



Federal Communications Commission
Washington, D.C. 20554

January 13, 2021

Sunshine Broadcasting Company, Inc.
Randolph Weigner
1903 South Greely Hwy
#127
Cheyenne, WY 82007
dtvty@yahoo.com
(via electronic mail)

Re: Request for Tolling Waiver
WARP-CD, Tampa-St. Petersburg, FL
Facility ID No. 55106
LMS File No. 0000131093

Dear Licensee:

Sunshine Broadcasting Company, Inc.(SBC), the licensee of WARP-CD, Tampa-St. Petersburg, Florida (WARP-CD or Station), filed the above-referenced request to extend the Station's license and silent authority (Request).¹ For reasons set forth below, we grant the request, waive all applicable rules, and extend the Station's license and silent authority to (April 15, 2021).

Background. Section 312(g) of the Communications Act of 1934 (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 The Commission has exercised its discretion under section 312(g) to extend or reinstate a station's expired license "to promote equity and fairness" only in limited circumstances where a station's failure to transmit a broadcast signals for 12 consecutive months is due to compelling circumstances that were beyond the licensee's control.³ For example, the Commission has granted section 312(g) relief to stations whose facilities were destroyed by natural disasters such as hurricanes,⁴ where silence was

¹ Request of Sunshine Broadcasting Company, Inc. for Extension of Silent Authority, Exhibit for Request to Extend Silent STA and Waiver of 312(g), LMS File No. 0000131093 (filed January 12, 2021) (Request).

² 47 U.S.C. § 312(g); 47 CFR §§ 73.1635(a)(4), 73.1740(c), 73.1750.

³ See *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617, para. 27 (2008) (*A-O Broadcasting*) ("This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited").

⁴ *V.I. Stereo Communications*, Memorandum Opinion and Order, 21 FCC Rcd 14259, 14262 (2006) (*V.I. Stereo*) (reinstating license where silence due to destruction of towers in hurricanes); *Media Bureau Provides Guidance For Broadcast Licensees Still Rebuilding in the Aftermath of Hurricanes Irma and Maria*, Public Notice, 33 FCC Rcd 8368, 8368-69 (MB 2018) (*PR and USVI Hurricane Guidance*) (granting relief and extending the license of stations damaged or destroyed by Hurricanes Irma and Maria).

necessary in furtherance of public safety,⁵ where a court ordered reinstatement of the station's license,⁶ where stations were actually displaced by the Incentive Auction and repacking process,⁷ or where a station's silence was the result of governmental closure.⁸ The Commission also said it would consider cases where stations were forced to remain dark for more than 12 months by the repack process.⁹ The Commission has declined to exercise its section 312(g) discretion when a station's silence is the result of a licensee's own action or inaction, finances, and/or business judgment.¹⁰

As part of the Incentive Auction, the Station was reassigned from channel 20 to channel 22 and assigned to transition Phase 7, which had a phase completion date of January 17, 2020. The Station has been silent since January 15, 2020.¹¹ The Station was previously granted a construction permit extension and subsequent waiver of the Commission's tolling rule and tolling through July 17, 2020.¹² On June 29,

⁵ *Community Bible Church*, Letter Order, 23 FCC Rcd 15012, 15014 (MB Oct. 17, 2008) (reinstatement warranted where licensee took all steps needed to return to air, but remained off air to promote air safety after discovering and reporting that FCC and FAA records contained incorrect tower information).

⁶ *Mark Chapman, Court-Appointed Agent*, Letter Order, 22 FCC Rcd 6578, 6580 (MB Mar. 30, 2007) (reinstating license where silence necessitated by licensee's compliance with court order).

⁷ *See, e.g., Request of America-CV Station Group, Inc. for Reinstatement of License*, LMS File No. 0000113086 (granted Aug. 13, 2020). *See also, Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, MB Docket No. 16-306, GN Docket No. 12-268, Public Notice, 32 FCC Rcd 858, 873-74, para. 49 (IATF/MB 2017) (stating that displaced LPTV stations that remain silent for more than one year may request an extension or reinstatement of license where the station can demonstrate that its silence is the result of compelling reasons beyond the station's control including facts that relate to the post-auction transition process).

⁸ *See, Universal Broadcasting of New York, Inc.*, DA 19-1146, Memorandum Opinion and Order, 34 FCC Rcd 10319 (MB 2019) (station unable to file STA to resume service due to a federal government shutdown), *aff'd*; *Universal Broadcasting of New York, Inc.*, Letter Order, DA 20-753 (MB July 17, 2020).

⁹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6807, para. 585 (2014).

¹⁰ *See, e.g., New Visalia Broadcasting, Inc.*, FCC 14-112, Memorandum Opinion and Order, 29 FCC Rcd 9744 (2014) (record did not show that health problems prevented the principals from resuming operations); *A-O Broadcasting*, FCC 08-10, Memorandum Report and Order, 23 FCC Rcd 603 (2008) (transmission from unauthorized location not sufficient to avoid the consequences of section 312(g)); *Eagle Broadcasting Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, 589-90 (2008) (operation from unauthorized site insufficient to avoid the consequences of section 312(g)); *Mt. Rushmore Broadcasting, Inc.*, Letter Order, 32 FCC Rcd 3924, 3927 (MB May 12, 2017) (discretion unwarranted when station was either silent or engaging in brief periods of unauthorized operation for six years); *Zacarias Serrato*, Letter Order, 20 FCC Rcd 17232 (MB Nov. 4, 2005) (station taken off the air due to a business decision); *Kingdom of God*, Letter Order, 29 FCC Rcd 11589 (MB Sep. 29, 2014) (station's numerous periods of extended silence were a direct result of licensee's own business decisions); *Christian Broadcasting*, Memorandum Opinion and Order, 30 FCC Rcd at 13976 (2015) (licensee provided no evidence that station's silence was beyond its control); *In the Matter of Roy E. Henderson*, Memorandum Opinion and Order, 33 FCC Rcd 3385, 3388 (2018) (finding no basis to reinstate the license where the station failed to operate with authorized facilities for over four years).

¹¹ *See Request of Sunshine Broadcasting Company, Inc. for Silent Authority*, LMS File No. 0000097722, (granted Feb. 3, 2020). *See also, Request of Sunshine Broadcasting Company, Inc. for Modification of a Licensed Facility for Digital Class A TV Station Application*, LMS File No. 0000025105, (granted June 21, 2017).

¹² *See Request of Sunshine Broadcasting Company, Inc. for Extension of Construction Permit*, LMS File No. 0000097632 (granted Jan. 15, 2020).

2020, SBC was granted a second waiver of the tolling rule and tolling of its post-auction channel facility construction permit through January 15, 2021.¹³ SBC stated that it was given incorrect information regarding local permitting requirements by the Station's tower owner.¹⁴ Construction was further delayed due to personnel impacts stemming from the COVID-19 pandemic.¹⁵ While SBC expected these delays to be resolved by the extended construction permit deadline, SBC has filed the instant Request for an extension of its license and an application for additional tolling of its construction permit.¹⁶

Request. SBC states that construction of the Station's post-auction channel facilities has faced multiple delays.¹⁷ SBC states that it has been working with the local County to obtain approval, however, that process was delayed due to the impact of the COVID-19 pandemic and only just recently completed.¹⁸ SBC states that the Station's transmitter has been installed and the Station's antenna that was damaged upon delivery has been repaired and is ready to be shipped back to the Station.¹⁹ SBC goes on to state that the Station's tower crew has been delayed with other installations and is not scheduled to be available until mid-January 2021.²⁰ Pending delivery and installation of the antenna, SBC states that the Station is ready to resume on-air operations.²¹ SBC expects to be able to complete construction by April, 2021. Based on the foregoing, SBC states that good cause exists for extending the Station's license pursuant to the equity and fairness provision of section 312(g) and requests an extension of its license for a period of three months.²²

Discussion. Upon review of the facts and circumstances presented, we find that SBC's request to extend the license and silent authority of WARP-CD satisfies the requirements of section 312(g), will promote equity and fairness, and is in the public interest. Consistent with the public interest, we will provide section 312(g) relief and extend the license of stations that are forced off the air by compelling circumstances beyond their control. The Bureau has previously noted it would provide section 312(g) relief to stations that have had to go silent for an extended period of time as a result of being repacked or being displaced as a result of the repack.²³ While off the air, the Station has demonstrated it has made good faith efforts to return to air as soon as possible, and kept the Commission apprised of its progress.²⁴ Therefore, we find that due to compelling circumstances beyond its control, WARP-CD was unable to return to the air prior to its one-year anniversary of going silent for reasons beyond its control. Grant of its requested relief to extend the Station's license and silent authority will allow WARP-CD to complete

¹³ See Request of Sunshine Broadcasting Company, Inc. for Tolling, LMS File No. 0000116667 (granted July 14, 2020).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See *supra* note 13.

¹⁷ See Request at 1-2.

¹⁸ *Id.*

¹⁹ *Id.* at 2.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* See *supra* notes 3-10.

²³ See *supra* notes 7 and 9.

²⁴ See Request at 1-2 and *supra* notes 12 and 13.

construction of its post-auction facility and once again serve the residents of Tampa and St. Petersburg, Florida.

We remind SBC that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs “reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other.”²⁵ Additional expenses incurred, such as expenses resulting from changes in a Station’s transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

We further remind SBC of the deadline for submitting final expense documentation for reimbursement for the Station is March 22, 2022.²⁶ Thus, we strongly encourage the Station to diligently pursue satisfaction of the current deadlines to improve the chances that there will be sufficient funds available to reimburse the Station for its legitimate repacking expenses, and we encourage SBC to submit eligible invoices as soon as practicable.

Accordingly, we find that in order to promote fairness and equity, the request filed by Sanford Broadcasting Group, Inc. **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,²⁷ and the license and silent authority for WARP-CD, Tampa-St. Petersburg, Florida **IS EXTENDED through April 15, 2021**. To the extent SBC seeks an additional extension of the Station’s license, silent authority, or additional tolling of its post-auction construction permit, any such request(s) must include a detailed plan for bringing the station back to operational status. We will look unfavorably upon any future request that does not include such a plan.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic email): Kathleen Victory, Esq.

²⁵ 47 U.S.C. § 1452(b)(4)(A)(i). *See also Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 et. al., Report and Order, 29 FCC Rcd 6567, 6821, para. 622 (2014) (*Incentive Auction R&O*), *aff’d*, *Nat’l Ass’n of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) (“The appropriate scope of ‘costs reasonably incurred’ necessarily will have to be decided on a case-by-case basis.”).

²⁶ *See Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (IATF/MB Oct. 7, 2020) (setting three filing deadlines for submission of all remaining repack invoices: for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period, the deadline for submitting all remaining invoices is October 8, 2021; the deadline for entities assigned completion dates in the second half of the transition period is March 22, 2022; and the deadline for all other participants in the reimbursement program is September 5, 2022).

²⁷ 47 CFR §§ 73.1635(a)(4), 73.1740(c), and 73.1750. A waiver is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis. *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 CFR § 1.3 (waiver for good cause shown).