



Federal Communications Commission
Washington, D.C. 20554

November 22, 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
W45DX-D, Atlanta, GA
Fac ID No. 61199
LMS File Nos. 0000159475 and
0000151626

Dear Licensee:

This letter concerns the 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 station W45DX-D, Atlanta, Georgia (W45DX-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 to March 1, 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

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).

reinstatement and a waiver.”² Further, in the *Post-Incentive Auction Procedures PN* the Media Bureau (Bureau) stated that, in considering requests to extend or reinstate a station’s 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 station’s 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 W45DX-D, that has already transitioned to digital and is subsequently granted a digital construction permit for displacement facilities was 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. W45DX-D’s digital channel 45 was displaced by the Incentive Auction and repacking process. W45DX-D has been silent as a result since July 13, 2020. Ventana timely filed a displacement

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*).

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).

application for the Station for channel 13 and that application was granted on September 28, 2018 (Displacement CP).¹⁰

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 September 2021. Ventana states that, in 2019, it began preparing filings for the Commission's LPTV reimbursement program and preparing orders for equipment. In 2020, Ventana states that its equipment orders were delayed by COVID-19 pandemic related shutdown and equipment delivery delays. While Ventana has ordered its new antenna, it has still not yet been fabricated by the manufacturer. Ventana states that the Station's transmitter equipment has been manufactured and is awaiting delivery to the tower site. In addition, Ventana reports that a tower crew has been selected and it is actively engaged in obtaining all necessary local permits for the planned installation.

In May 2021, while it was preparing to begin installation of the Station's facilities at its tower site, Ventana states that it reached out to the owner of its tower for information regarding the mounting specifics for the Station's antenna. Ventana states that it did not receive a response until August 2021 when the tower owner disclosed that there was a new tower equipment map from 2016 which provided the updated and correct information that Ventana needed in order to proceed with the design and build of the antenna. This updated information has caused Ventana to have to make changes in the antenna design and also to have to file a minor modification application to address changes in the antenna design.¹¹ All of this has further delayed completion of the Station's displacement facilities.

Ventana is confident that it can complete construction by mid-January 2022. Ventana states that grant of its Requests is in the public interest because it will allow the Station to finish the build-out of its displacement facility and allow the Station to return to the air and once again serve its viewers.

Discussion. Upon review of the facts and circumstances presented, we find that Ventana's request for extension of the Station's license to March 1, 2022, 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. W45DX-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 equipment manufacturing and construction delays, most recently by an issue involving obtaining important information necessary to proceed with construction from the owner of the Station's 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.

We remind Ventana that, pursuant to the Reimbursement Expansion Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs reasonably incurred as a result

¹⁰ See LMS File No. 0000053166.

¹¹ See LMS File No. 0000151607

of the reorganization of broadcast television spectrum.¹² Please note, however, that additional expenses incurred, such as those resulting from changes in a Station's plans to construct their displacement facilities that are unrelated to the displacement, may not be eligible for reimbursement from the Fund.

We further remind Ventana that the deadline for submitting final expense documentation for reimbursement for the Stations is September 5, 2022.¹³ Thus, we strongly encourage Ventana to diligently to submit eligible invoices as soon as practicable to improve the likelihood that there will be sufficient funds available to reimburse the Station for its legitimate expenses.

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 W45DX-D, Atlanta, Georgia **IS EXTENDED** to March 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. 0000151607) for W45DX-D, Atlanta, Georgia **IS TOLLED** to March 1, 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.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

¹² 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).

¹³ See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (IATF/MB 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 second half of the transition period; and 3) September 5, 2022 for all other participants in the reimbursement program).

¹⁴ 47 CFR §§ 74.15(f) and 74.763(c).