



Federal Communications Commission
Washington, D.C. 20554

January 6, 2021

Guenter Marksteiner
P.O. Box 34990
Palm City, FL 34990
marksteiner@whdt.net
(via electronic mail)

Re: Request for Reinstatement and
Extension of License and Under
Section 312(g)
WHDT-LD, Boston, MA
LMS File No. 0000130073
Facility ID No. 59488

Dear Licensee:

This concerns the above-referenced request to reinstate and extend license (Request) filed by Guenter Marksteiner (Marksteiner), licensee of low power television station WHDT-LD, Boston, Massachusetts (WHDT or Station). For reasons set forth below, we grant the request, waive all applicable rules, reinstate and extend the Station's license.

Background. Section 312(g) of the Communications Act of 1934 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 stated that, in considering requests to extend or reinstate a stations license under section 312(g) in order to

¹ 47 U.S.C. § 312(g).

² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6806-07, para. 585 (2014) (*Incentive Auction R&O*). 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).

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, the Bureau would “consider a request for extension or reinstatement pursuant to section 312(g) of the Communications Act and a request for waiver of the Commission rule.”⁵

Request. As part of the Incentive Auction and repacking process, WHDT’s channel 38 was reallocated for use by wireless operator T-Mobile USA (T-Mobile). WHDT went silent on channel 38 on September 30, 2019.⁶ WHDT timely filed a displacement application requesting a construction permit for channel 4 in the Commission’s displacement application filing window for low power television stations that were displaced by the incentive auction and repacking process.⁷ The displacement application was granted September 9, 2018.

Marksteiner states that he has ordered the Station’s transmitter, antenna, mask filter, and transmission line. However, Marksteiner states that installation has been delayed on the Station’s tower location because the building’s owner is requiring that a “damage inspection” be completed on the tower. According to Marksteiner, this process and the subsequent installation require mobilizing a considerable number of specialized crew members to conduct the safety inspection, dismount the legacy broadcast antenna, lift the new antenna into place via helicopter, mount transmission line and install the station’s transmitter in the equipment room on the top story of the building. Marksteiner states that the COVID-19 pandemic has caused significant delays and uncertainty which have restricted construction. Marksteiner states that he is working to transport the needed equipment and coordinate with tower crews and other necessary parties to complete construction. Marksteiner argues that grant of this Request would preserve the license of a station that was displaced, and then forced off-air.

Discussion. Upon review of the facts and circumstances presented, we find that Marksteiner’s request for reinstatement and extension of WHDT’s license and silent authority for a period of 180 days from the date of this letter 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 in the public interest. Consistent with the public interest, we will provide section 312(g) relief to

³ *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, 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*, 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*, 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 LMS File No. 0000087705.

⁷ See LMS File No. 000052060; *Special Displacement Window PN; Incentive Auction Task Force and Media Bureau Extend Post Incentive Auction Special Displacement Window Through June 1, 2018*, Public Notice, 33 FCC Rcd 3794 (IATF/MB 2018).

displaced LPTV and TV translator stations that are forced off the air by circumstances beyond their control, which we have previously found to include displacement as a result of incentive auction and repack.⁸ WHDT was forced off the air as a result of being displaced by the incentive auction and repacking process and Marksteiner took steps to build his displacement facilities in a timely manner. Therefore, due to circumstances outside its control, WHDT has been unable to return to the air. Grant of relief of will allow WHDT to return to the air and once again serve its viewers.

Accordingly, we find that in order to promote fairness and equity the request filed by Guenter Marksteiner **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,⁹ and the license and silent authority for WHDT-LD, Boston, Massachusetts, **IS REINSTATED AND EXTENDED** for 180 days from the date of this letter.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Lauren Lynch Flick, Esq.

⁸ See *V.I. Stereo Communications Corp.*, 21 FCC Rcd. 14259 (2006) (granting a request to reinstate a station's license when the station's tower had been destroyed by a hurricane and after it was rebuilt, again sustained substantial damage from three more hurricanes); *Community Bible Church, Letter*, 23 FCC Red 15012, 15014 (MB 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); *Mark Chapman, Court-Appointed Agent, Letter*, 22 FCC Red 6578 (MB 2007) (reinstatement warranted where extended silence resulted from licensee's compliance with a court order); see Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, Federal Communications Commission to Renee Ilhardt, DTV America Corporation and HC2 Broadcasting Holdings, Inc., LMS File Nos. 0000072656, et al., (Mar. 23, 2020) (reinstatement and extension is appropriate where the stations' silence was a result of being displaced by the Incentive Auction and repacking process).

⁹ 47 CFR §§ 74.15(f) and 74.763(c).