

New York Spectrum Holding Company, LLC
Station WAGC, Atlanta, GA
Facility ID 190105

Request for further 312g extension of Silent STA and Request for Tolling of displacement CP

New York Spectrum Holding Company, LLC (“NYSHCo”) is the licensee of WAGC-LD, Atlanta, GA (Facility ID 190105). By this request, NYSHCo requests for further extension of its silent STA (FCC File No. LMS 0000107490 as extended) and seeks further 312(g) waiver and a tolling of its displacement CP.

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. WAGC-LD went silent on September 12, 2019 in response to the FCC notification on September 11, 2019 that WAGC Channel 14 was interfering with WSKC-CA. NYSHCo filed for and received the grant of a displacement CP for Ch. 15 (LMS File No. 0000054666). That CP expires 9/14/2021. The FCC previously granted 312(g) relief but that waiver expires on 8/4/21.

New transmitting equipment for the new Channel 15 has been purchased but still has not be delivered as a result of NYSHCo’s inability to access the authorized tower site. Because the station was displaced and had to go silent due to the interference to WKSA-CA, the station has had no income and NYSHCo has not been able to pay rent at the tower site. As a result, American Tower has steadfastly refused to allow NYSHCo access to the site to install equipment for the displacement facility. Despite good faith efforts, the efforts of the consortium that NYSHCo was working with to put together a nationwide network failed to advance or resolve the WAGC lease issue with American Tower.

Since the last 312(g) extension, NYSHCo has been searching for an alternative site. NYSHCo, at last, has hired a new local engineer – its hiring efforts were delayed due to the pandemic. NYSHCo has entered into a contract with a company for advisory services and for assistance with the installation of the station despite the lingering effects of the pandemic.

NYSHCo’s local engineer has done an exhaustive search of possible alternative sites and NYSHCo, its local engineer, its advisory partner and its consulting engineer are in the process of narrowing site options. NYSHCo’s consulting engineer is conducting studies on which sites are technically suitable and best meet the needs of the station in compliance with the FCC’s rules. Once a final site is determined, and lease negotiations are completed – hopefully by mid to late September/early October, NYSHCo will immediately file a modification application to move to the new site. Once a modification is granted, the equipment will be delivered to the authorized site and NYSHCo anticipates that construction can be completed by mid to late November.

NYSHCo is *very* motivated to complete the preparation of the application for modification of the CP so that it can move to the proposed new site and implement the facility and return to

on air operations.

NYSHCo is also actively trying to sell the station but the inability to implement the existing CP facility has severely hampered its ability to do so.

Section 312(g) provides that “If 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 if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness.” 47 U.S.C. § 312(g).

In the *Incentive Auction Report and Order*, the Commission explained that it would be receptive to requests for waivers of Section 312(g) as a result of the repacking process, “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.”¹ The Media Bureau expanded upon this position in the *Post-Incentive Auction Procedures Public Notice*, explaining that in considering requests for waiver of Section 312(g), 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.”² Similarly, in a public notice reminding repacked stations of their post-auction deadlines, the Media Bureau and the Incentive Auction Task Force stated “In considering requests to extend or reinstate a license, we 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.”³

Considering the foregoing, NYSHCo respectfully requests an extension of the waiver of Section 312(g) to allow it to remain off the air until the Channel 15 station completes the build and resumes broadcasting. NYSHCo also respectfully requests an extension of its Ch. 15 displacement CP to enable it to take the steps outlined above and put the station back on the air.

¹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, FCC Rcd 6567 ¶ 585 (2014), *aff'd*, *Nat'l Assoc. of Broadcasters, et al v. FCC*, 789 F.3d 165 (D.C. Cir. 2015)

² *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd. 858 ¶ 49 (IATF/MB 2017).

³ *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, MB Docket No. 16-306, GN Docket No. 12-268, DA 18-884 n. 25 (MB/IATF Aug. 27, 2018) (citing *Christian Broadcasting of East Point, Inc.*, 30 FCC Rcd. 13975, 13976-77, para. 4 (2015)).