

312(g) waiver

WRAP-LP's digital CP File No. 0000001539 for channel 32 was rendered unusable first by two adjacent channel full power stations in Youngstown, Ohio maximizing their signals as part of the repack process in order to try to serve the Cleveland market. Then after WRAP-LP filed for a modified channel 32 that did not interfere with the those two Youngstown stations but covered only part of the Cleveland DMA Nexstar's Youngstown station filed an application for channel 32 which interfered with the WRAP channel 32 application. Nexstar's following application corrected the interference issue but left no viable area for WRAP to use for its channel 32. Despite an exhaustive search WRAP at that time found there were no other channels in Cleveland available to use.

Subsequently WRAP was able to identify channel 16 as a channel that as part of the repack process was being vacated and filed an application for channel 16. WRAP-LP received a construction permit for channel, File no. 0000071862, toward the end of 2019 but unfortunately then found it's applied for tower could not accommodate the station.

WRAP-LP then located a tower less than half a kilometer from its current tower and is well on the way to completing a lease for that tower. A minor modification was filed to move to that tower File No. 0000137492 which has been granted.

WRAP-LP currently has a transmitter for the channel 16 as well as all ancillary equipment including EAS and as soon as the lease is signed will order the antenna and transmission line. We expect construction to be completed within a reasonable time unless again delayed for reasons beyond our control.

WRAP-LP has unfortunately again experienced delays due to reasons beyond its control due to structural issues with the tower reported by a crew changing tower lights and the tower's owner constantly changing terms and conditions of the lease. We originally completed the K2 Towers II co-location form in March 2021. We were presented with a copy of K2's standard lease shortly thereafter and negotiated with them for almost a month until we had a lease that satisfied both parties and told K2 we were ready to sign. About the same time K2 had a tower crew servicing their tower's lighting and they reported an issue to K2 regarding possible structural problems that also included potential problems with the tower's guy wires. K2 then informed us they needed to do a complete structural analysis of the tower and our equipment on the tower and couldn't complete a lease until the structural analysis was finished. K2 hired Warmus Associates in Bath, OH, a several person firm, to do the structural analysis. Warmus it became clear later not only does engineering but out also does tower work and was involved it installing multiple full power TV antennas for repack stations at the time. Despite my weekly inquiries and weekly reassurances by K2 that Warmus would finish quickly the weeks began to drag into months. By the time Warmus finished its tower work and then finished the structural several months has elapsed. Warmus finally presented the structural analysis to K2 on August 30th 2021 and that structural analysis showed the tower was not structurally deficient and also gave their approval to install WRAP's transmission line and antenna on the tower.

We asked them to sign the lease we had both previously agreed on and showed them a bid by Rio Steel, our tower crew, to get their permission to use Rio to install the antenna. Rio is a NATE.org member, an American Tower approved contractor and a company I've used twice just recently in Tampa, FL to install line and antenna with outstanding results. K2 replied they wanted us to hire Warmus to do the tower work and a much, much higher price and added a clause in the lease to try to force us to agree to use Warmus. It took literally a month to have K2 change the Warmus terms in the lease to oversight with a maximum \$2000. expense. "Great" I said to K2, "let's sign the lease". But no, K2 again changed the lease to include

a new clause that said we would now be financially responsible for all expenses related to other tenants on the tower having to shut down when WRAP installs the line and antenna on the K2 tower.

This change by K2 was made the last week in September and it seems almost pointless to continue to negotiate with a company that, should we resolve this issue, may very well change the lease yet again and prudent to come up with an alternative plan should we not be able to complete a lease with K2. At this time I have contacted several other towers in the immediate area to ask if they had space and several do. Depending on the outcome of these discussions the station may move to an entirely different tower. I am still in discussions with K2 as well.

When I received the results of the structural analysis I ordered the antenna from Alive antenna with delivery now mid-November, I have Rio Steel ready to do the antenna and line installation currently November 22nd. I'm working diligently and certainly hope I have a tower to put the antenna on before then. Again WRAP does currently have the capacity to put the analog channel 32 on air should it become necessary.

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 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."² 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."³

In light of the showing above including the aforementioned events beyond our control licensee requests a further extension to allow the station to remain silent and again finds it prudent to ask for a 312(g) waiver to remain off air beyond the one year deadline while we complete construction of the WRAP channel 16 and return the station to operation as soon as possible.

¹ *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)

² *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).

³ *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)).