

**FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

*In reply refer to: 1800B3-LA*

**OCT 04 2017**

Dan J. Alpert, Esq.  
2120 North 21st Road  
Arlington, VA 22201

In re: **WGAY(FM), Sugarloaf Key, FL**  
Facility ID No. 190443  
Silent since September 10, 2017  
  
Request for Special Temporary  
Authority to Remain Silent

Dear Mr. Alpert:

This letter concerns the request you filed on September 14, 2017, on behalf of Magnum Broadcasting, Inc. (MB), for Special Temporary Authority (STA) to permit FM Radio Station WGAY to remain silent.

MB's request states that Station WGAY(FM) went silent on September 10, 2017, for technical reasons. The request includes the appropriate certification regarding Section 5301 of the Anti-Drug Abuse Act of 1988.<sup>1</sup>

MB's request is granted. Accordingly, Special Temporary Authority is granted to permit Station WGAY(FM) to remain silent not to exceed 180 days from the date of this letter. **Notwithstanding the grant of this Special Temporary Authority, the broadcast license for Station WGAY(FM) will automatically expire as a matter of law if broadcast operations do not resume by 12:01 a.m., September 11, 2018.**<sup>2</sup>

MB is required to notify the Commission when broadcast operations resume. If MB does not file the notification of resumption of operations in a timely manner, the license may be subject to cancellation pursuant to Section 312(g) of the Communications Act, as amended.<sup>3</sup>

The station's silent status does not suspend the licensee's obligation to comply with all other relevant Commission rules, including the filing, when appropriate, of applications for renewal of broadcast license. It is imperative to the safety of air navigation that any prescribed painting and illumination of the station's tower shall be maintained until removed.<sup>4</sup>

Sincerely,



Lisa Scanlan  
Deputy Chief, Audio Division  
Media Bureau

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<sup>1</sup> In the event extension of special temporary authority is sought, please renew the certification in this matter.

<sup>2</sup> See 47 U.S.C. § 312(g).

<sup>3</sup> *Id.* In addition to filing a notification of resumption of operations electronically on the date operations resume, notification of resumption must also be emailed to Denise.Williams@FCC.gov.

<sup>4</sup> See 47 C.F.R. §§ 17.6 and 73.1740(a)(4).

**FEDERAL COMMUNICATIONS COMMISSION**  
**445 TWELFTH STREET SW**  
**WASHINGTON DC 20554**

MEDIA BUREAU  
AUDIO DIVISION  
APPLICATION STATUS: (202) 418-2730  
WWW.FCC.GOV/media/radio/audio-division

ENGINEER: Dale Bickel  
TELEPHONE: (202) 418-2706  
FACSIMILE: (202) 418-1410  
E-MAIL: dale.bickel@fcc.gov

September 6, 2017

Michael Stapleford, President  
Magnum Broadcasting, Inc.  
P.O. Box 436  
State College, PA 16804

Re: WGAY (FM), Sugarloaf Key, FL  
Magnum Broadcasting, Inc.  
Facility Identification Number: 190443  
Special Temporary Authority  
BSTA-20170905ABW

Dear Mr. Stapleton:

This is in reference to your request filed September 5, 2017. You request special temporary authority ("STA") to operate WGAY with temporary facilities (0.040 kW ERP, from an antenna mounted 6 meters above ground level) at the construction permit site, to allow the station to resume operation before the possible arrival of Hurricane Irma. The licensed transmitter site is not available. You must return WGAY to operating status **no later than September 20, 2017** to avoid automatic cancellation of the station's license pursuant to Section 312(g) of the Communications Act.

STA requests which involve a change in transmitter site must include four critical elements: (1) Loss of the licensed site must be beyond the licensee's control; (2) STA facilities must continue to provide service to the licensed community; (3) STA facilities must maintain, as closely as practicable, the licensed service area without extending it;<sup>1</sup> (4) STA facilities cannot involve the construction of towers intended for permanent use by the station requesting the STA. We find that the proposed STA operation satisfies these criteria.

Special Temporary Authority for the temporary facilities proposed IS GRANTED. **When WGAY commences operations pursuant to this STA, the licensee (or its representative) shall confirm the start of STA operations via an e-mail to Dale Bickel, dale.bickel@fcc.gov.** This date will be entered into the Commission's CDBS database to indicate that the station has resumed broadcasting. You must also file a Notice of Resumption of Operations for WGAY in the CDBS electronic filing system.

The licensee must use whatever means are necessary to protect workers and the public from radiofrequency exposure in excess of the Commission's exposure guidelines. See 47 CFR § 1.1310.

**This authority expires on March 5, 2018.**

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<sup>1</sup> In this STA request, there is a small extension of the STA 60 dBu outside the licensed 60 dBu contour, toward the northeast of the licensed site. This area remains wholly within the area authorized by the construction permit. Under the special circumstances present here, we find this acceptable.

We remind the licensee that the station's license will expire as a matter of law upon twelve consecutive months of silence [ending **September 20, 2017**], notwithstanding the grant of the present STA. See Pub. Law No. 104-104, 110 Stat. 56, Section 403(1) (1996) and Order, *Silent Station Authorizations*, FCC 96-218 (released May 17, 1996). See also Public Notice, *Expedited Processing of Applications Filed by Silent Stations*, DA 96-818 (1996). Please be aware that unauthorized operations – operations with facilities not authorized by a current STA or license – do not count as a resumption of operations within one year for the purposes of Section 312(g) of the Communications Act, and cannot be used to avoid the consequences of Section 312(g). See *A-O Broadcasting Corporation*, FCC 08-10, 23 FCC Rcd 603 (2008).

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**STA Advisory:** Section 309(f) of the Communications Act of 1934, as amended, authorizes the Commission to grant STA in cases of "extraordinary circumstances requiring temporary authorizations in the public interest and when delay in the institution of the temporary operations would seriously prejudice the public interest." However, Section 309(f) is not a means by which a licensee/permittee may circumvent established processing procedures which require the filing of an application, nor is it a means by which a broadcaster may enhance his facility or make operation more convenient for the broadcaster. Stations operating with less than licensed facilities under temporary authorities can be viewed as receiving the benefit of a larger protection area than that in which they are currently providing service.

Accordingly, Special Temporary Authorities by nature are to be temporary and are not intended for extended use. Licensees of stations operating under temporary authorities are reminded that timely restoration of permanent facilities is the responsibility of the licensee and should be undertaken expeditiously. Any request for extension of special temporary authorities carries an increased burden with each subsequent request.

Therefore, requests for extension of STA will be granted only where the licensee can show that one or more of the following criteria have been met:

- Restoration of licensed facilities is complete and testing is underway;
- Substantial progress has been made during the most recent STA period toward restoration of licensed operation; or
- No progress has been made during the most recent STA period for reasons clearly beyond the licensee's control, and the licensee has taken all possible steps to expeditiously resolve the problem.

Sincerely,



Dale Bickel  
Senior Engineer  
Audio Division  
Media Bureau

cc: Dan Alpert (via e-mail only)