



Federal Communications Commission  
Washington, D.C. 20554

May 31, 2019

New York Spectrum Holding Company, LLC  
1580 Lincoln St.  
Suite 520  
Denver, CO 80203

Re: Request for Extension of License and  
Silent Authority Under Section 312(g)  
WTXI-LD, Miami, FL  
LMS File No. 0000063795  
Facility ID No. 168482

Dear Licensee:

This concerns the above-referenced request to extend silent authority and license (Request) filed on June 1, 2018, and amended on May 28, 2019, by New York Spectrum Holding Company, LLC (NYSHC), licensee of low power television station WTXI-LD, Miami, Florida (WTXI 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 for a period of 180 days from the date of this letter.

*Background.* Section 312(g) 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 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 station's 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

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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*, Report and Order, 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*, 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)).

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, WJAN-CD, Miami, Florida, was reassigned to post-auction channel 33 and assigned to post-auction transition phase 2 with a phase transition completion date of April 12, 2019. WJAN-CD subsequently requested to change its transition date explaining that it would facilitate T-Mobile USA’s, an incentive auction winning 600 MHz wireless licensee, deployment of new, competitive wireless broadband service to people in Miami.<sup>6</sup> The Media Bureau granted WJAN-CD’s request and WJAN-CD transitioned to channel 33 on June 1, 2018.

NYSHC explains that WJAN-CD’s transition displaced WTXI’s digital operations, that it discontinued operations, and went silent on June 1, 2018.<sup>7</sup> NYSHC maintains that because of the WJAN-CD phase change it had limited advance notice of the displacement date. WTXI timely filed a displacement application requesting a construction permit for channel 18 on April 20, 2018, in the Commission’s displacement application filing window for low power television stations that were displaced by the incentive auction and repacking process (Special Displacement Window).<sup>8</sup> The Media Bureau determined that WTXI’s displacement application for channel 18 was mutually exclusive with another application filed by KRCA License LLC, Debtor-In-Possession (KRCA), licensee of Station W17DG-D, Miami, Florida. As a result, the Station was placed in MX Group 71 (MX 71) along with W17DG-D.<sup>9</sup> An opportunity to resolve mutual exclusivity through settlement or technical modification of the engineering proposals was provided from October 30, 2018 to January 10, 2019 (the Settlement Window). NYSHC submitted a settlement agreement with KRCA to resolve the mutual exclusivity among their applications. Pursuant to the settlement agreement, WTXI agreed to dismiss its application and to channel share with W17DG-D on W17DG-D’s newly authorized displacement channel. The settlement was granted, WTXI’s application was dismissed, W17DG-D’s application granted and WTXI subsequently filed an application and was granted a construction permit to channel share with W17DG-D.<sup>10</sup>

In its May 28, 2019, supplement to its Request, NYSHC asks that the Commission extend WTXI’s license pursuant to the provisions of Section 312(g) of the Communications Act of 1934 (Section

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<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 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. 0000035557.

<sup>7</sup> See LMS File No. 0000054953.

<sup>8</sup> See LMS File No. 0000053159; *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>9</sup> *Incentive Auction Task Force and Media Bureau Announce Settlement Opportunity for Mutually Exclusive Displacement Applications Filed During the Special Displacement Window: October 30, 2018 to January 10, 2019*, Public Notice, DA 18-1108, (MB/IATF, rel. Oct. 30, 2018).

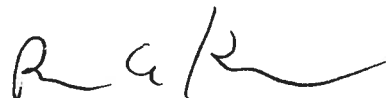
<sup>10</sup> See LMS File No. 0000068071.

312(g)) finding that equity and fairness support such a decision. NYSHC argues that WTXI's continued silence is a result of circumstances beyond its control and that Commission precedent supports extension of the Station's license pursuant to Section 312(g). Specifically, NYSHC argues that WTXI's silence is due to the early activation of WJAN-CD on June 1, 2018 and the delayed delivery of new equipment hindering implementation of the shared facilities and the inability to get a tower crew to install the new shared antenna before the Section 312(g) deadline. NYSHC states that WTXI was originally on in-core channel 33 in a market that was not scheduled to transition until phase 2 but the Commission granted WJAN-CD's phase change request allowing it to transition to Channel 33 in "phase zero" on June 1, 2018, displacing WTXI well in advance of the anticipated transition date. NYSHC states that it was unable to find another channel in the congested Miami market on which to operate in the interim. NYSHC requests a waiver of Section 312(g) to allow it to remain off the air until the shared displacement facility with W17DG-D is completed. NYSHC states that it has been advised by KRCA that the antenna and transmitter for the shared displacement facility are expected to be delivered to the Miami tower location by the late June and installation is expected to occur by mid- to late July.

*Discussion.* Upon review of the facts and circumstances presented, we find that NYSHC's Request to extend the WTXI's silent authority, waive all applicable rules, and extend the Station's license for a period of 180 days from the date of this letter 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 related to the incentive auction and repacking. WTXI was authorized to operate on an in-core channel in a market that pursuant to the Transition Scheduling Plan would have been displaced in phase 2 with a phase completion deadline in April 2019. However, WJAN-CD achieved its transition to its post-auction channel in June 2018 pursuant to the grant of a phase change request, and WTXI was displaced much earlier than expected. As described above, due to circumstances outside its control, WTXI has been unable to return to the air because its displacement application for a channel in Miami, a market with limited channel availability, was mutually exclusive and NYSHC was only recently able to resolve that mutual exclusivity by entering into a settlement agreement to channel share with the other station. The stations have diligently pursued implementation of their shared facility but completion has been prevented due to equipment delays. NYSCH believes the stations will be able to implement the shared facility and WTXI will be able to return to the air in a few months.

Accordingly, we find that in order to promote fairness and equity the request filed by New York Spectrum Holding Company, LLC **IS HEREBY GRANTED**, the applicable Commission rules ARE **WAIVED**,<sup>11</sup> and the license for WTXI-LD, Miami, Florida **IS EXTENDED** for 180 days from the date of this letter.

Sincerely,



Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc: Kathleen Victory, Esq. – Counsel for NYSHC

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<sup>11</sup> 47 CFR §§ 74.15(f) and 74.763(c)