

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Application of)	
)	
NEW YORK SPECTRUM HOLDING)	LMS File No. 0000010775
COMPANY, LLC)	
)	Facility ID 29231
For Extension of Time to Construct)	
Displacement Facilities for Low Power)	
Television Station WYXN-LD)	
To: Chief, Video Division		
Media Bureau		

PETITION FOR RECONSIDERATION

1. New York Spectrum Holding Company, LLC ("NYSHC") hereby petitions for reconsideration of the action of the Video Division of May 19, 2016, dismissing the above-captioned application for an extension of time to complete construction of displacement facilities for Low Power Television Station WXNY-LD, New York, NY, under File No. BDISDTL-20100421AAT ("Extension Application").¹

2. There is no correspondence, notification, or other document in CDBS or LMS that indicates the reason for dismissal. NYSHC believes, based on informal communication with the Video Division Staff, that the Extension Application was dismissed because the underlying construction permit expired before the extension was requested. The CDBS system shows an expiration date of March 1, 2016. However, the Commission never notified NYSHC of this deadline, either by direct notice to NYSHC or by public notice.

¹ No public notice has been issued announcing the dismissal, and no letter was issued or automated notice sent by LMS stating that the Extension Application was dismissed. The only evidence of dismissal is an entry in LMS. This Petition for Reconsideration is being filed within 30 days of the date noted in LMS and thus is timely filed.

3. A previous extension application, CDBS File No. BEP-20150901ADK, was granted by the Commission on September 3, 2015. The public notice of grant of the extension² did not indicate any expiration date. There is no link at all to BEP-20150901ADK in LMS, and the “Authorization” link in CDBS leads to a page stating “AUTHORIZATION NOT YET CREATED BY MB.” The only available public record of the expiration date is under an Application Search in CDBS, which is something that a licensee does not normally undertake.

4. NYSHC requested a 12-month extension in BEP-20150901ADK because of the timing of the incentive auction.³ That request was consistent with the Commission’s several policy pronouncements allowing LPTV licensees to postpone significant facilities investments until the results of the impending spectrum repack are known. If the Commission intended to make only a partial grant, it should have notified the applicant directly.

5. It should be noted that the Commission acted inconsistently on two extension applications filed by NYSHC on the same day reflecting the same circumstances. File No. BEP-20150901ADM, for WNXV-LD, Facility ID 29233, was granted on September 3, and will expire on June 1, 2016, according to CDBS records. But CDBS states that File No. BEP-20150901ADK, filed on the same day by the same licensee for WXNY-LD, Facility ID 29231, and granted on the same day by the Commission, expired March 1, 2016. Given that NYSHC explicitly requested 12-month extensions in both applications, it is far from clear that NYSHC should have known about the March 1 expiration date.

² Broadcast Actions, Report No. 48569, released September 10, 2015.

³ The exhibit to BEP-20150901ADL stated: “AN EXTENSION OF 12 RATHER THAN 6 MONTHS IS REQUESTED BECAUSE THE INCENTIVE AUCTION WILL NOT HAVE BEGUN 6 MONTHS FROM NOW, SO REPACKING AND DISPLACEMENT RESULTS WILL NOT BE KNOWN AT THAT TIME.”

6. The Extension Application was only the second extension requested by NYSHC. Moreover, the extension request was well supported in an exhibit, explaining that an extension until after the incentive auction and announcement of whether the displacement channel will remain available for LPTV use would be consistent with established Commission policy.

7. Since the Extension Application was well supported; the Commission did not inform NYSHC of the March 1, 2016, expiration date; there is no Authorization available in CDBS; and the Commission acted inconsistently on two virtually identical applications filed and granted on the same dates, NYSHCO respectfully submits that reinstatement and grant of the Extension Application are justified and requests that such relief be granted.⁴

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Respectfully submitted,



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June 17, 2016

⁴ Even though access to the displacement channel is not guaranteed if that channel is needed by a full power or Class A station after the spectrum repack, having even a limited right to access to a displacement channel is likely to be critically important in New York, the nation's largest market, where the post-repack spectrum is likely to be very crowded.