



Federal Communications Commission  
Washington, D.C. 20554

February 5, 2021

New York Spectrum Holding Company, LLC  
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Re: Request for Extension of  
License and Silent Authority Under  
Section 312(g)  
WAGC-LD, Atlanta, GA  
LMS File No. 0000135293  
Facility ID No. 190105

Dear Licensee:

This concerns the above-referenced request to further extend silent authority and license (Request) filed on February 5, 2021, by New York Spectrum Holding Company, LLC (NYSHC), licensee of low power television station WAGC-LD, Atlanta, Georgia (WAGC 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) 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 repacking process, WAGC’s channel 14 was displaced by WSKC-CA, Atlanta, Georgia that was repacked to channel 14. As a result, WAGC has been silent since September 12, 2019.<sup>6</sup> WAGC timely filed a displacement application requesting a construction permit for channel 15 and that application was granted on September 14, 2018.<sup>7</sup> Since that time, NYSHC states that it has been diligently constructing its displacement facilities. NYSHC represents that new transmitting equipment for the new channel 15 facilities has been purchased but not yet delivered. NYSHC states that delivery has been delayed due to issues finalizing the new lease and access with the Station’s tower owner. NYSHC states that delivery has also been delayed due to residual delivery delays due to significant slow-downs during the COVID-19 pandemic. NYSHC reports that progress has been made with the landlord and it is working with a consortium of other stations to develop a master lease with the tower owner. NYSHC states that the tower owner has tentatively agreed to facilitate access to the Station’s tower and implementation of the channel 15 facilities. NYSHC expects to be able to complete construction and for the Station to return to the air “in the next three months.” Therefore, NYSHC seeks further extension of the Station’s license and silent authority pursuant to section 312(g) to promote equity and fairness. WAGC was previously granted an extension of license and its license extended to February 17, 2021.<sup>8</sup>

*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) 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

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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 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. 0000081290.

<sup>7</sup> See LMS File No. 0000054666.

<sup>8</sup> See LMS File No. 0000107490.

displaced LPTV and TV translator stations that are forced off the air by circumstances beyond their control. WAGC was displaced by the incentive auction and diligently pursued a new displacement channel. Due to circumstances outside its control, WAGC has been unable to return to the air prior to the one-year anniversary of going silent.

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>9</sup> and the license and silent authority for WAGC-LD, Atlanta, Georgia, **IS EXTENDED** for 180 days from the date of this letter.

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Kathleen Victory, Esq.

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<sup>9</sup> 47 CFR §§ 74.15(f) and 74.763(c).