



Federal Communications Commission  
Washington, D.C. 20554

March 30, 2022

JBS, Inc.  
708-C Thimble Shoals Blvd.  
Suite 704  
Newport News, VA 23606  
[NEALROSENBAUM@GMAIL.COM](mailto:NEALROSENBAUM@GMAIL.COM)  
(via electronic mail)

Re: Request for Reinstatement and  
Extension of License and Silent  
Authority Under Section 312(g)  
and Application for Extension  
of Digital Construction Permit  
WJHJ-LP, Newport News, etc.,  
VA  
LMS File Nos. 0000163461 and  
0000179196  
Facility ID No. 35137

Dear Licensee:

This letter concerns the requests to reinstate and extend license, extend silent authority, and provide waiver of the tolling rules, as amended (Requests), filed by JBS, Inc. (JBS) licensee of low power television (LPTV) station WJHJ-LP, Newport News, Virginia (WJHJ-LP or Station). For reasons set forth below, we grant JBS's Requests, waive all applicable rules, reinstate and extend the Station's license and silent authority and toll the Station's digital construction permit to May 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."<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

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<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).

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 (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>

Requests for additional time to construct LPTV facilities are subject to the Commission’s tolling provisions of section 73.3598(b) of the Rules.<sup>6</sup> The Commission’s tolling provisions provide that a construction permit deadline may be tolled under specific circumstances such as acts of God, delays due to administrative or judicial review, or construction that is delayed by any cause of action pending before a court of competent jurisdiction relating to any necessary local, state, or federal requirement for the construction or operation of the station, including any zoning or environmental requirement.<sup>7</sup> If a station does not qualify for tolling under these criteria, good cause may exist to waive the Commission’s tolling provisions and tolling may still be warranted where the licensee can demonstrate that “rare and

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<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*).

<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 § 73.3598(b).

<sup>7</sup> *Id.*

exceptional circumstances” prevented construction by the station’s construction permit expiration date.<sup>8</sup>

*Requests.* As part of the Incentive Auction and repacking process, WJHJ-LP’s analog channel 39 was reallocated for wireless broadband use. As a result, WJHJ-LP went silent on April 15, 2020 and is no longer able to operate on its analog channel.<sup>9</sup> WJHJ-LP’s displacement application for channel 34<sup>10</sup> was granted on February 17, 2019 and, because the Station was still operating in analog, the displacement construction permit (Displacement CP) was assigned an expiration date of July 13, 2021.<sup>11</sup> On April 29, 2021, the Station was granted relief under section 312(g), its license was reinstated and extended and its the Displacement CP was extended to January 10, 2022.<sup>12</sup>

Since the grant of section 312(g) relief and extension of the Displacement CP in April 2021, JBS states that it has conducted extensive discussions with local land use authorities and the contractor that represents the Station’s tower owner and confirmed that no building permits were required for construction. JBS has been working with the tower owner to obtain a Notice to Proceed (NTP) with construction and has provided all necessary information except for the submission of a Class 4 rigging plan for the antenna installation. The rigging contractor has yet to supply such a plan and JBS is continuing to work with the contractor to expedite the process. Meanwhile, JBS reports that the transmitter for the Station’s displacement facilities has been ordered and paid for and JBS is expecting delivery shortly. JBS notes that installation of the transmitter will need to be coordinated with the installation of the Station’s antenna. JBS states that the electrical and HVAC work for the transmitter site has been paid for and is in process of being completed. JBS estimates that it will be able to complete the remaining construction tasks and begin operations of the Station’s displacement facilities by the end of April 2022.

JBS concludes that grant of its requests for relief would serve the public interest by helping to assure that the Station completes construction of its digital facilities so that it can recommence broadcast service to viewers in Newport News and the surrounding area in digital. Therefore, JBS requests reinstatement and extension of the Station’s license and silent authority pursuant to the equity and fairness provision of section 312(g), waiver of the tolling rules, and tolling of the Displacement CP.

*Discussion.* Upon review of the facts and circumstances presented, we find that JBS’s request for reinstatement and extension of the Station’s license 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

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<sup>8</sup> See 1998 Biennial Regulatory Review -- *Streamlining of Mass Media Applications, Rules, and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17542, para. 42 (1999) (*Streamlining MO&O*) (recognizing that there may be “rare and exceptional circumstances” beyond the control of the licensee that do not fall under the tolling provisions, but “which would warrant the tolling of construction time.” The Commission concluded that in such “limited circumstances,” it would entertain requests for waiver of its “strict tolling provisions”); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown).

<sup>9</sup> See LMS File No. 0000112668.

<sup>10</sup> See LMS File No. 0000054621.

<sup>11</sup> See 47 CFR § 74.788(a).

<sup>12</sup> See LMS File Nos. 0000143967 and 0000139629.

that were displaced by the Incentive Auction, pursued new displacement channels, and those efforts were delayed for circumstances beyond their control. WJHJ-LP was displaced by the Incentive Auction and repacking process. JBS diligently pursued construction of its displacement facilities, but its efforts have been hindered by construction delays. For similar reasons, we find that JBS has met the standard for waiver of the tolling rules and tolling of its Displacement CP, as well as extension of the Station's silent authority. Grant of JBS's Requests will permit the Station to complete its transition to digital and once again serve its viewers on its digital displacement channel. Although JBS requests reinstatement and extension of the Station's license and tolling of the Displacement CP to July 10, 2022, we find that our grant of relief through May 1, 2022, is appropriate based on the record in this case and so that the Commission can continue to monitor the progress of construction.

We remind JBS 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 of the reorganization of broadcast television spectrum.<sup>13</sup> Please note, however, that additional expenses incurred, such as those resulting from changes in a Station's plans to construct its displacement facilities that are unrelated to the displacement, may not be eligible for reimbursement from the Fund.

We further remind JBS of the deadline for submitting final expense documentation for reimbursement for the Station is September 6, 2022.<sup>14</sup> **We caution JBS that we do not anticipate allowing extensions of the final September 6, 2022 invoice filing deadline. A station's failure to complete any remaining construction in a timely manner and to make final submissions by the assigned invoice filing assignment deadline could preclude that station from receiving full reimbursement.** Unobligated amounts in the Fund must be rescinded to Treasury and the Commission staff (with the support of the Fund Administrator) must have sufficient time to fully process all reimbursement requests and complete close-out procedures prior to July 3, 2023.<sup>15</sup> The Fund Administrator will initiate close out procedures for any entity that has failed to initiate interim close-out procedures by the September 6, 2022 invoice filing deadline. Any unused allocations made to that entity's account will be returned to the Fund and made available for allocation to other program participants or rescinded to Treasury. Thus, we strongly encourage the Stations to diligently pursue satisfaction of the current deadlines and we encourage JBS to submit eligible invoices as soon as practicable.

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<sup>13</sup> 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).

<sup>14</sup> See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (IATF/MB 2020) (setting three filing deadlines for submission of all remaining repack invoices: for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period, the deadline for submitting all remaining invoices is October 8, 2021; the deadline for entities assigned completion dates in the second half of the transition period is March 22, 2022; and the deadline for all other participants in the reimbursement program is September 6, 2022).

<sup>15</sup> See *id.* at 11277-78, para 13.

Accordingly, we find that in order to promote fairness and equity the request filed JBS, Inc. **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,<sup>16</sup> and the license and silent authority for WJHJ-LP, Newport News, Virginia, **ARE REINSTATED AND EXTENDED** to May 1, 2022. In addition, the request for waiver of the tolling rules of JBS, Inc. **IS GRANTED** and the expiration date of the construction permit (LMS File No. 0000054621) for WJHJ-LP, Newport News, Virginia, **IS TOLLED** to May 1, 2022. While we anticipate this will be the Stations' final requests for tolling and section 312(g) relief, we note that another request for extension of the Station's license under the equity and fairness provision of section 312(g)<sup>17</sup> and/or tolling of a Station's construction permit under section 73.3598(b) of the Commission's rules<sup>18</sup> will not be viewed favorably unless accompanied by a showing that completion of the Station's displacement facilities was prevented by additional compelling circumstances. JBS 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): David Burns, Esq.

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<sup>16</sup> 47 CFR §§ 74.15(f) and 74.763(c).

<sup>17</sup> 47 U.S.C. § 312(g).

<sup>18</sup> 47 CFR § 73.3598(b). A station 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. *See Streamlining MO&O*, 14 FCC Rcd at 17536, para. 42.