

WRCX-LP, Dayton, OH (Facility ID 69535)

Ross Communications, Ltd.

Request for Extension of Silent STA and Extension of 47 U.S.C. §312(g) Waiver

**REQUEST FOR EXTENSION OF SILENT STA AND EXTENSION OF WAIVER OF 47 U.S.C. §312(G)**

Ross Communications, Ltd. ("RCL") is the licensee of WRCX-LD, Dayton, OH (Facility ID 69535) (the "Station"). By this request, RCL requests a further extension of silent STA (original FCC File No. LMS 0000063411) and *further extension* of the waiver of the 12-month off air provision of 47 U.S.C. §312(g) granted by the FCC in LMS 0000078353. The current STA and 312(g) waiver authorizes RCL to remain off the air until January 29, 2020.

During the time that the station has been silent, the tower and building at which the station is licensed to operate (which is the site authorized in its displacement facility) was sold to a new owner and RCL's lease was terminated. Although the new owner has indicated a willingness to allow RCL to enter into a new lease and allow RCL to install a new antenna and related equipment, the site owner has ignored RCL's efforts to timely negotiate the terms of a new lease so that construction of RCL's displacement facility can be completed. Unbeknownst to RCL, the new owner went out of town for an extended period of time. All transmission equipment was scheduled to be delivered and installed at the site in early December and hung and installed before Christmas. The absence of the new owner and the fact that the lease has not been completed means that RCL had to delay delivery as it did not have permission to complete construction and resume operations from the site.

As soon as Station management realized that it was a possibility that the Station would have to relocate they reached out to American Tower, which has a tower site 500 ft. away from the Station's current tower site. American Tower has confirmed that it does have available space on the tower but it needs thirty to forty five days to conduct a study to confirm that the tower can hold the additional antenna load. As such, RCL cannot yet file for an STA for an interim facility. Currently, RCL is proceeding on dual courses: it is attempting to negotiate a new lease with the new site owner who has just recently returned from his travels, and working with American Tower to confirm that that site could be used as the site of an interim facility with an eye toward getting the Station back on the air as soon as possible.

As of this time, all of the new transmission equipment (Antenna, Transmitter, line, etc.,) has been fabricated and is ready to be shipped and installed, but the station is currently without a tower to hang the equipment on. Due to the lease delays and the American Tower loading study, RCL must now also re-coordinate with the already overbooked tower crew's and equipment manufacturer's schedules to get the transmission equipment delivered and installed at whichever site it ultimately to be used. This cannot be done until after the 1<sup>st</sup> of the year 2020.

As RCL previously advised the FCC, WRCX-LD went silent on August 1, 2018, as a result of notification by T-Mobile in April 2018 that it intended to commence operations on its 600 MHz spectrum in PEA #25, where the Station is located, on August 17, 2018. The Station's displacement application was granted on August 17, 2018 – after the Station went silent (FCC File No. LMS 0000054778). While working toward getting the Station back on the air before the original 12-month off air deadline and attempting to build out the Station's CP facilities, the Station, tower, its principal and its staff suffered very serious damages from an E4 tornado on May 27, 2019.

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 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>

Despite RCL’s diligent efforts to complete construction and implementation of its displacement facilities, the sale of its licensed site and its as yet unsuccessful efforts to negotiate terms of a new lease are due to matters entirely beyond RCL’s control but relating to the post-incentive auction transition. As is the time needed to conduct at tower lading study for a possible interim facility.

RCL is confident that it will either negotiate new lease terms at the existing site or obtain approval to move to the American Tower site with an interim facility, but it needs more time to get all technical logistics in place. While RCL believes that it can get the Station back on the air – whether from its licensed site or from a new site with an interim facility- by March 1, 2020, to be safe RCL requests for an additional 60 to 75 days after its current 312(g) deadline of January 29, 2020 to remain off the air and complete installation of its displacement CP or to file for an interim facility and get that facility built and on the air.

In light of the foregoing, RCL respectfully requests a waiver of Section 312(g) and grant of an extension of STA to allow it to remain off the air for an additional sixty (60) to seventy-five (75) days to allow the Station to either complete negotiation of new lease terms at its licensed site and build out its CP facilities or confirm the ability to use the nearby tower owned by American Tower and file for an STA for a low power interim facility to get the Station back on the air.

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

<sup>2</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>3</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)).