



Federal Communications Commission
Washington, D.C. 20554

August 25, 2021

Developers and Managers Group, LLC
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ernestjohnson@lacapfund.com
(via electronic mail)

Re: Request for Reinstatement and
Extension of License and Under
Section 312(g) and Waiver of
Tolling Rules
K38NR-D, Alexandria, LA
K45IM-D, Monroe, LA
LMS File Nos. 0000151649,
0000151650, 0000151425 and
0000151426
Facility ID Nos. 189745 and
70101

Dear Licensee:

This concerns the above-referenced requests to reinstate and extend license and silent authority and waiver of the tolling rules (Requests), as amended, filed by Developers and Managers Group, LLC (DMG), licensee of low power television stations K38NR-D, Alexandria, Louisiana (K38NR) and K45IM-D, Monroe, Louisiana (K45IM) (collectively Stations). For reasons set forth below, we grant DMG's Requests; waive all applicable rules; extend the Stations' licenses and silent authority and toll the Stations' digital construction permits for 60 days to October 18, 2021.

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

¹ 47 U.S.C. § 312(g).

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 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

A low power television station, such as the Stations, 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

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).

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 47 CFR § 74.788(d).

⁷ See 47 CFR § 73.3598(b).

⁸ *Id.*

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

Request. As part of the Incentive Auction and repacking process, the Stations’ channels (38 and 45) were reallocated for use by wireless operator T-Mobile USA (T-Mobile). After receiving notices from T-Mobile of intent to begin operating, the Stations went silent on September 7, 2018. DMG timely filed displacement applications requesting new displacement channels for the Stations in the Commission’s displacement application filing window for low power television stations that were displaced by the incentive auction and repacking process.¹⁰ K38NR-D’s displacement application for channel 4 was granted on August 20, 2018, and K45IM-D’s displacement application for channel 29 was granted on August 27, 2018.

Following the grant of the Stations’ displacement applications, DMG states that it immediately began to work with a third-party company to order equipment and arrange for construction of the Stations’ displacement facilities. In its Requests, DMG supplied a detailed showing of each step it took from 2018 to date to complete the construction process. Throughout 2019 and 2020, DMG worked with its third-party company to order the necessary equipment for the Stations’ facilities, but this process was delayed on several occasions due to equipment shortages and local COVID-19 pandemic lockdowns and restrictions that delayed manufacturing and delivery of equipment. In an effort to quickly resume operations, DMG has been working to complete reduced-power facilities for both Stations. DMG represents that construction of the reduced-power facilities should be completed in the next 60 days.¹¹ Therefore, DMG requests reinstatement and an extension of the Stations’ licenses and silent authority and tolling of the Stations’ displacement construction permits.

Discussion. Upon review of the facts and circumstances presented, we find that DMG’s Requests for reinstatement and extension of the Stations’ licenses and silent authority 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 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

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 LMS File Nos. 0000054926 and 0000054924; *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).

¹¹ We remind DMG that in order to commence operation from this facility it is required to file for and receive grant of special temporary authority. Such STA must be filed as an engineering STA in LMS and provide the specific technical parameters by which the station will operate at variance from those authorized in its construction permit.

result of incentive auction and repack.¹² The Stations' channels were displaced by the incentive auction and repacking process and DMG took steps to build its digital displacement facilities in a timely manner. However, due to circumstances outside its control, the Stations were unable to return to the air prior to their one-year anniversary of going silent. DMG states it is now close to completing construction of the Stations' displacement facilities and resuming operations. For similar reasons, we find that DMG has met the standard for waiver of the tolling rules and tolling of its digital construction permits. Grant of relief will allow the Stations to resume operations and once again serve their viewers. We recognize that construction of the stations' final facilities will not be complete in the 60 day time period that we toll the Stations' construction permits. In order to toll the Stations' facilities further, DMG will need to file a subsequent tolling request demonstrating compliance with the Commission's tolling rule. DMG must include with any such request a detailed plan for completing construction and returning the Stations to operation.

Furthermore, another request for extension of Stations' licenses under section 312(g) will not be favorably viewed unless accompanied by a showing and written support that completion of the station's permanent displacement facilities was prevented by additional compelling circumstances and further extension is warranted under the equity and fairness provision of section 312(g). DMG must also include with any such request a detailed plan for returning the Stations to operation.

We remind DMG that, pursuant to the Reimbursement Expansion Act, the some Stations may be eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs reasonably incurred as a result of the reorganization of broadcast television spectrum.¹³ Please note, however, that additional expenses incurred, such as those resulting from changes in a Stations' plans to construct their displacement facilities that are unrelated to the displacement, may not be eligible for reimbursement from the Fund.

We further remind DMG that the deadline for submitting final expense documentation for reimbursement for eligible Stations is September 5, 2022.¹⁴ Thus, we strongly encourage the DMG to

¹² 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 Rcd 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 Rcd 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 repack process).

¹³ See *Consolidated Appropriations Act, 2018*, Pub. L. 115-141, at Division E, Title V, § 511, 132 Stat. 348 (2018) (codified at 47 U.S.C. § 1452(j)-(n)). See also 47 CFR § 73.3701 (Reimbursement Under the Reimbursement Expansion Act); *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 34 FCC Rcd 1690 (2019); and *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking and Order, 33 FCC Rcd 7855 (2018).

¹⁴ See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (IATF/MB Oct. 7, 2020) (setting three filing deadlines for the submission of all outstanding repack invoices, notably: 1) October 8, 2021 for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period; 2) March 22, 2022 for entities assigned completion dates in the

diligently pursue completion of the current deadlines to improve the likelihood that there will be sufficient funds available to reimburse the Stations for their legitimate expenses, and we encourage DMG to submit eligible invoices as soon as practicable.

Accordingly, we find that in order to promote fairness and equity the request filed by Developers and Managers Group, LLC **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,¹⁵ and the licenses and silent authority for stations K38NR-D, Alexandria, Louisiana; and K45IM-D, Monroe, Louisiana **ARE REINSTATED AND EXTENDED** to October 18, 2021. In addition, the requests for waiver of the tolling rules of Developers and Managers Group, LLC **ARE GRANTED** and the expiration date of the construction permits (LMS File Nos. 0000054926 and 0000054924, respectively) for K38NR-D, Alexandria, Louisiana; and K45IM-D, Monroe, Louisiana **ARE TOLLED** to October 18, 2021.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

second half of the transition period; and 3) September 5, 2022 for all other participants in the reimbursement program).

¹⁵ 47 CFR §§ 74.15(f) and 74.763(c).