

Request for Engineering Special Temporary Authority and 47 U.S.C. § 312(g) Relief  
WTXX-LD, New Haven, CT, Facility ID No. 31453

HC2 Station Group, Inc. (“HC2”), licensee of Low Power Television (“LPTV”) station WTXX-LD, New Haven, CT (Fac. ID No. 31453) (“WTXX”), hereby respectfully requests an Engineering Special Temporary Authority (“STA”) and a waiver under the provisions of Section 312(g) of the Communications Act of 1934, as amended (the “Act”), so that the license for WTXX will not be considered expired but instead will be reinstated and extended to “promote equity and fairness,” consistent with Commission processing guidelines and relevant precedent.<sup>1</sup> HC2 demonstrates below that WTXX qualifies for such relief.

**Displacement**

HC2 acquired the license for WTXX on March 1, 2018.<sup>2</sup> As reflected in HC2’s original request for an Engineering STA (FCC File No. 00000121167), WTXX is a displaced station. While the Commission has granted WTXX a displacement construction permit for operations on channel 29 (FCC File No. 0000053148), HC2 has not yet constructed that displacement facility. In the interim, HC2 reached an agreement with Connecticut Public Broadcasting, licensee of WEDW, Bridgeport, Connecticut (Facility ID No. 13594) (“WEDW”), to permit WTXX to share the facilities of WEDW by operating on channel 21. The Commission’s LMS system was not able to accommodate an application to permit such interim channel-sharing, and the Commission’s staff advised HC2 to apply for an engineering STA to authorize the use of WEDW’s facilities in the period before construction of WTXX’s ultimate displacement facility is completed.

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<sup>1</sup> 47 U.S.C. § 312(g).

<sup>2</sup> File No. BALDTL-20190214AAB.

### **A Waiver of Section 312(g) Is Warranted in this Instance**

Section 312(g) of 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>3</sup> In the *Incentive Auction Report and Order*, 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>4</sup> Further, in the *Post-Incentive Auction Procedures PN* the Media Bureau stated that, in considering requests to extend or reinstate a station’s license under Section 312(g) to promote fairness and equity, it would “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>5</sup>

Those factors apply here. Because WTXX was displaced, the repacking process adversely affected its operations for reasons beyond its control. The Commission has granted Section 312(g) waivers for LPTV stations that, like WTXX, have been silent for more than one

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<sup>3</sup> 47 U.S.C. § 312(g).

<sup>4</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6806-07, para. 585 (2014).

<sup>5</sup> *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 (rel. Jan. 27, 2017); *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 (rel. Aug. 27, 2018) (citing *Christian Broadcasting of East Point, Inc.*, 30 FCC Rcd. 13975, 13976-77, para. 4 (2015)).

year because of repacking and displacement issues.<sup>6</sup> Given the similar circumstances of this case, similar treatment should be afforded to WTXX.<sup>7</sup>

For the reasons stated above, HC2 respectfully requests an Engineering STA and waiver of Section 312(g) of the Act based on a finding of fairness and equity. These actions would serve the public interest by allowing WTXX to complete construction of its displaced channel 29 facilities and in the interim continue serving its viewers through shared channel operations with WEDW on channel 21.

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<sup>6</sup> See, e.g. *Request for Extension of License and Silent Authority Under Section 312(g), K45IE-D, Vail, CO*, Facility ID No. 128356, LMS File Number 0000116748 (Vid. Div., MB rel. July 7, 2020); *Request for Reinstatement and Extension of License and Silent Authority Under Section 312(g), KZCS-LP, Colorado Springs, CO, Facility ID No. 67544*, Letter, LMS File No. 0000088135 (June 17, 2020); *Request for Reinstatement and Extension of License and Silent Authority Under Section 312(g), WXNY-LD, New York, NY, Facility ID No. 29231*, Letter, LMS File No. 0000116425 (Vid. Div., MB rel. June 24, 2020).

<sup>7</sup> *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965) (establishing the basic proposition that the Commission must treat similarly-situated applicants similarly or explain the differential treatment).