

KVFW-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 REINSTATEMENT AND FURTHER WAIVER OF 47 U.S.C. §312(G)

New York Spectrum Holding Company, LLC (“NYSHCo”) is the licensee of KVFW-LD, Fort Worth, TX (Facility ID 53433). Station KVFW has been silent, with a 312(g) waiver, since January 15, 2019. The FCC most recently granted a further 312(g) waiver and extension of silent authority and the KVFW license to *June 28, 2021*. NYSHCo inadvertently failed to file for a further extension prior to June 28th, due in part to the fact that its counsel was away due to a medical issue. NYSHCo seeks reinstatement of its license and a further waiver of the 12-month off air provision of 47 U.S.C. §312(g).

KVFW-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 KVFW-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. (KVFW’s Ch. 7 displacement CP (LMS-0000053902) expires on 1/15/2022). KVFW-LD 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. The equipment has now been received and is in storage awaiting implementation. NYSHCo had difficulty scheduling tower crews due to the increased need now that COVID restrictions are lifting. The engineer that NYSHCo intends to hire to do the work has been traveling and his schedule has remained uncertain. The tower landlord has restricted access until a master lease is negotiated. Negotiations have again reached an impasse. NYSHCo is actively researching new sites and options for a temporary/interim site that would enable it to put the station back on the air. NYSHCo is also actively working on a sale to a third party that stands ready to move quickly to implement the facility.

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 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 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.

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).

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)).