

Request for Extension of 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 an extension of the Special Temporary Authority (“STA”) permitting W28ES to remain silent, and an extension of the associated waiver under the provisions of Section 312(g) of the Communications Act of 1934, as amended (the “Act”) (see FCC File No. 0000142463). HC2 submits that a brief extension of the STA and the Section 312(g) waiver, to and including **February 13, 2022**, is necessary in order to permit W28ES to complete construction of its displacement facilities. As set forth in more detail below, HC2 has made diligent efforts to complete construction in a timely manner, and the brief extension requested herein will help promote equity and fairness, consistent with Commission processing guidelines and relevant precedent, without any adverse effect on other parties.

Displacement

HC2 acquired the license for W28ES on September 11, 2019.¹ The station went silent on the same day and requested an STA to remain silent.² 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.³ 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

¹ File No. BALDTL-20190214AAB.

² File No. 0000084217 (granted Oct. 4, 2019).

³ File No. 0000027751 (granted July 21, 2017).

due to displacement during the repacking process following the incentive auction.⁴ That application was granted on August 17, 2020. Thus, HC2 has had only 13 months to construct the authorized displacement facilities.

Diligent Efforts

HC2 has acted diligently to complete 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 is operating 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 a shared channel 13 facility.⁵ WKOB intends to channel share this facility with Estrella Television station WASA-LD, Port Jervis, New York (“WASA”).⁶ WKOB and WASA intend to relocate from the Trump Tower to One World Trade Center and channel share on a new channel 13 facility. When that move is completed (now estimated to occur by October/November 2021), W28ES will complete the installation of a new directionalized antenna on channel 2 at Trump Tower, thus replacing WKOB’s current channel 2 antenna. The current timeline for installation of the new channel 2 antenna is by no later than February 13, 2022, which is less than 6 months from the current STA expiration date. HC2 has ordered the necessary equipment for the W28ES displacement facilities, including a new Kathrein antenna ordered in October 2020, which has been received in HC2’s warehouse and is ready for

⁴ File No. 0000116969. The new call sign for the facility is W02CY-D.

⁵ File No. 0000129472 (granted Dec. 21, 2020).

⁶ A replacement shared construction permit is being prepared in order to authorize WKOB and WASA to operate the channel 13 facilities on a shared channel basis, which will be submitted shortly.

installation. The existing WKOB transmitter and line will be reused to broadcast the W28ES channel 2 facilities. In addition, with respect to WKOB, HC2 has successfully negotiated a complex tower lease with the New York/New Jersey Port Authority for space at One World Trade Center, which was executed by HC2 on September 20, 2021. HC2 is in possession of a Dielectric Antenna, purchased in September 2020, for the WKOB/WASA shared channel 13 facilities, and a Gates Air transmitter, also purchased in September 2020, is being stored by Gates Air pending HC2's notice to proceed with installation.

HC2 has shown diligence throughout this process, and it will be completing the construction process for both the WKOB and W28ES facilities this autumn as tower crews become available and COVID-19 pandemic conditions permit.

A Continued 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.”⁷ In the *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.”⁸ Further, in the *Post-Incentive Auction*

⁷ 47 U.S.C. § 312(g).

⁸ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6806-07, para. 585 (2014).

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."⁹

Those factors continue to apply in this situation. 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 than one year because of repacking and displacement issues.¹⁰ Given the similar circumstances of this case, and the brief extension period being requested, similar treatment should be afforded to W28ES.

For the reasons stated above, HC2 respectfully requests a brief extension, to and including **February 13, 2022**, of the STA to remain silent and associated waiver of Section 312(g). These actions would serve the public interest by allowing W28ES to complete construction of its displaced channel 2 facilities and continue serving its viewers.

⁹ *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)).

¹⁰ 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)*, WXYN-LD, New York, NY, Facility ID No. 29231, Letter, LMS File No. 0000116425 (Vid. Div., MB rel. June 24, 2020).