



Federal Communications Commission  
Washington, D.C. 20554

September 20, 2023

New York Spectrum Holding Company, LLC  
Michael Do  
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Re: Request for Reinstatement and  
Extension of License and Silent  
Authority Under Section 312(g)  
KVHD-LD, Los Angeles, CA  
LMS File No. 0000218999  
Facility ID No. 67901

Dear Licensee:

This concerns the above-referenced request filed by New York Spectrum Holding Company, LLC (NYSHC), licensee of low power television station KVHD-LD, Los Angeles, California (KVHD-LD or Station) to reinstate its license and be provided a limited extension of its license and silent authority (Request).<sup>1</sup> For reasons set forth below, we grant the Request, and extend the Station's silent authority, waive all applicable rules, and reinstate and extend the Station's license to September 27, 2023.

*Background.* Section 312(g) of the Communications Act of 1934, as amended (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>2</sup> The Commission has exercised its discretion under section 312(g) to extend or reinstate a station's expired license "to promote equity and fairness" only in limited circumstances where a station's failure to transmit a broadcast signals for 12 consecutive months is due to "compelling circumstances" that were beyond the licensee's control.<sup>3</sup> For example, the Commission has granted section 312(g) relief to stations whose facilities were destroyed by natural disasters such as hurricanes;<sup>4</sup> where silence was necessary in furtherance of public safety,<sup>5</sup> where reinstatement of the station's license was necessitated by

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<sup>1</sup> LMS File No. 0000218999, as amended.

<sup>2</sup> 47 U.S.C. § 312(g).

<sup>3</sup> See *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617, para. 27 (2008) (*A-O Broadcasting*) ("This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited").

<sup>4</sup> *V.I. Stereo Communications Corp.*, 21 FCC Rcd 14259, 14262, para. 8 (2006) (reinstating license where silence due to destruction of towers in hurricanes).

<sup>5</sup> *Community Bible Church*, Letter Order, 23 FCC Rcd 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).

court order;<sup>6</sup> or where station silence was the result of governmental closure.<sup>7</sup> The Commission has declined to exercise its section 312(g) discretion when a station's silence is the result of a licensee's own action or inaction, finances, and/or business judgment.<sup>8</sup>

*Request.* KVHD-LD's channel 40 was displaced by the Incentive Auction and repacking process and the Station timely filed a displacement application requesting a construction permit for channel 3.<sup>9</sup> KVHD-LD's displacement application for channel 3 was deemed mutually exclusive with another application filed by KRCA License, LLC (KL) for the same channel for its station KSGA-LD, Los Angeles, California (KSGA-LD).<sup>10</sup> The parties entered into a settlement agreement whereby the Station agreed to dismiss its application and channel share with KL utilizing KSGA-LD's displacement channel facilities. After several delays implementing the shared facilities,<sup>11</sup> the Station finally began sharing with KSGA-LD on or about October 12, 2021.<sup>12</sup>

In its Request, NYSHC states that KVHD-LD operated on channel 3 with KSGA-LD on a shared basis "for a period of time,"<sup>13</sup> but later encountered a disagreement with KSGA-LD over the channel sharing arrangement (CSA). Subsequently, on or about August 5, 2022, NYSHC states that KL "shut down" KVHD-LD's operations, denied NYSHC access to the shared facilities, and sought to terminate the CSA.<sup>14</sup> KVHD-LD has been silent since that time and as a result the Station's license automatically expired pursuant to section 312(g) of the Act after it failed to resume operations by August 5, 2023. NYSHC asserts that reinstatement and a limited extension of the Station's license is warranted under the "equity and fairness" provision of section 312(g) of the Act. Since the Station went silent in August

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<sup>6</sup> *Mark Chapman, Court-Appointed Agent*, Letter Order, 22 FCC Rcd 6578, 6580 (MB 2007) (reinstating license where silence necessitated by licensee's compliance with court order).

<sup>7</sup> *Universal Broadcasting of New York, Inc.*, 34 FCC Rcd 10319, (MB 2019) (finding that station's inability to file an STA to resume service due to a federal government shutdown was a compelling circumstance under section 312(g)).

<sup>8</sup> *See, e.g., New Visalia Broadcasting, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9744 (2014) (record did not show that health problems prevented the principals from resuming operations); *A-O Broadcasting*, 23 FCC Rcd 603 (transmission from unauthorized location not sufficient to avoid the consequences of section 312(g)); *Eagle Broadcasting Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, 589-90 (2008) (operation from unauthorized site insufficient to avoid the consequences of section 312(g)); *Mt. Rushmore Broadcasting, Inc.*, Letter Order, 32 FCC Rcd 3924, 3927 (MB 2017) (discretion unwarranted when station was either silent or engaging in brief periods of unauthorized operation for six years); *Zacarias Serrato*, Letter Order, 20 FCC Rcd 17232 (MB 2005) (station taken off the air due to a business decision); *Kingdom of God*, Letter Order, 29 FCC Rcd 11589 (MB 2014) (station's numerous periods of extended silence were a direct result of licensee's own business decisions); *Christian Broadcasting*, 30 FCC Rcd at 13976 (2015) (licensee provided no evidence that station's silence was beyond its control).

<sup>9</sup> *See* LMS File No. 0000054274.

<sup>10</sup> *See* LMS File No. 0000052735.

<sup>11</sup> *See* LMS File Nos. 0000079920, 0000117662, 0000131337, 0000152919 and 0000160774.

<sup>12</sup> *See* LMS File No. 0000163391.

<sup>13</sup> Request at 2.

<sup>14</sup> *See* New York Spectrum Holding Company, LLC's Response To Operational Inquiry at 2 (Jan. 6, 2023), a copy of which is available in the Commission's Licensing and Management System under facility identification number 000067901. KL has filed an application to terminate the current channel sharing agreement and retain the full rights in the 6 MHz channel. *See* LMS File No. 0000202537. That application will be acted upon by separate staff action.

2022, NYSHC states that it has worked diligently to find a way to resume operations, including attempting to resolve its differences with KL and also exploring opportunities for a new channel sharing partner. While NYSHC and KL were not able to negotiate a resolution that would allow KVHD-LD to resume operations under its current CSA,<sup>15</sup> NYSHC has been able to find a new channel sharing partner with which it is in the process of finalizing the terms of its new channel sharing arrangement and implementing a shared facility.<sup>16</sup> NYSHC represents that it is committed to resuming operations no later than September 27, 2023 and<sup>17</sup> if it is not able to resume operation by that date it agrees to relinquish the Station's license and not seek any further extensions of the Station's license.<sup>18</sup>

*Discussion.* Upon review of the facts and circumstances presented, including the unique nature of channel sharing and cooperation that must occur between channel sharing partners, we find that NYSHC's request for reinstatement and a limited extension of its license and silent authority to September 27, 2023, is in the public interest. Due to an apparent dispute with its channel sharing partner, KVHD-LD went silent. Although NYSHC was unable to resolve its differences with its channel sharing partner and resume operations from its shared facility, it successfully pursued a new sharing host partner and has committed to implement shared facilities and resume operations by its extended license expiration date. NYSHC has also agreed to relinquish the Station's license if it is unable to do so and not seek any additional license extensions.

We note that our decision today does not make any substantive findings with regards to the apparent dispute between KL and NYSHC. Any dispute in implementing the terms of the CSA and failure by any party to abide by those terms is a private contractual matter that is more appropriately addressed in a court of competent jurisdiction.<sup>19</sup> We also take this opportunity to remind NYSHC as it enters into its new channel sharing arrangement that the Commission will not serve as an arbiter of disputes among channel sharing licensees and we expect that parties will adopt provisions in their channel sharing agreements to avoid disputes that result in stations going silent.<sup>20</sup>

Accordingly, we find that in order to promote fairness and equity the request filed New York Spectrum Holdings, LLC **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,<sup>21</sup> and the license and silent authority for KVHD-LD, Los Angeles, California **IS REINSTATED AND**

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<sup>15</sup> Request at Attachment 1.

<sup>16</sup> Request at 2.

<sup>17</sup> Amendment to Request (Sept. 15, 2023).

<sup>18</sup> *Id.*

<sup>19</sup> See *Stockholders of Renaissance Comm. Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 11866, 11869 (1997) (finding that the Commission is not the proper forum for the adjudication of private contractual disputes).

<sup>20</sup> See *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6853, para. 700 (2014).

<sup>21</sup> 47 CFR §§ 74.15(f) and 74.763(c).

**EXTENDED** to September 27, 2023. Per the Station's statement, no further extensions of license will be considered.

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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