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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Carl Lash  
Whiplash Comm. in Dallas, Tex.

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Federal Communications Commission  
Washington, D.C. 20554

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In Reply Refer to: 1800B3-VM

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Received & Inspected

Mr. Chris Lash  
Whiplash Community Radio, Inc.  
29 Angela Drive  
Palm Coast, FL 32164

SEP 08 2015

FCC Mail Room

In re: **KXCT(FM), Goodland, KS**  
Facility ID No. 174585  
Silent since April 5, 2014

**Notification of License Expiration**

Dear Mr. Lash:

Our records indicate that the station referenced above has been silent since at least April 5, 2014. Therefore, pursuant to Section 312(g) of the Communications Act, as amended, the station's license expired as a matter of law at 12:01 A.M., April 6, 2015. On April 2, 2015, you filed a notice of resumption of operations on behalf of Whiplash Community Radio, Inc. ("WCR"), stating that Station KXCT(FM) had resumed operation on April 4, 2015. In that resumption notice, WCR states, "Station resumes operations under the technical specifications requested in engineering STA filed 4-2-2015." Our records show that WCR filed a request for special temporary authority ("STA") on April 2, 2015, to operate at an alternative site, which was dismissed as defective on April 16, 2015. Accordingly, the facilities that they proposed to use in their resumption notice are not authorized and cannot provide the basis for a resumption of operations.

**Background.** On April 11, 2014, WCR filed a request for STA to remain silent, stating that Station KXCT(FM) went silent on April 5, 2014, after it lost its lease for its transmitter site.<sup>1</sup> That request was granted on August 11, 2014, and expired on February 7, 2015, after which time continued silence was unauthorized.<sup>2</sup> At the time we granted the silent STA, we notified WCR that pursuant to §312(g) of the Communications Act of 1934, as amended, the broadcast license for Station KXCT(FM) would automatically expire as a matter of law if broadcast operations did not resume by 12:01 a.m., April 6, 2015. On April 2, 2015, WCR filed a technical STA to use an alternate site to operate Station KXCT(FM). That request was dismissed by letter on April 16, 2015, including the following warning:

Additionally, a station's license expires as a matter of law upon twelve consecutive months of silence [here ended April 4, 2015]. 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 (May 22, 1996). The mere filing of an STA request does not stay that statutory deadline. 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

<sup>1</sup> File No. BLSTA-20140411AAZ.

<sup>2</sup> Letter to Mr. Chris Lash, from Lisa Scanlan, Assistant Chief, Audio Division, Media Bureau, Ref. 1800D3-RH, August 11, 2014.

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, released January 8, 2008.<sup>3</sup>

On July 16, 2015, WCR filed an application for construction permit, in which it included an exhibit stating:

On April 4, 2015 the station resumed operation with an emergency antenna as permitted in Section 73.1680(b) which does not require prior authority [sic] from the Commission. Immediately concurrent with that resumption, a request for formal Special Temporary Authority was made to utilize [sic] the emergency location; well within the 24-hour period required under that rule section. The location is an American Tower Corporation roof top facility with A.T.C [sic] asset number KS-2067.<sup>4</sup>

**Discussion.** Contrary to WCR's assertion, Section 73.1680, i.e., the emergency antenna rule is inapposite in this instance. Section 73.1680 of the Commission's Rules states "[A]n emergency antenna is one that is erected for temporary use after the authorized main and auxiliary antennas are damaged and cannot be used."<sup>5</sup> The Rule also states that "[p]rior authority from the FCC is not required by licensees and permittees to erect and commence operations using an emergency antenna to restore program service to the public. However, an informal letter request to continue operation with the emergency antenna must be made within 24 hours to the FCC . . . ."<sup>6</sup> In this case, WCR's antenna was not damaged – it was reportedly seized in a legal dispute, along with the rest of the station's transmitting equipment. Furthermore, WCR did not submit a request to the Commission to continue operation with this emergency antenna as required by the rule. The emergency antenna rule allows an operating station that has suffered unexpected damage to its main and auxiliary antennas either to erect a temporary antenna or operate using a portion of its licensed antenna system as an emergency antenna to restore service. It does not permit the complete relocation of a station's transmitting facilities to an alternate site after nearly a one year period of silence in order to avoid expiration of the station's license.<sup>7</sup> Thus, the reported operation of the Station, starting on April 4, 2015, was unauthorized, and the Station failed to resume authorized operation prior to expiration of the twelve month period of silence as required by §312(g) of the Act.<sup>8</sup>

Accordingly, we have determined that the license for Station KXCT(FM), Goodland, Kansas, expired as a matter of law at 12:01 a.m., on April 6, 2015. The Commission's public and internal databases WILL BE MODIFIED to indicate that the broadcast license for the referenced station is

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<sup>3</sup> *Letter to Whiplash Community Radio from Dale Bickel, Senior Engineer, Audio Division*, April 16, 2015.

<sup>4</sup> File No. BPED-20150716ABT, Ex.17.

<sup>5</sup> 47 C.F.R. §73.1680(a).

<sup>6</sup> 47 C.F.R. §73.1680(b).

<sup>7</sup> See *Letter to John C. Trent, Esq., from Peter H. Doyle, Chief, Audio Division, Media Bureau*, Ref. 1800D3-MM (MB, July 25, 2014), *aff'd*, *Letter to John C. Trent, Esq., and Cary S. Tepper, Esq., from Peter H. Doyle, Chief, Audio Division, Media Bureau*, Ref. 1800D3-IB (MB, Nov. 25, 2014), review pending (§73.1680 does not apply to operation at alternate site after licensed site was lost in landlord-tenant dispute, and use of such site does not break silence for purposes of §312(g) of the Act).

<sup>8</sup> See *Eagle Broadcasting Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 591-96 (2008), *aff'd sub nom. Eagle Broadcasting Group, Ltd. V. F.C.C.*, 563 F.3d 543 (D.C. Cir. 2009) (unauthorized operation is equivalent to continued silence for purposes of §312(g)).

EXPIRED, that the station's license IS CANCELED as a matter of law, and that the station's call sign IS DELETED. Additionally, IT IS ORDERED that the pending Station KXCT(FM) minor change application (File No. BPED-20150716ABT) IS DISMISSED as moot.

Finally, we note that it is imperative to the safety of air navigation that any prescribed painting and illumination of the Station's tower be maintained until the tower is dismantled. Accordingly, the owner of the tower where the Station's transmitting antenna is located is required, pursuant to Section 303(q) of the Act, to maintain the tower in the manner prescribed by our rules and the terms of the cancelled license.<sup>9</sup>

Sincerely,

*Peter H. Doyle* /TH  
Peter H. Doyle, Chief  
Audio Division  
Media Bureau

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<sup>9</sup> See 47 U.S.C. §303(q). See also 47 C.F.R. §§ 17.1 *et seq.* and 73.1213; *Streamlining the Commission's Antenna Structure Clearance Procedure*, WT Docket No. 95-5, 11 FCC Rcd 4272 (1995).