



Federal Communications Commission
Washington, D.C. 20554

January 5, 2022

New York Spectrum Holding Company, LLC
Michael Do
12020 Sunrise Valley Dr.
Suite 115
Reston, VA 20191
michael.do@nybbsat.com
(via electronic mail)

Re: Request for Reinstatement and
Extension of License and Silent
Authority Under Section 312(g)
WTBT-LD, Tampa, FL
LMS File No. 0000158673,
0000160180, and 0000163714
Facility ID No. 168481

Dear Licensee:

This concerns the above-referenced request filed by New York Spectrum Holding Company, LLC (NYSHC) to reinstate and extend license and silent authority (Request) of low power television station WTBT-LD, Tampa, Florida (WTBT-LD or Station). For reasons set forth below, we grant the request, waive all applicable rules, reinstate and extend the Station's license, and extend silent authority to February 28, 2022.

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."¹ 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."² Further, in the *Post-Incentive Auction Procedures PN* the Media Bureau

¹ 47 U.S.C. § 312(g).

² *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.*, 23 FCC Rcd 603, 617, para. 27 (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.*, 21 FCC Rcd 14259 (2006); *Community Bible Church*, 23 FCC Rcd 15012, 15014 (MB 2008); *Mark Chapman, Court-Appointed Agent*, 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.*, 25 FCC Rcd 10686 (MB 2010); *Kirby Young*, 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.”³ 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.⁴ 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.”⁵

Request. As part of the Incentive Auction repacking process, WTBT-LD was displaced and has been silent since July 13, 2020.⁶ In September 2018, NYSHC was granted a displacement application to relocate to channel 8. The construction permit for channel 8 expired on September 11, 2021.⁷ NYSHC subsequently filed a displacement application for channel 27 that is pending.⁸

NYSHC states that it has been diligently working to complete construction of the Station’s displacement facilities. However, before it could order any equipment, NYSHC maintains that it first needed to complete the process of obtaining a lease for the Station’s proposed tower site. NYSHC states that it hired a third party entity, an experienced LPTV broadcaster, to assist in the Station’s tower lease negotiations. However, despite numerous attempts to negotiate the lease terms, NYSHC states that it was unable to come to terms with the owner of its proposed tower. As a result, in May 2021, NYSHC states that it decided to sell the Station to Major Market Broadcasting of Florida, Inc. (MMBF), who NYSHC believed could assist in the construction process and help to resume operations prior to the Station’s one-year silent anniversary in July 2021.⁹ While despite NYSHC’s best efforts, working with MMBF, the Station was unable to resume operations before the license automatically expired on July 13, 2021, pursuant to section 312(g) of the Act, NYSHC reports that it has made significant progress towards

³ *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)).

⁴ 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*).

⁵ *Id.* at 1237, 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).

⁶ See LMS File No. 0000125535.

⁷ See LMS File No. 0000054671.

⁸ See LMS File No. 0000160180. Our decision today should in no way be interpreted as a decision on the Station’s continued eligibility for reimbursement from the Commission’s LPTV reimbursement fund. See *Consolidated Appropriations Act, 2018*, Pub. L. 115-141, at Division E, Title V, § 511, 132 Stat. 348 (2018) (codified at 47 U.S.C. § 1452(j)-(n)). See also 47 CFR § 73.3701 (Reimbursement Under the Reimbursement Expansion Act); *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 34 FCC Rcd 1690 (2019).

⁹ See LMS File No. 0000155033. The assignment application will be considered separately.

completing construction of the Station's displacement facility proposed in the pending displacement application. NYSHC reports that as of the date of the instant request it has: (1) located a new tower site and filed an application for minor change¹⁰ specifying the new location, (2) negotiated a lease for the new tower site, (3) located a transmitter that would be compatible with the facilities proposed in the pending application, (4) ordered the antenna to be used at the new site, (5) worked to secure a tower crew to conduct the installation work, and (6) begun securing local programming to air on the Station once it resumes operations. NYSHC has also filed an application for engineering special temporary authority (STA)¹¹ to resume operations from the new tower site with temporary facilities while it completes the final construction. NYSHC states that the facility proposed in the STA could be up and running in a matter of days after grant of the STA.

NYSHC argues that reinstatement and extension of the Station's license pursuant to the equity and fairness provisions of section 312(g) would serve the public interest as it would permit the Station to remain off the air until it completes construction of its displacement facilities and resumes broadcasting.

Discussion. Upon review of the facts and circumstances presented, we find that NYSHC's request for reinstatement and extension of license and silent authority, 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 displaced LPTV and TV translator stations that are forced off the air by circumstances beyond their control. WTBT-LD was displaced by the incentive auction and diligently pursued a new digital displacement facility. Due to circumstances outside its control, most notably delays with securing a new tower site, WTBT-LD has been unable to return to the air. Grant of relief will enable the Station to return to the air and once again serve its viewers.

Accordingly, we find that in order to promote fairness and equity the request filed New York Spectrum Holding Company, LLC **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,¹² and the license and silent authority for WTBT-LD, Tampa, Florida **IS REINSTATED AND EXTENDED** to February 28, 2022. In addition, the application for special temporary authority and minor change (displacement) construction permit for WTBT-LD, Tampa, Florida **ARE GRANTED** to February 28, 2022. While we anticipate that this will be NYSHC's final request, another request for extension of the Station's license under the equity and fairness provision of section 312(g) will not be favorably viewed unless accompanied by a showing that completion of the Station's displacement facilities was prevented by additional compelling circumstances. NYSHC must also include with any such request(s) a detailed plan for completing construction and returning the Station to operation.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

¹⁰ See LMS File No. 0000160180.

¹¹ See LMS File No. 0000163714.

¹² 47 CFR §§ 74.15(f) and 74.763(c).