

REQUEST FOR SILENT STA NUNC PRO TUNC AND WAIVER OF SECTION 312(g)

Word of God Fellowship, Inc. (“WOGF”), licensee of WHWD-LD, Winston Salem, NC (Fac ID 67958), hereby requests silent authority nunc pro tunc and an extension of the deadline by which the station must return to the air or forfeit its license pursuant to Section 312(g) of the Communications Act of 1934, as amended.

On March 8, 2018, WHWD-LD went silent on Channel 48 pursuant to a notice from T-Mobile of intent to begin 600 MHz operations. See LMS File No. 0000029373. The Commission did not grant the displacement application for WHWD-LD until June 6, 2018. See LMS File No. 0000029372. Although WOGF worked diligently to procure equipment for its displacement facility, it discovered that the American Tower site specified in its displacement application did not have an associated building to hold the equipment necessary to operate WHWD-LD and it would not be practical to construct one. Accordingly, WOGF has had to identify a new tower site and effectively restart the process.

Section 312(g) provides that “If 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* if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness.” 47 U.S.C. § 312(g) (emphasis added).

In the *Incentive Auction Report and Order*, the Commission explained that it would be receptive to requests for waivers of Section 312(g) as a result of the repacking process, “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.”¹ The Media Bureau expanded upon this position in the *Post-Incentive Auction Procedures Public Notice*, explaining that in considering requests for waiver of Section 312(g), it “will examine whether the station has demonstrated that its silence is the result of compelling reasons beyond the station’s control, including facts that relate to the post-auction transition process.”² Finally, in the *Special Displacement Window Public Notice*, the Media 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 and 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

¹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 ¶ 585 (2014), *aff’d*, *Nat’l Assoc. of Broadcasters, et al v. FCC*, 789 F.3d 165 (D.C. Cir. 2015)

² *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd. 858 ¶ 49 (IATF/MB 2017).

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.”³

The Commission should grant the instant request for waiver because WHWD-LD’s silence is fully attributable to circumstances beyond its control relating to the post-Incentive Auction transition. Specifically, WHWD-LD had to vacate its prior channel before the FCC opened its Special Displacement Window due to a notice from T-Mobile. Although WOGF was able to restore service on a temporary basis, the unexpected conditions at the tower site, which were outside WOGF’s control, forced WOGF to reconfigure its plans for the station and prevented WHWD-LD from resuming operations during the one year period.

WOGF has filed an application to modify its displacement CP and expects to commence operations from its new tower site by the end of February.

The Commission has granted waivers of Section 312(g) under similar circumstances, and WOGF respectfully requests the same consideration here.⁴

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³ 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 Red. 1234 ¶ 7 & n.25 (IATF/MB 2017).

⁴ See *e.g.*, Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to KRCA License LLC, LMS File No. 0000059940 (Mar. 15 2019).