

### **Request for Waiver of Section 312(g)**

On June 13, 2019, Radio Peach, Inc. (“Radio Peach”), licensee of low-power television station WPGA-LP (“WPGA-LP” or “Station”), submitted a request an extension of special temporary authority to remain silent (“STA Extension Application”). LMS File No. 0000074720. The STA Extension Application remains pending. By this amendment application, Radio Peach updates the STA Extension Application to request a waiver of Section 312(g) of the Communications Act of 1934, as amended (“Section 312(g)”), to enable the Station to remain silent until such time as it commences operations on its displacement channel, channel 18.

**Background.** Section 312(g) provides that a broadcast station license expires as a matter of law if the station fails to transmit any signals for a consecutive twelve-month period.<sup>1</sup> The Federal Communication Commission (“FCC” or “Commission”), however, is authorized to extend or reinstate such a license “for any reason to promote equity and fairness.”<sup>2</sup> To this end, the FCC has stated that, in the context of the incentive auction, it would be receptive to requests to extend a station license under Section 312(g), “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>3</sup> In considering requests for waiver of Section 312(g), the Media Bureau has stated that 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.”<sup>4</sup> To this end, the Media Bureau has granted requests to waive Section 312(g) and extend the licenses of low-power television stations, like WPGA-LP, that have been displaced due to the incentive auction and repack.<sup>5</sup>

**Request.** WPGA-LP historically has operated on channel 50. Channel 50 was reallocated as part of the incentive auction for use by T-Mobile USA (“T-Mobile”). As a result, during the FCC’s Special Displacement Window, Radio Peach submitted an application for authority to construct displacement facilities on channel 18. *See* LMS File No. 0000053605. The FCC granted this application on July 19, 2018 and specified a three-year period for WPGA-LP to construct the channel 18 displacement facility. Less than two months after the date on which the

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<sup>1</sup> 47 U.S.C. § 312(g).

<sup>2</sup> 47 U.S.C. § 312(g).

<sup>3</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6806-07, para. 585 (2014) (“*Incentive Auction R&O*”).

<sup>4</sup> *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Red 858, 873-74, para. 49 (IATF/MB 2017) (Post-Incentive Auction Procedures PN); *see also Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, 33 FCC Red 8240, 88243, n.25 (MB/IA TF 2018) (citing *Christian Broadcasting of East Point, Inc.*, 30 FCC Red. 13975, 13976-77, para. 4 (2015)).

The Media Bureau also stated that it would consider requests for waiver of Section 312(g) by low-power television stations displaced in the incentive auction, if the requesting station was required to go silent as a result of the incentive auction and such station’s displacement channel had not yet been released by an incumbent broadcaster. *See* Incentive Auction Task Force and Media Bureau Announce Post Incentive Auction Special Displacement Window April 10, 2018, Through May 5, 2018, and Make Location and Channel Data Available, Public Notice, 33 FCC Red 1234, 1237, para. 7 (IATF/MB 2018).

<sup>55</sup> *See* LMS File Nos. 0000059940, 0000078353, 0000063795, 0000075874.

FCC granted WPGA-LP's channel 18 displacement construction permit, T-Mobile notified the Station that it intended to commence operations on its 600 MHz spectrum. As a result of T-Mobile's notification to the Station, WPGA-LP went silent on September 1, 2018. Radio Peach obtained FCC authority to remain silent, and has been silent since this time. LMS File No. 0000064283.

Until recently, Radio Peach has been a debtor-in-possession in bankruptcy proceedings commenced in mid-November 2016.<sup>6</sup> Accordingly, Radio Peach has been impaired in its ability to incur expenses to construct the displacement facility. Nevertheless, the Station is working to implement a reduced power facility on channel 18 in an attempt to bring WPGA-LP back on the air prior the expiration of the twelve-month deadline set forth in Section 312(g). For example, the Station is in contact with its suppliers regarding the purchase and expedited delivery of the equipment necessary to operate a reduced power channel 18 facility.<sup>7</sup> However, the Station has not yet been able to order such equipment, nor does it have commitments from its suppliers that the equipment will be on-site to enable installation by August 31, 2019. Thus, out of an abundance of caution, WPGA-LP is submitting the instant request for a waiver of Section 312(g) to extend its license and silent authority for an additional 180-day period.

The Media Bureau should grant the instant request to extend WPGA-LP's license and silent authority because the Station was "involuntarily forced to remain dark as a result of the repacking process" when it went silent on September 1, 2018 due to T-Mobile's commencement of operations on channel 50. WPGA-LP timely took the necessary actions to obtain a displacement channel in accordance with the FCC's Special Displacement Window procedures. The Station was displaced by T-Mobile less than 2 months after obtaining its channel 18 displacement construction permit, such that it has not had ample time to construct its displacement facility, particularly given the Station's involvement in a protracted bankruptcy proceeding. Accordingly, the instant request for waiver falls within the scope of the Commission's stated parameters for granting relief under Section 312(g). Moreover and importantly, grant of the instant request to waive Section 312(g) and extend WPGA-LP's license and silent authority for 180 days is consistent with the public interest because, absent favorable action on this application, WPGA-LP would be required to remain off-air permanently, thereby depriving its viewers of access to the programming services it provides.

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<sup>6</sup> See CDBS File Nos. BALTTTL-20170706ABE and BAL-20190628AAF.

<sup>7</sup> Assuming the Station can procure the necessary equipment, WPGA-LP will file an application for FCC authority to construct and operate on channel 18 at parameters different from those specified in the Station's displacement application.