



Federal Communications Commission
Washington, D.C. 20554

December 10, 2021

Ventana Television, Inc.
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(via electronic mail)

Re: Request for Extension of License
and Silent Authority Under Section
312(g) and Waiver of Tolling Rules
K45IO-D, Kansas City, MO
Fac ID No. 49176
LMS File Nos. 0000158779 and
0000151628

Dear Licensee:

This concerns requests to extend license and silent authority and waiver of the tolling rules, as amended (Requests) filed by Ventana Television, Inc. (Ventana) licensee of low power television (LPTV) station K45IO-D, Kansas City, Missouri (K45IO-D or Station). For reasons set forth below, we grant Ventana's Requests, waive all applicable rules, extend the Station's license and silent authority, and toll the Station's digital construction permit through February 28, 2022.

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.”¹ 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 process and whether, in light of the facts presented, equity and fairness dictate a license extension or reinstatement and a waiver.”² Further, in the *Post-Incentive Auction Procedures PN* the Media Bureau

¹ 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 (“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 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).

² *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*).

(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.”³ 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.⁴ 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.”⁵

A low power television station, such as K45IO-D, that has already transitioned to digital and is subsequently granted a digital construction permit for displacement facilities, is given three years to complete construction of its displacement facilities.⁶ If a station experiences delays licensing its facility, it may only obtain additional time to complete construction through the Commission’s “tolling” rule.⁷ The tolling rule provides that a construction permit deadline may be tolled only for specific circumstances not under the licensee’s control, such as acts of God or delays due to administrative or judicial review.⁸ Stations 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.⁹

Requests. K45IO-D’s digital channel 45 was displaced by the Incentive Auction and repacking process and was designated as portion of the new wireless “duplex gap.” As a result, the Station was required to cease operations on July 13, 2020.¹⁰ Ventana timely filed a displacement application for the Station for channel 15 and that application was granted on August 29, 2018 and the construction permit was issued with an expiration date of August 29, 2021 (Displacement CP).¹¹

³ *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)).

⁴ 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*).

⁵ *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).

⁶ See 47 CFR § 74.788(d).

⁷ See 47 CFR § 73.3598(b).

⁸ *Id.*

⁹ See *1998 Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536, para. 42 (1999).

¹⁰ See *Incentive Auction R&O*, 29 FCC Rcd at 6841, para. 672.

¹¹ See LMS File No. 0000054324.

Following the grant of its Displacement CP, Ventana states that it prepared a construction schedule to effectuate the completion of its displacement facilities prior to the expiration of its construction permit in August 2021. Ventana states that, in 2019, it began preparing filings for the Commission's LPTV reimbursement program and preparing orders for equipment. In early 2021 Ventana discovered that it would need to revise the antenna pattern proposed in the Displacement CP in order to better design the very tight directional pattern required for operation on the displacement channel and it filed a minor modification to specify this antenna in January 2021.¹² Ventana states that it was forced to file a second minor modification in May 2021¹³ after it received updated mapping information from the owner of the Station's tower. Ventana states that the new information revealed that the original antenna height was inaccurate by about 10 feet and the minor modification application corrected this error.

Further, a structural analysis of the tower was performed for the site by the tower owner's contractors and the results were provided to the owner in May 2021. Ventana states that the analysis indicates a current overloading of the tower by 17% and thus the owner is prohibiting any further installation until the overload condition is ameliorated. Ventana maintains that it began requesting information from the tower owner commencing in June 2021, as to how to resolve this issue. Ventana reports that it finally received a response from the tower owner in late August 2021 and has been negotiating with the owner as to the responsibility for tower strengthening remediation. Ventana states that as of its date of filing, it has not yet received a Notice to Proceed from the Station's tower owner for the antenna installation.

Despite these last-minute, unexpected delays, Ventana states that its new antenna has been delivered to the tower site. Additionally, Ventana states that the Station's new transmitter equipment has been delivered and was partially installed at the tower site in July 2021. Ventana reports that a tower crew has been selected and is ready to proceed with antenna installation as soon as the tower strengthening issues are resolved.

Therefore, Ventana requests reinstatement and extension of its license and silent authority pursuant to the equity and fairness provision of section 312(g) and waiver of the tolling rules and tolling of the Displacement CP.

Discussion. Upon review of the facts and circumstances presented, we find that Ventana's request for 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. K45IO-D was displaced by the Incentive Auction and repacking process. Ventana diligently pursued construction of its displacement facilities, but its efforts to were hindered by construction delays related to its antenna and tower. For similar reasons, we find that Ventana has met the standard for waiver of the tolling rules and tolling of its digital construction permit. Grant of Ventana's Requests will permit the Station to once again serve its viewers.

¹² See LMS File No. 0000131318.

¹³ See LMS File No. 0000146018.

Accordingly, we find that in order to promote fairness and equity the request filed Ventana Television, Inc. **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,¹⁴ and the license and silent authority for K45IO-D, Kansas City, Missouri, **IS EXTENDED** to February 28, 2022. In addition, the request for waiver of the tolling rules of Ventana Television, Inc. **IS GRANTED** and the expiration date of the construction permit (LMS File No. 0000146018) for K45IO-D, Kansas City, Missouri, **IS TOLLED** to February 28, 2022. We note that another request for extension of the Station's license under the equity and fairness provision of section 312(g) and/or tolling of a Station's construction permit under section 73.3598(b) of the Commission's rules will not be favorably viewed unless accompanied by a showing that completion of the Station's displacement facilities was prevented by additional compelling circumstances. Ventana must also include with any such request(s) a detailed plan for completing construction and returning the Station to operation.¹⁵

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Gregg Skall, Esq.

¹⁴ 47 CFR §§ 74.15(f) and 74.763(c).

¹⁵ We caution Ventana that if as a result of its current tower situation it ultimately decides to relocate its facility to a tower different from the one authorized in its Displacement CP, such a decision may be viewed as a voluntary business decision and depending on the facts and circumstances surrounding such a decision, the Station may not be eligible for extension of its license or tolling beyond February 28, 2022.