



Federal Communications Commission
Washington, D.C. 20554

December 1, 2023

SENT VIA CERTIFIED MAIL AND ELECTRONIC MAIL

New York Spectrum Holding Company, LLC
Michael Do
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Re:

WNYX-LD, New York NY
WNYX-LD, New York NY
Facility ID Nos. 29233 and 29236
LMS File Nos. 0000209069,
0000209071, 0000217987, and
0000217985
Cancellation of License

Dear Licensee:

This letter is in regards to the former licenses of low power television (LPTV) stations WNYX-LD, New York, New York (WNYX-LD) and WNYX-LD, New York, New York (WNYX-LD) (collectively Stations), licensed to New York Spectrum Holding Company, LLC (NYSHC or Licensee). We find that the Stations' licenses have automatically expired pursuant to section 312(g) of the Communications Act of 1934, as amended (Act),¹ their licenses have been cancelled, and their call signs deleted.

Background. Section 312(g) of the Act provides, in part, 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....²

The Stations went silent on July 18, 2022.³ On July 17, 2023, NYSHC was granted special temporary authority (STA) to construct temporary facilities⁴ and filed notices with the Commission that the Stations had resumed operations pursuant to the terms of the STAs.⁵ Based on documents provided to

¹47 U.S.C. § 312(g). *See* 47 CFR § 74.15(f).

² *Id.*

³ *See* LMS File Nos. 0000207062 and 0000207063.

⁴ *See* LMS File Nos. 0000217987 and 0000217985. In a letter dated July 17, 2023, the Media Bureau (Bureau) granted the Stations' STAs with certain conditions requiring the Licensee to demonstrate that the STA facilities were constructed in accordance with the parameters set forth in the STAs and the Stations resumed operations by their one-year silent anniversary. *See* Letter to New York Spectrum Holding Company, LLC from Mark J. Colombo, Associate Chief, Video Division (July 17, 2023) available at LMS File Nos. 0000217987 and 0000217985.

⁵ *See* LMS File Nos. 0000218041 and 0000218042.

the Media Bureau (Bureau) by NYSHC and information subsequently obtained by Bureau staff from those involved in the construction of the STA facilities, material questions of fact were raised as to whether the Stations: (a) actually resumed operation on July 17, 2023; (b) when the Stations resumed operation and whether they did so pursuant to the STA parameters; and (c) what programming the Stations were rebroadcasting and whether they had permission to rebroadcast that programming.⁶ As a result, on October 18, 2023, the Bureau issued a Letter of Inquiry (LOI) seeking to resolve these questions and determine whether the Stations continued to have valid licenses.⁷ The LOI provided NYSHC 30 days to provide all requested information and documents, or as an alternative to a response, NYSHC could relinquish the Stations' licenses.⁸ The LOI went on to state that failure to respond to the LOI within the specified time period would result in the Bureau concluding that the Stations had been silent for 12 consecutive months and their licenses had expired as a matter of law, pursuant to section 312(g) of the Act.⁹

Discussion. To date, a response has not been filed and the Stations' licenses have not been relinquished. While it appears the Stations may have resumed operations on July 31, 2023, that was nearly two weeks after their section 312(g) deadline.¹⁰ Further, it is unclear whether the Stations were constructed and operated in accordance with the parameters of the STAs,¹¹ what programming the Stations were airing when operational,¹² and whether NYSHC had permission from the Licensee of the station that may have been rebroadcast.¹³ The Licensee's failure to respond to the LOI leaves these material questions of fact unanswered. However, in light of our finding that the Stations' licenses automatically expired pursuant to section 312(g) of the Act by failing to resume operation by July 18, 2023, we need not make any findings of fact with regards to these open matters and we decline to investigate further any potential violations of the Commission's rules (Rules) or the Act.

Accordingly, we find that the Stations' licenses have automatically expired pursuant to section 312(g) of the Act and the licenses of WNXV-LD, New York, New York and WNYX-LD, New York,

⁶ See LOI at 2-5 (discussing statements of NYSHC to the Bureau); LMS File Nos. 0000218042 and 0000218041 (resumption of operations notices); Letter from New York Spectrum Holding Company to Video Division, Media Bureau (July 31, 2023) available at LMS File Nos. 0000217987 and 0000217985.

⁷ Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Michael Do, New York Spectrum Holding Company, LLC (Oct. 18, 2023) (LOI) available at LMS File Nos. 0000217987 and 0000217985. Postal records indicate that the LOI was received on October 20, 2023, at the address listed in the LOI for NYSHC. A copy of the receipt confirmation is available at LMS File Nos. LMS File Nos. 0000217987 and 0000217985.

⁸ LOI at 5.

⁹ *Id.* at 7. 47 U.S.C. § 312(g).

¹⁰ See LOI at 4 (discussing that that the pictures provided by NYSHC were taken on the day construction was completed, July 31, 2023, not July 17, 2023 as represented by NYSHC).

¹¹ See *id.* at 5 (noting that the photographs provided by NYSHC appear to show at least one antenna oriented incorrectly and discussing that those who installed the antennas were not provided any specific instruction regarding how they should be oriented). Failure to construct and operate a facility as authorized would amount to unauthorized operation in violation of section 301 of the Act. 47 U.S.C. § 301.

¹² See LOI at 5 (discussing the photographs provided by NYSHC showing that the Stations were rebroadcasting the programming of channel 20, WNYK-LD, Teaneck, New Jersey; not the channel 33, W33ET-D, New York, New York as claimed by NYSHC).

¹³ *Id.* Failure to have permission to rebroadcast another station would be a violation of section 74.784(b) of the Commission's rules. 47 CFR § 74.784(b).

New York, **ARE CANCELLED**, call signs **ARE DELETED**, and all pending applications **ARE DISMISSED**.¹⁴ All authority to operate the Stations and permits to construct modified facilities¹⁵ **HAS BEEN TERMINATED**.¹⁶

Furthermore, NYSHC's failure to completely, diligently, and timely respond to the LOI constitutes an apparent violation of a Commission order and, thus, a violation of the Act.¹⁷ In addition, the apparent inaccurate factual statements NYSHC made to the Bureau in written statements, including the Stations' resumption of operations notices and the documentation submitted by NYSHC as a condition of its STAs, constituted a violation of section 1.17 of the Rules.¹⁸ Accordingly, we **ADMONISH** the Licensee for its failure to comply with the terms of a Commission order and its violation of 47 CFR § 1.17.¹⁹

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

¹⁴ LMS File Nos. 0000209071 and 0000209069.

¹⁵ LMS File Nos. 0000178115 and 0000178116.

¹⁶ We remind NYSHC that it must continue to adhere to the requirements in the former station's authorization pertaining to lighting of antenna structures. See 47 U.S.C. §303(q); 47 CFR §§ 17.1 *et seq.*, 73.1213 and 73.1740(a)(4). See also *Streamlining the Commission's Antenna Structure Clearance Procedure*, Report and Order, 11 FCC Rcd 4272, 4293 (1995) (tower owner bears primary responsibility for maintaining tower painting and/or lighting).

¹⁷ See LOI at 6 ("This LOI constitutes an order of the Commission to produce the documents and information requested herein."). See *e.g.*, *Neon Phone Service, Inc.*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd. 7964, 7970, para. 16 (2017) ("It is well established that a failure to respond to a Bureau LOI [letter of inquiry] constitutes a violation of a Commission Order."). Furthermore, section 416(c) of the Act provides, "[i]t shall be the duty of every person . . . to observe and comply with such orders so long as the same shall remain in effect." 47 U.S.C. § 416(c).

¹⁸ See *supra* note 6. 47 CFR § 1.17 (specifying the requirements for the submission of truthful statements to the Commission).

¹⁹ This admonishment is issued pursuant sections 1.80 and 0.283(d) of the Rules, 47 CFR §§ 1.80 and 0.283.