

New York Spectrum Holding Company, LLC
Station WTBT-LD, Tampa, FL
Facility ID 168481
Request for Extension of Silent STA and Waiver of 47 U.S.C. §312(g)

**REQUEST FOR EXTENDED SILENT STA AND LICENSE/WAIVER OF 47 U.S.C. §312(G)/
CORRECT DATE OF STATION SILENCE**

New York Spectrum Holding Company, LLC (“NYSHCo”) is the licensee of WTBT-LD, Tampa, FL (Facility ID 168481). By this request, NYSHCo requests further extension of its silent STA (FCC File No. LMS 0000120535) and seeks a Section 312(g) waiver. As the Commission was previously informed WTBT-LD first went silent on July 20, 2020.¹ WTBT-LD’s most recent waiver/Silent STA expired on July 20, 2021, and on July 12, 2021, NYSHCo filed an application for legal STA which sought to extend that authorization, File No. 0000152232. Subsequently, NYSHCo was informed by FCC staff that it should instead file a further request for STA to remain silent, and it is now doing so. Due to the fact that NYSHCo did, in fact, file a request to address this matter prior to the former STA’s expiration, and for the reasons set forth herein, NYSHCo requests, to the extent necessary, reinstatement and extension of the WTBT license.

Since WTBT-LD’s licensed Channel 45 is in the wireless duplex gap, the absolute shut down date for operation on Channel 45 was in summer 2020 rather than July 2021. In preparation for that shutdown, NYSHCo filed for and was granted a displacement construction permit for modified facilities on Channel 8. That construction permit expires September 11, 2021. While NYSHCo has made progress toward implementation, delays beyond its control have delayed completion of construction.

Specifically, NYSHCo has experienced prolonged, slow responses to its attempt to obtain the necessary items from manufacturers/vendors such as Alive and Hitachi. Much of this delay can be attributed to disruptions due to COVID-19. The pandemic has resulted in both limited availability of personnel and delays in delivery of component parts, both of which have resulted in widespread manufacturing delays well beyond the control of customers ordering equipment. Additionally, delivery of such equipment as NYSHCo could obtain has been further delayed due to an ongoing site access dispute with landlord ATC. These outstanding issues and the ability to resolve them have been further complicated by the sudden departure of broadcast engineers formerly responsible for the site, accompanied by the hiring of new engineers without the same level of familiarity with the site.

At the same time that it has been endeavoring to move the construction process forward, NYSHCo has also entered into an asset purchase for the sale of the station to Major Market Broadcasting of Florida, Inc. (“Major Market”), and the parties filed an application for consent to assignment of the station license on August 2, 2021, File No. 0000155003. That application is now pending and rapidly approaching the date on which it may be granted.

¹ Because of issues related to LMS, this filing states that the silence date is the same as the filing date, but July 20, 2020 is the correct date.

The proposed Buyer will assist with the final implementation of the construction permit, and it has formulated definite plans for doing so. Indeed, Major Market has already begun that process. Currently, Major Market is finalizing plans for a new tower site as an alternative to the original WTBT-LD site, and this plan will enable the station to get around the ongoing difficulties with ATC and move forward with construction. Major Market further has engaged an RF engineer to perform mapping of the new frequency pattern and will assist with rapid preparation of an application for modification of construction permit that will specify the new site. Additionally, in anticipation of the proposed assignment of license, Major Market has placed equipment orders with its own vendors to supply the new antenna and transmitter equipment to be used in construction of the facilities either for itself or for the use of NYSHCo pending action on the assignment application. It is NYSHCo's understanding that Major Market also has instructed a crew to standby to carry out the station installation once FCC approval of the modified construction permit is granted and the new equipment arrives.

NYSHCo believes that all of the efforts which have now been undertaken enable the completion of WTBT-LD's construction and commencement of operation with new facilities within the next three months. Such operation will serve the public interest, whereas denial of the requested extension just as WTBT-LD is on the brink of being able to resume operation would be contrary to the public interest and fundamental fairness.

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."² 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."³ Similarly, in a public notice reminding repacked stations of their post-auction deadlines, the Media Bureau and the Incentive Auction

² *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)

³ *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).

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.”⁴

It is clear in the instant case that WTBT-LD was, in fact, involuntarily forced to go dark and remain dark because of the television repacking process which required a change in channels. Moreover, while the station did receive a construction permit for modified facilities, because of ongoing issues related to the COVID-19 pandemic, which adversely affected not only finished equipment but also both the personnel and the supply chain for raw materials necessary to manufacture, as well as the ability to deliver and the personnel to install that equipment, NYSHCo has been unable to pull together the necessary resources to complete construction. Added to those difficulties were issues with the landlord, the resolution of which also was complicated by COVID-19 and its restrictions on in-person meetings and work, and which also was not entirely within NYSHCo’s control. Because of these novel and once-in-a-lifetime, if not once in several generations, circumstances, fairness and equity do indeed dictate a license extension or reinstatement and waiver. Moreover, the interests of the residents of the Tampa service area also require that a station which is so close to being able to resume service, and has definitive plans to enable it to do so, be granted a further extension.

Now, however, NYSHCo has entered into an agreement which will make it possible for WTBT-LD’s facilities in its new channel to be constructed and placed into operation in the immediate future. Cutting off the ability to move forward with this plan, especially when it is on the brink of fulfillment, because of delays that ultimately were beyond NYSHCo’s control clearly would be both inequitable and contrary to the interests of the viewers of WTBT-LD.

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 8 station completes the build and resumes broadcasting.

⁴ *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)).