



Federal Communications Commission  
Washington, D.C. 20554

June 24, 2020

New York Spectrum Holding Company, LLC  
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Re: Request for Reinstatement and  
Extension of License and Silent  
Authority Under Section 312(g)  
WXNY-LD, New York, NY  
LMS File No. 0000116425  
Facility ID No. 29231

Dear Licensee:

This concerns the above-referenced request to reinstate and extend license and silent authority (Request) filed by New York Spectrum Holding Company, LLC (NYSHC), licensee of low power television station WXNY-LD, New York, New York (WXNY or Station). For reasons set forth below, we grant the request, waive all applicable rules, reinstate and extend the Station's license and silent authority for a period of 180 days from the date of this letter.

*Background.* Section 312(g) of the Communications Act of 1934 (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."<sup>1</sup> 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."<sup>2</sup> Further, in the *Post-Incentive Auction Procedures PN* the Media Bureau 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."<sup>3</sup> 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

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<sup>1</sup> 47 U.S.C. § 312(g).

<sup>2</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6806-07, para. 585 (2014) (*Incentive Auction R&O*).

<sup>3</sup> *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)).

(channels 2-36) that full power and Class A stations would be relinquishing as a result of the incentive auction and repacking process.<sup>4</sup> 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.”<sup>5</sup>

*Request.* As part of the Incentive Auction and repacking process, WXNY’s channel 32 was displaced by WLIW-DT, Garden City, New York, that was repacked to channel 32. As a result, WXNY has been silent since June 10, 2019.<sup>6</sup> NYSHC filed a displacement application requesting a construction permit for channel 23 in the Commission’s displacement application filing window for low power television stations that were displaced by the incentive auction and repacking process.<sup>7</sup> The Media Bureau determined that WXNY’s displacement application for channel 23 was mutually exclusive with an application filed by W25FA-D, West Orange New Jersey (W25FA), and as a result, the Station was placed in MX Group 90 (MX 90). An opportunity to resolve mutual exclusivity through settlement or technical modification of the engineering proposals was provided and the stations submitted a settlement agreement whereby W25FA agreed to dismiss its application and to the grant of NYSHC’s application for WXNY, thus resolving their mutual exclusivity. WXNY’s application for channel 23 was granted on July 22, 2019.

Since the grant of its displacement application for channel 23, NYSHC states that a structural analysis for the Station’s new antenna tower mount was initiated but was interrupted due to the non-essential business order for the city of New York as the result of the COVID-19 pandemic.<sup>8</sup> NYSHC states that it is working to have the new antenna, transmitter, and transmission line for installation in early October 2020 and to return to the air by middle of that month. NYSHC requests reinstatement and extension of the WXNY license and silent authority pursuant to section 312(g) to promote equity and fairness and so the Station can resume service to the public.

*Discussion.* Upon review of the facts and circumstances presented, we find that NYSHC’s request for reinstatement and extension of WXNY’s license and silent authority for a period of 180 days from the date of this letter 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

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<sup>4</sup> 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*).

<sup>5</sup> *Id.* at 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).

<sup>6</sup> See LMS File No. 0000074633.

<sup>7</sup> See LMS File No. 0000053900.

<sup>8</sup> The World Health Organization has classified COVID-19 as a pandemic and the President declared it a national emergency.

control.<sup>9</sup> WXNY was forced off the air as a result of being displaced by the incentive auction and repacking process and NYSHC took steps to build its displacement facilities in a timely manner. Therefore, due to circumstances outside its control, WXNY has been unable to return to the air prior to the one-year anniversary of going silent. WXNY pledges to resume operations later this year. Grant of relief of will allow WXNY 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 by New York Spectrum Holding Company, LLC **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,<sup>10</sup> and the license for WXNY-LD, New York, New York **IS REINSTATED AND EXTENDED** for 180 days from the date of this letter.

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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

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<sup>9</sup> See *V.I. Stereo Communications Corp.*, 21 FCC Rcd. 14259 (2006) (granting a request to reinstate a station's license when the station's tower had been destroyed by a hurricane and after it was rebuilt, again sustained substantial damage from three more hurricanes); *Community Bible Church, Letter*, 23 FCC Red 15012, 15014 (MB 2008) (reinstatement warranted where licensee took all steps needed to return to air, but remained off air to promote air safety after discovering and reporting that FCC and FAA records contained incorrect tower information); *Mark Chapman, Court-Appointed Agent, Letter*, 22 FCC Red 6578 (MB 2007) (reinstatement warranted where extended silence resulted from licensee's compliance with a court order).

<sup>10</sup> 47 CFR §§ 74.15(f) and 74.763(c).