



Federal Communications Commission  
Washington, D.C. 20554

July 19, 2021

New York Spectrum Holding Company, LLC  
Michael Do  
12012 Sunrise Valley Drive  
Suite 115  
Reston, VA 20191  
[michael.do@nybbsat.com](mailto:michael.do@nybbsat.com)

Re: Request for Extension of  
License and Silent Authority Under  
Section 312(g)  
KVHD-LD, Los Angeles, CA  
LMS File No. 0000152919  
Facility ID No. 67901

Dear Licensee:

This concerns the above-referenced request to further extend silent authority and license (Request) filed on July 15, 2021, by New York Spectrum Holding Company, LLC (NYSHC), licensee of low power television station KVHD-LD, Los Angeles, California (KVHD-LD or Station). For reasons set forth below, we grant the request, and extend the Station's silent authority, waive all applicable rules, and extend the Station's license to September 30, 2021.

*Background.* Section 312(g) of the Communications Act of 1934 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

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<sup>1</sup> 47 U.S.C. § 312(g).

<sup>2</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6806-07, para. 585 (2014) (*Incentive Auction R&O*). 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).

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, the Bureau would “consider a request for extension or reinstatement pursuant to section 312(g) of the Communications Act and a request for waiver of the Commission rule.”<sup>5</sup>

*Request.* As part of the incentive auction and repacking process, KVHD-LD’s channel 40 was reallocated for use by wireless operator T-Mobile USA (T-Mobile). As a result, KVHD-LD has been silent since April 12, 2019. KVHD-LD timely filed a displacement application requesting a construction permit for channel 3 in the Commission’s displacement application filing window for low power television stations that were displaced by the incentive auction and repacking process.<sup>6</sup> KVHD-LD’s displacement application for channel 3 was deemed mutually exclusive with another application filed by KRCA License, LLC (KL) for the same channel for its station KSGA-LD, Los Angeles, California (KSGA-LD), and placed in MX group 25.<sup>7</sup> The parties entered into a settlement agreement whereby NYSHC agreed to dismiss its application and channel share with KL on KSGA-LD’s displacement channel facilities. The settlement was approved and the stations filed their channel sharing agreement which was approved on June 25, 2019. KVHD-LD was previously granted extensions of license and its license most recently extended to July 19, 2021.<sup>8</sup>

Since the grant of its settlement and channel sharing agreement for channel 3, NYSHC states that it has been awaiting construction of the shared facilities to be hosted by KSGA-LD. NYSHC reports that, due to a significant commercial dispute between NYSHC and the owner of the shared tower, the owner recently refused to enter into a lease with either KL or NYSHC. As reported by KL in its recent request for extension of license and silent authority, granted on July 13, 2021,<sup>9</sup> prompt efforts were taken to

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<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, 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*, 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*, Public Notice, 33 FCC Rcd 1234, 1237, para. 7 (IATF/MB 2018) (*Special Displacement Window PN*).

<sup>5</sup> *Id.* at 1237, 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 LMS File No. 0000054274; *Special Displacement Window PN; Incentive Auction Task Force and Media Bureau Extend Post Incentive Auction Special Displacement Window Through June 1, 2018*, Public Notice, 33 FCC Rcd 3794 (IATF/MB 2018).

<sup>7</sup> See LMS File No. 0000052735.

<sup>8</sup> See LMS File Nos. 0000079920, 0000117662 and 0000131337.

<sup>9</sup> See LMS File No. 0000150147.

locate a new tower site and adjust its equipment and construction needs. NYSHC and KL were able to negotiate a leasing arrangement with a new tower owner located in Claremont, California. However, the change in tower location required modification of the shared facility's construction permit. The modification application for the shared facility was granted on June 23, 2021.<sup>10</sup> NYSHC is now awaiting completion of the shared facilities so it can resume operations. Because KVHD-LD was displaced off of channel 40 after notification from T-Mobile, it may not resume operations on that channel while it awaits completion of the shared facilities. NYSHC has been informed by KL that it believes that the Station will be constructed and operational by approximately September 13, 2021.

*Discussion.* Upon review of the facts and circumstances presented, we find that NYSHC's request for extension of license and silent authority pursuant to section 312(g) to September 30, 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 in the public interest. Consistent with the public interest, we will provide section 312(g) relief to displaced LPTV and TV translator stations that are forced off the air by circumstances beyond their control. NYSHC was displaced by the incentive auction and diligently pursued a new shared digital displacement. Due to circumstances outside its control, most notably the last-minute loss of its shared tower site, KVHD-LD has been unable to return to the air. Grant of relief will enable the Station to return to the air and once again serve its viewers.

We remind NYSHC 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>11</sup> 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 NYSHC that the deadline for submitting final expense documentation for reimbursement for the Station is September 5, 2022.<sup>12</sup> Thus, we strongly encourage the Station to diligently pursue completion of the current deadlines to improve the likelihood that there will be sufficient funds available to reimburse NYSHC for its legitimate expenses, and we encourage NYSHC to submit eligible invoices as soon as practicable.

Accordingly, we find that in order to promote fairness and equity the request filed New York Spectrum Holding Company, LLC **IS HEREBY GRANTED**, the applicable Commission rules **ARE**

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<sup>10</sup> See LMS File No. 0000150197. The Station's construction permit expires on March 26, 2022.

<sup>11</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>12</sup> 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).

**WAIVED**,<sup>13</sup> and the license and silent authority for KVHD-LD, Los Angeles, California, **IS EXTENDED** to September 30, 2021. We note that another request for extension of KVHD-LD's license under section 312(g) will not be favorably viewed unless accompanied by a showing and written support that completion of the station's permanent displacement facilities was prevented by additional compelling circumstances and further extension is warranted under the under the equity and fairness provision of section 312(g). NYSHC must also include with any such request 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): Kathleen Victory, Esq.

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<sup>13</sup> 47 CFR §§ 74.15(f) and 74.763(c).