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited”)). 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 Commc'ns Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006) (hurricane destruction); *Community Bible Church*, Letter, 23 FCC Rcd 15012, 15014 (MB 2008) (FCC and FAA records contained incorrect tower information); *Mark Chapman, Court-Appointed Agent*, Letter, 22 FCC Rcd 6578 (MB 2007) (compliance with a court order). Conversely, 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 judgments (*See, e.g., A-O Broad.*, 23 FCC Rcd at 617, para. 27 (failure to complete construction at an alternate site); *ETC Communications, Inc.*, Letter, 25 FCC Rcd 10686 (MB 2010) (chose not to operate station while offering it for sale); *Kirby Young*, Letter, 23 FCC Rcd 35 (MB 2008) (not financially able to restore operations after transmitter failed). *See also Kingdom of God*, Letter, 29 FCC Rcd 11589 (MB 2014) (failure to promptly find a permanent and suitable transmitter site)).

Please outline specifically how the states of emergency in New York and New Jersey prevent the construction of temporary facilities at the proposed location. This showing must include documentation that the proposed construction is prohibited under the governors’ orders as non-essential. It also must show why the construction could not be accomplished with proper safety gear.

Also provide proof of all tangible steps taken to return the station to air prior to the state of emergency. These steps include the following: 1) a lease or sublease of space at the new site; 2) a list of the necessary equipment on hand or on order; 3) arrangements for the equipment to be installed at the new site; 4) building permit for work at the new site. If any of these cannot be provided, please explain the reason.

Sincerely,
Victoria McCauley
Attorney/Advisor
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