

Request for Special Temporary Authority and 47 U.S.C. § 312(g) Relief  
W28ES-D, New York, NY, Facility ID No. 130477

HC2 Station Group, Inc. (“HC2”), licensee of Low Power Television (“LPTV”) station W28ES-D, New York, NY (Fac. ID No. 130477) (“W28ES”), hereby respectfully requests Special Temporary Authority (“STA”) to remain silent, 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 W28ES 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 W28ES qualifies for such relief.

**Displacement**

HC2 acquired the license for W28ES on September 11, 2019.<sup>2</sup> The station went silent on the same day and requested an STA to remain silent.<sup>3</sup> HC2 was aware that Class A TV station WEPT-CD, Newburgh, New York, Facility ID No. 30429 (“WEPT-CD”), licensed to Venture Technologies Group, LLC, which had been operating on Channel 22, had been assigned to channel 28 in the post-incentive auction repack.<sup>4</sup> W28ES thus would cause impermissible interference into WEPT-CD by remaining on channel 28. Accordingly, on July 6, 2020, HC2 filed a displacement application for W28ES proposing to change from channel 28 to channel 2 due to displacement during the repacking process following the incentive auction.<sup>5</sup> That application was granted on August 17, 2020.

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<sup>1</sup> 47 U.S.C. § 312(g).

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

<sup>3</sup> File No. 0000084217 (granted Oct. 4, 2019).

<sup>4</sup> File No. 0000027751 (granted July 21, 2017).

<sup>5</sup> File No. 0000116969. The new call sign for the facility is W02CY-D.

### **Diligent Efforts**

HC2 has diligently pursued the construction of the displacement facilities for W28ES on channel 2 since obtaining its displacement construction permit in August 2020. Specifically, in anticipation of completing its buildout on channel 2, W28ES intends to operate on a multicast channel of co-owned LPTV station WKOB-LD, channel 2, New York, NY, Facility ID No. 51441 (“WKOB”), located on Trump Tower, while construction of the W28ES permanent channel 2 facilities at Trump Tower are completed. WKOB in turn has a construction permit to move to channel 13 and relocate from the Trump Tower to 1 World Trade Center.<sup>6</sup> When that move is completed (currently estimated to occur in June/July 2021), W28ES will complete the installation of a new directionalized antenna on channel 2 at Trump Tower, replacing WKOB’s current antenna. The timeline for installation of the new channel 2 antenna is late Summer 2021. Through equipment purchases and the negotiation of required tower leases, HC2 has shown diligence throughout this process, and it intends to begin the installation process for both WKOB and W28ES when warmer weather and COVID-19 pandemic conditions permit.

### **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>7</sup> In the

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<sup>6</sup> File No. 0000129472 (granted Dec. 21, 2020).

<sup>7</sup> 47 U.S.C. § 312(g).

*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>8</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>9</sup>

Those factors apply here. Because W28ES was displaced by WEPT-CD, 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 W28ES, have been silent for more

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<sup>8</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>9</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)).

than one year because of repacking and displacement issues.<sup>10</sup> Given the similar circumstances of this case, similar treatment should be afforded to W28ES.<sup>11</sup>

For the reasons stated above, HC2 respectfully requests an STA to remain silent, and reinstatement of its license through a 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 W28ES to complete construction of its displaced channel 2 facilities and continue serving its viewers.

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<sup>10</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>11</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).