



Federal Communications Commission
Washington, D.C. 20554

August 13, 2020

America-CV Station Group, Inc.
13001 N.W. 107th Ave.
Hialeah Gardens FL 33018
jorge.salas@americave.com

Re: Request for Reinstatement of
License Under Section 312(g)
WJWN-TV, San Sebastian, PR
LMS File No. 0000113086
Facility ID No. 58342

Dear Licensee:

America-CV Station Group, Inc. (ACV), licensee of WJWN-TV, San Sebastian, Puerto Rico (WJWN or Station) filed the above-referenced request to reinstate the license.¹ For reasons set forth below we grant the request and reinstate the Station's license as described herein.

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 necessary in furtherance of public safety,⁵ where a court ordered reinstatement of the station's license,⁶

¹ Request of America-CV Station Group, Inc. for Reinstatement and Extension Under Section 312(g), LMS File No. 0000113086, as amended (filed May 4, 2020) (Request Third Amendment).

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).

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).

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 repacking process, the Station was reassigned from channel 39 to channel 33 and assigned to transition Phase 2, which had a phase completion date of April 12, 2019. In September 2017, the Station's facilities were destroyed by Hurricane Maria. The Station was silent beginning September 25, 2017 until July 31, 2020. In order to transition directly to its post-auction channel and to expedite access to the 600 MHz wireless band in the aftermath of Hurricane Maria for new wireless broadband service, the Station requested and was granted permission to transition early and its phase completion date was modified to August 1, 2018.¹¹ The Station was deemed to have satisfied that deadline because it had vacated channel 39 prior to the deadline.

In August 2018, the Media Bureau (Bureau) provided relief to stations, including WJWN, in Puerto Rico and the U.S. Virgin Islands impacted by hurricanes Irma and Maria and that remained silent and whose licenses would otherwise be subject to automatic cancellation under Section 312(g) of the Act.¹² Specifically, the Media Bureau established procedures whereby a licensee in this group of

⁷ See, e.g., *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.*, FCC 08-9, 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*, FCC 15-158, 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*, FCC 18-36, 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 *Incentive Auction Task Force and Media Bureau Grant Waiver of the Post-Auction Transition Schedule and Modify the Transition Phase Assignments of Repacked Stations in Puerto Rico and the U.S. Virgin Islands*, Public Notice, 33 FCC Rcd 138, 138 (MB 2018) (*PR and USVI Repack Guidance*).

¹² See generally *PR and USVI Hurricane Guidance*, *supra* note 4.

impacted stations could request reinstatement and extension of their license and silent authority.¹³ In a request granted on September 26, 2018, ACV availed itself of this procedure on behalf of WJWN to finish installation and testing of the Station's new post-auction antenna and transmitter, and to complete installation of wiring at its tower site.¹⁴ This extension included a March 27, 2019 expiration date of both the Station's license and silent authority.¹⁵ Citing the need to finish testing, installation, and electrical work, ACV subsequently requested and was granted an extension of its silent authority first to September 27, 2019¹⁶ and again to March 20, 2020.¹⁷ And finally, citing the difficulty of scheduling the necessary engineers and construction crews due to the ongoing COVID-19 pandemic,¹⁸ ACV requested and was granted an extension of its silent authority through September 28, 2020.¹⁹ Notwithstanding these grants for extension of silent authority and related extensions of the Station's post-incentive auction construction permit,²⁰ ACV did not seek any extension of the Station's license, which under section 312(g), automatically expired on March 27, 2019. After being informed by Bureau staff on May 4, 2020, that the Station's license had automatically expired pursuant to section 312(g), ACV filed the instant request. On August 11, 2020, ACV filed a resumption of operations notice²¹ and engineering STA to operate from an interim facility at reduced power.²² ACV states that WJWN commenced operation on its post-auction channel on July 31, 2020.

Request. In its Request, ACV seeks reinstatement of Station's license.²³ ACV maintains that the conditions resulting from the COVID-19 pandemic made it difficult to schedule engineers and construction crews necessary to complete construction of WJWN's post-auction channel facilities and resume operations. ACV also argues that the Station's silence was due to the requirement that it cease operation on its pre-auction channel as a result of the post-incentive auction repack. ACV argues these

¹³ *Id.*

¹⁴ Request of America-CV Station Group, Inc. for Extension of Silent Authority, LMS File No. 0000059651 (granted Sept. 26, 2018).

¹⁵ *Id.*

¹⁶ Request of America-CV Station Group, Inc. for Extension of Silent Authority, LMS File No. 0000068289 (granted Mar. 7, 2019).

¹⁷ Request of America-CV Station Group, Inc. for Extension of Silent Authority, LMS File No. 0000081786 (granted Oct. 16, 2019).

¹⁸ The World Health Organization has classified COVID-19 as a pandemic and the President declared it a national emergency.

¹⁹ Request of America-CV Station Group, Inc. for Extension of Silent Authority, LMS File No. 0000108042 (granted Mar. 31, 2020) (extending authority based on COVID-19 pandemic).

²⁰ As part of its repack efforts, the Station also filed for and was granted tolling of its post-incentive auction construction permit through September 28, 2020. Request of America-CV Station Group, Inc. for Tolling Extension, LMS File No. 0000108043 (granted Mar. 30, 2020) (Tolling Extension Request). *See also* Request of America-CV Station Group, Inc. for Extension of a Construction Permit, LMS File No. 0000056370 (granted July 31, 2018); Request of America-CV Station Group, Inc. for Tolling of Construction Permit, LMS File No. 0000067189 (granted Apr. 12, 2019).

²¹ Notice of America-CV Station Group, Inc. for Resumed Operations, LMS File No. 0000120313 (filed Aug. 11, 2020).

²² Request of America-CV Station Group, Inc. for DTV Engineering STA Application Amendment, LMS File No. 0000120213 (filed Aug. 11, 2020) (DTV Engineering STA).

²³ Request at 1.

circumstances were beyond its control and reinstatement of the Station's license will "promote equity and fairness" pursuant to section 312(g). ACV therefore requests that the Commission reinstate WJWN's license.

Discussion. Upon review of the facts and circumstances presented, we find that ACV's request to reinstate the license of WJWN 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 reinstate the license of a station that is forced off the air by compelling circumstances beyond their control. Similar to the facts in *V.I. Stereo*,²⁴ where the Commission granted relief under section 312(g) to a licensee whose station tower had been destroyed by multiple hurricanes, WJWN was initially forced off the air as a result of hurricane damage, and AVC took steps thereafter to rebuild its facilities and resume operations. The Station was also repacked and required to cease operations on its pre-auction channel by August 1, 2018.²⁵ The Commission and Bureau have 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.²⁶ The Station has encountered numerous construction delays resulting from the overwhelming demand on construction resources from hurricane damaged stations, as well as wiring issues that prevented the station from resuming operation and caused its construction permit to be tolled multiple times.²⁷ While the Station properly requested and received authority to remain silent and to extend its construction permit deadline, the Station failed to also request extension of its license under section 312(g) after it automatically expired on March 27, 2019.²⁸ On July 31, 2020, WJWN was able to return to air operating from an interim facility at reduced power.²⁹ Once ACV's engineers and construction crew, who are currently based out of the United States mainland, are able to gain entrance to Puerto Rico, ACV anticipates being able to complete construction of its final post-auction facility.³⁰ Therefore, we find that due to compelling circumstances beyond its control, WJWN was unable to return to the air prior to its one-year anniversary of going silent. Grant of its requested relief to reinstate the Station's license will allow WJWN to serve its viewers using its interim facility and ultimately complete construction of its post-auction facility.

We remind ACV 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."³¹ 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.

²⁴ See *V.I. Stereo*, *supra* note 4.

²⁵ See *PR and USVI Repack Guidance*, *supra*. note 11.

²⁶ See *supra* notes 7 and 9.

²⁷ See *supra* notes 19 and 20.

²⁸ Request Third Amendment at 2.

²⁹ *Id.* at 2; DTV Engineering STA.

³⁰ Request Third Amendment at 2.

³¹ 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.").

We further remind ACV that the Commission has stated that the Bureau may announce a deadline for the submission of final expense documentation for reimbursement well before the statutory deadline of July 3, 2023.³² 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, we encourage ACV to submit eligible invoices as soon as practicable.

Accordingly, we find that in order to promote fairness and equity, the request filed by America-CV Station Group, Inc. **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,³³ and the license for WJWN-TV, San Sebastian, Puerto Rico **IS REINSTATED**. To the extent the Station seeks additional tolling of its post-auction construction permit, such a request 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 mail): Francisco R. Montero, Esq.

³² See *id.* at 6567, para. 616; *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, MB Docket 18-214 and GN Docket No. 12-268, Report and Order, 34 FCC Rcd 1690, 1739, para. 105 (2019). See also *Incentive Auction Task Force and Media Bureau Report on the Status of the Post-Incentive Auction Transition and Reimbursement Program et al.*, GN Docket No. 12-268 and MB Docket No. 16-306 and, Public Notice, 34 FCC Rcd 304, 312, para. 23 and n.35 (IATF/MB 2019).

³³ 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).