

KVFWD, 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 FURTHER WAIVER OF 47 U.S.C. §312(G)**

New York Spectrum Holding Company, LLC ("NYSHCo") is the licensee of KVFWD, Fort Worth, TX (Facility ID 53433). Station KVFWD has been silent, with a 312(g) waiver, since January 15, 2019. The current 312(g) waiver granted an extension of silent authority and the KVFWD license to *December 29, 2020*. NYSHCo seeks a further waiver of the 12-month off air provision of 47 U.S.C. §312(g).

KVFWD 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 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. (KVFWD's Ch. 7 displacement CP (LMS-0000053902) expires on 1/15/2022). KVFWD is unable to resume operation on its currently licensed Channel 38, because T-Mobile required that the station vacate the channel by August 23, 2019.

While significant progress has been made toward the final implementation of the Station's Ch. 7 facility, construction has not been completed due to events beyond NYSHCo's control. While all of the necessary equipment was ordered, due at least in part to the COVID-19 pandemic, shipment of the antenna has been delayed. NYSHCo just received confirmation that the antenna will ship on December 18, 2020. Due to fact that date of the antenna delivery was unknown, NYSHCo was been unable to schedule the required tower crew and engineers to work the installation. The person that NYSHCo intends to hire to do the work has been traveling and his schedule is uncertain. Now, so close to the holidays, NYSHCo is not certain when a tower crew will be available. Further delay has resulted from difficult negotiations with the tower landlord which limited access to the site but those issues have just recently been resolved.

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."<sup>1 2</sup> 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

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

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

beyond the station's control, including facts that relate to the post-auction transition process."<sup>3</sup> 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 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."<sup>4</sup>

KVFW-LD was forced to go silent due to demand by T-Mobile that KVFW-LD abandon Channel 38 by August 23, 2019. While diligent efforts have been made in the time since the station went silent, factors beyond NYSHCo's control, as discussed above, have prevented the completion of the Ch. 7 displacement facility.

In light of the foregoing, NYSHCo respectfully requests a further waiver of Section 312(g) to allow it to remain off, and to preserve its license, for at least 45 days to enable it to complete the equipment installation after delivery of the antenna and commence on-air operations on its w CH. 7 facility.

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<sup>3</sup> *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).

<sup>4</sup> *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)).