



New York Broadband LLC

New York Spectrum Holding Company, LLC  
Station WAGC, Atlanta, GA  
Facility ID 190105

#### Request for 312g Legal STA

New York Spectrum Holding Company, LLC ("NYSHCo") is the licensee of WAGC-LD, Atlanta, GA (Facility ID 190105). By this request, NYSHCo amends its pending request for extension silent STA (FCC File No. LMS 0000107490) and seeks waiver of the 12-month off air provision of 47 U.S.C. §312(g).

WAGC-LD went silent on September 12, 2019 in responding to the FCC notification that WAGC Channel 14 was interfering with WSKC on September 11, 2019 due to the LPTV repack services.

New transmitting equipment for the new Channel 15 is ordered but the station is unlikely be completed by September 2020 due to equipment manufacturing schedule for station integration and resumption of broadcasting on time to meet the one-year silent deadline. From our understanding, the equipment delay is largely due the volume of manufacturing hardware for the LPTV repack affected by the on-going health pandemic.

Section 312(g) provides that "If 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 if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness." 47 U.S.C. § 312(g).

In the *Incentive Auction Report and Order*, the Commission explained that it would be receptive to requests for waivers of Section 312(g) as a result of the repacking process, "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>1 2</sup> The Media Bureau expanded upon this position in the *Post-Incentive Auction Procedures Public Notice*, explaining that in considering requests for waiver of Section 312(g), 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."<sup>3</sup> Similarly, in a public notice reminding

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<sup>1</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order,

<sup>2</sup> FCC Rcd 6567 ¶ 585 (2014), *aff'd*, *Nat'l Assoc. of Broadcasters, et al v. FCC*, 789 F.3d 165 (D.C. Cir. 2015)

<sup>3</sup> *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd. 858 ¶ 49 (IATF/MB 2017).



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repacked stations of their post-auction deadlines, the Media Bureau and the Incentive Auction Task Force stated "In considering requests to extend or reinstate a license, we 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."<sup>4</sup>

WAGC-LD's silence is due to a demand by WSKC to cease broadcasting services on Channel 14 on September 11, 2019, NYBB could not resume transmission due to unavailability of new equipment. Once shipment is received at the tower site, replacement equipment will be installed and checked out.

Considering the foregoing, NYSHCo respectfully requests an extension of the waiver of Section 312(g) to allow it to remain off the air until the Channel 15 station completes the build and resumes broadcasting.

Please direct any question to the point of contact below.

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<sup>4</sup> *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, MB Docket No. 16-306, GN Docket No. 12-268, DA 18-884 n. 25 (MB/IATF Aug. 27, 2018) (citing *Christian Broadcasting of East Point, Inc.*, 30 FCC Rcd. 13975, 13976-77, para. 4 (2015)).