



Federal Communications Commission  
Washington, D.C. 20554

September 1, 2021

Broadcast Group, Ltd  
5925 Cromo Drive  
El Paso, TX 79912  
[jcabada@canal44.com](mailto:jcabada@canal44.com)  
(via electronic mail)

Re: Request for Extension of  
License and Silent Authority Under  
Section 312(g) and Waiver of Tolling  
Rules  
K42KZ-D, Calexico, CA  
Fac ID No. 185530  
LMS File Nos. 0000150095 and  
0000150096

Dear Licensee:

This concerns requests to extend license and silent authority and waiver of the tolling rules, as amended (Requests) filed by Broadcast Group, Ltd (BGL) licensee of low power television station K42KZ-D, Calexico, California (K42KZ-D or Station). For reasons set forth below, we grant BGL's Requests; waive all applicable rules; reinstate and extend the Station's license, extend the Station's silent authority; and toll the Station's digital construction permit to November 1, 2021.

*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."<sup>1</sup> 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."<sup>2</sup> Further, in the *Post-Incentive Auction Procedures PN* the Media Bureau

---

<sup>1</sup> 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).

<sup>2</sup> *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.”<sup>3</sup> 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.<sup>4</sup> 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.”<sup>5</sup>

A low power television station, such as K42KZ-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.<sup>6</sup> If a station experiences delays licensing its facility, it may only obtain additional time to complete construction through the Commission’s “tolling” rule.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

*Requests.* K42KZ-D’s digital channel 42 was displaced by the Incentive Auction and repacking process. K42KZ-D has been silent as a result since August 14, 2020. BDL timely filed a displacement application for the Stations for channel 29 and that application was granted on June 12, 2018 (Displacement CP).<sup>10</sup> BDL states that it has faced great difficulties in building out its displacement facilities in the wake of the COVID-19 pandemic. BDL cites to the fact that, during 2020, it and its vendors were severely impacted by the COVID-19 related lockdowns and work stoppages. For example, BDL cites to the fact that it submitted a purchase order for an antenna in 2020; however, the antenna

---

<sup>3</sup> *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)).

<sup>4</sup> 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*).

<sup>5</sup> *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).

<sup>6</sup> See 47 CFR § 74.788(d).

<sup>7</sup> See 47 CFR § 73.3598(b).

<sup>8</sup> *Id.*

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

<sup>10</sup> See LMS File No. 0000051948.

manufacturer indicated in June 2021 that it would not be able to complete manufacture and delivery of Licensee's antenna by the original June 2021 deadline due to delays caused by the COVID-19 pandemic.

BDL reports that is now ready to complete construction of the Station's displacement facilities. BDL states that the antenna has been manufactured and it expects that the antenna will be delivered by early September 2021. BDL believes the antenna could be installed by the end of September 2021. BDL also notes that its field engineer has informed BDL that the Station's exciter has an issue with its memory and must returned to the manufacturer. Once the antenna is delivered and exciter returns from the manufacturer, BDL estimates the Station should be able to resume operations by October 31, 2021.

BDL argues that grant of its Requests is in the public interest because it will allow the Station to finish the build-out it has been diligently working towards for years. Grant of its Requests, BDL argues, also will allow the Station to once again broadcast local programming to the public and serve its community.

*Discussion.* Upon review of the facts and circumstances presented, we find that BDL's request for extension of the Station's license through November 1, 2021 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. K42KZ-D was displaced by the Incentive Auction and repacking process. BDL diligently pursued construction of its displacement facilities, but its efforts to were hindered by equipment manufacturing and construction delays. For similar reasons, we find that BDL has met the standard for waiver of the tolling rules and tolling of its digital construction permit. Grant of BDL's Requests will permit the Station to once again serve its viewers. Although BDL seeks extension of its license and tolling for 180 days through December 15, 2021, we find that based on the showing provided November 1, 2021 should provide a sufficient amount of time to complete construction and allow Video Division staff to more closely monitor the Station's construction progress.

Accordingly, we find that in order to promote fairness and equity the request filed Broadcast Group, Ltd **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,<sup>11</sup> and the license for K42KZ-D, Calexico, California, **IS REINSTATED AND EXTENDED** and silent authority **IS EXTENDED** to November 1, 2021. In addition, the request for waiver of the tolling rules of Broadcast Group, Ltd **IS GRANTED** and the expiration date of the construction permit (LMS File No. 0000051948) for K42KZ-D, Calexico, California, **IS TOLLED** to November 1, 2021. We note that another request for extension of the Station's license under the equity and fairness provision of section 312(g)<sup>12</sup> and/or tolling of a Station's construction permit under section 73.3598(b) of the Commission's rules<sup>13</sup> will not be favorably viewed unless accompanied by a showing that completion of the Station's displacement facilities was prevented by additional compelling circumstances. BDL must also include

---

<sup>11</sup> 47 CFR §§ 74.15(f) and 74.763(c).

<sup>12</sup> 47 U.S.C. § 312(g).

<sup>13</sup> 47 CFR § 73.3598(b).

with any such request(s) a detailed plan for completing construction and returning the Station to operation.

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division

cc (via electronic mail): Francisco Montero, Esq.