



Federal Communications Commission
Washington, D.C. 20554

April 16, 2021

HC2 Station Group, Inc.
450 Park Avenue
29th Floor
New York, NY 10022

Re: Request for Reinstatement and
Extension of License and Silent
Authority Under Section 312(g)
W28ES-D, New York, NY
LMS File No. 0000142463
Facility ID No. 130477

Dear Licensee:

This concerns the above-referenced request to reinstate and extend license and silent authority (Request) filed by HC2 Station Group, Inc. (HC2), licensee of low power television station W28ES-D, New York, New York (W28ES 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 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 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

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.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617, para. 27 ("This 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.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006); *Community Bible Church*, Letter, 23 FCC Rcd 15012, 15014 (MB 2008); *Mark Chapman, Court-Appointed Agent*, Letter, 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.*, Letter, 25 FCC Rcd 10686 (MB 2010); *Kirby Young, Letter*, 23 FCC Rcd 35 (MB 2008).

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, W28ES's channel 28 was displaced by WEPT-CD, Newburgh, New York that was repacked to channel 28. As a result, W28ES has been silent since September 11, 2019.⁶ W28ES timely filed a displacement application requesting a construction permit for channel 2 and that application was granted on August 17, 2020.⁷ Since that time, HC2 states that it has diligently pursued the construction of the displacement facilities for W28ES on channel 2. HC2 states that, in anticipation of completing its buildout on channel 2, W28ES intends to operate on a multicast channel of co-owned LPTV station WKOB-LD, channel 2, New York, New York, located on Trump Tower, while construction of the W28ES permanent channel 2 facilities at Trump Tower are completed. HC2 notes that WKOB in turn has a construction permit to move to channel 13 and relocate from the Trump Tower to 1 World Trade Center. When that move is completed, HC2 estimates in June/July 2021, W28ES will complete the installation of a new directionalized antenna on channel 2 at Trump Tower, replacing WKOB's current antenna. HC2 states that the timeline for installation of the new channel 2 antenna is late Summer 2021. Through equipment purchases and the negotiation of required tower leases, HC2 argues that it has shown diligence throughout this process, and it intends to begin the installation process for both WKOB and W28ES when warmer weather and COVID-19 pandemic conditions permit. Therefore, HC2 seeks reinstatement and extension of the Station's license and silent authority pursuant to section 312(g) to promote equity and fairness.

Discussion. Upon review of the facts and circumstances presented, we find that HC2's request for reinstatement and extension of license and silent authority pursuant to section 312(g) 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 control. W28ES was displaced by the incentive auction and diligently pursued a new digital displacement

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 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. 0000084217.

⁷ See LMS File No. 0000116969.

channel. Due to circumstances outside its control, W28ES 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 HC2 Station Group, Inc. **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,⁸ and the license and silent authority for W28ES-D, 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): David O'Connor, Esq.

⁸ 47 CFR §§ 74.15(f) and 74.763(c).