

KVFWD-LD, Fort Worth, TX (Facility ID 53433)
New York Spectrum Holding Company, LLC
Request for Extension of Silent STA and Waiver of 47 U.S.C. §312(g)

REQUEST FOR WAIVER OF 47 U.S.C. §312(G)

New York Spectrum Holding Company, LLC ("NYSHCo") is the licensee of KVFWD-LD, Fort Worth, TX (Facility ID 53433). By this request, NYSHCo amends its pending request for extension of silent STA (FCC File No. LMS 0000078640) and seeks waiver of the 12-month off air provision of 47 U.S.C. §312(g).

KVFWD-LD went silent on January 15, 2019, after it was granted a displacement construction permit as part of a settlement of MX Group No. 60. Station KVFWD-LD is one of four stations that were in MX Group No. 60. All four parties agreed to a settlement to accept incoming interference from any of the other applicants, and the FCC granted separate construction permits to the stations.

At this time, engineering discussion between the four parties on a practical engineering solution to four stations operating on the same channel is ongoing with a plan to build out one or more joint station(s) in early 2020. KVFWD-LD cannot commence operation on its new Channel 7 until the plan has been finalized and agreed to by all the construction permit holders.

Meanwhile, KVFWD-LD is unable to resume operation on its currently licensed Channel 38, because on April 25, 2019, it received a notice from T-Mobile to vacate that channel by August 23, 2019. Channel 38 is thus no longer available for use by the TV station.

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).

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 2} 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."³ Similarly, in a public notice reminding repacked stations of their post-auction deadlines, the Media Bureau and the Incentive Auction Task Force stated "In considering requests to extend or reinstate a

¹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order,

² FCC Rcd 6567 ¶ 585 (2014), *aff'd*, *Nat'l Assoc. of Broadcasters, et al v. FCC*, 789 F.3d 165 (D.C. Cir. 2015)

³ *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).

license, we 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."⁴

KVFW-LD's silence is due to a demand by T-Mobile that KVFW-LD abandon Channel 38 by August 23, 2019, and the fact an agreeable solution among the settling parties in MX Group No. 60 will not have been implemented before the Section 312(g) deadline. Both of these circumstances relate to the post-incentive auction transition and are beyond NYSHCo's control, because they both depend on actions by unrelated entities that cannot be dictated by NYSHCo.

In light of the foregoing, NYSHCo respectfully requests a waiver of Section 312(g) to allow it to remain off the air until the final engineering solution is reached and operation on Channel 7 can begin.

⁴ *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, MB Docket No. 16-306, GN Docket No. 12-268, DA 18-884 n. 25 (MB/IATF Aug. 27, 2018) (citing *Christian Broadcasting of East Point, Inc.*, 30 FCC Rcd. 13975, 13976-77, para. 4 (2015)).