Federal Communications Commission
Washington, D.C. 20554

June 17, 2020

In Reply Refer to: 1800B3-VM

SENT VIA EMAIL

Mr. John H. Weller
Westburg Broadcasting Montgomery, LLC
1405 W. Crestwood Court
Spokane, WA 99128

In re: **WALQ(AM), Carrville, AL**
Facility ID No. 68309
File No. 0000097834

Dear Licensee:

We have before us your application (Application) for renewal of the license for AM Station WALQ, Carrville, Alabama (Station).[1] For the reasons set forth below, we grant the Application for a renewal period of one year from the date of this letter, instead of a full term of eight years, pursuant to Section 309(k)(2) of the Communications Act of 1934, as amended (Act).[2]

Background. The Application was filed on January 16, 2020, seeking to renew the Station's license. Based on our review of the Application and related Commission records, we find that the Station was silent for approximately 4 years during its license term starting on April 1, 2012, and ending on April 1, 2020.[3]

Discussion. Silence instead of operation in accordance with a station's FCC authorization is a fundamental failure to serve a broadcast station's community of license, because a silent station offers that community no public service programming such as news, public affairs, weather information, and Emergency Alert System notifications. Moreover, brief periods of station operation sandwiched between prolonged periods of silence are of little value because the local audience is not accustomed to tuning into the station's frequency.[4]

The basic duty of broadcast licensees to serve their communities is reflected in Section 309(k) of the Act.[5] That Section provides that if, upon consideration of a station's license renewal application and

[1] File No. 0000097834.

[2] 47 U.S.C. § 309(k)(2).

[3] *See* Attachment 1, File No. 0000097834; *see also* File Nos. BLSTA-20120628AAU (granted September 25, 2012), BLESTA-20130308ACN (granted May 22, 2013), BLSTA-20130719CYD (granted September 18, 2013), BLESTA-20140306AKK (granted May 28, 2014), BLSTA-20140818AAB (granted August 29, 2014), BLESTA-20150202ACC (granted April 6, 2015), BLSTA-20171106AAT (granted January 29, 2017), BLESTA-20180509ADA (granted June 18, 2018); Notices of resumption of operation dated June 18, 2013, July 17, 2014, August 13, 2015, November 5, 2018.

[4] *See Radioactive, LLC*, Hearing Designation Order, 32 FCC Rcd 6392, para. 2 (2017).

[5] 47 U.S.C. § 309(k). *See also* 47 U.S.C. § 312(g) (the license of any station that fails to transmit broadcast signals for any consecutive 12-month period expires automatically at the end of that period, unless extended or reinstated). In addition to its enforcement of Sections 309(k) and 312(g) of the Act, the Commission has stressed its interest in promoting efficient use of radio broadcast spectrum for the benefit of the public in several different contexts. *See Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Third Report and Order, 26 FCC Rcd 17642, 17645, para. 7 (2011) (citing the Commission's "fundamental interest" in expediting new radio service and preventing "warehousing" of scarce spectrum); *1998 Biennial Regulatory Review* –

related pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.[6] If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted."[7]

In 2001, the Commission cautioned "all licensees that . . . a licensee will face a very heavy burden in demonstrating that it has served the public interest where it has remained silent for most or all of the prior license term."[8] It also acknowledged the agency's longstanding policy to encourage stations to resume broadcast operations when license renewal applications were pending. However, the Commission noted that Section 309(k)(1) applies a "backwards-looking standard" that does not give any weight to efforts to return a station to full-time operation in the future.[9] The Commission held that denial of the renewal application of the station in question in *Birach* would be fundamentally unfair because the Commission had not provided sufficient notice of the effect the Section 309(k)(1) standard would have on silent stations.[10] Since the issuance of the *Birach* decision in 2001, licensees have been on notice as to how Section 309(k)(1) applies to silent stations.

In this case, Licensee's conduct has fallen short of that which would warrant routine license renewal. Licensee's stewardship of the Station fails to meet the public service commitment which licensees are expected to provide to their communities of license on a daily basis because the Station was silent for a significant portion of the license term.[11]

On the facts presented here, we conclude that a short-term license renewal for the Station is the appropriate sanction. Although the Station sought Commission authorization for each of the periods of silence, we cannot find that the Station served the public interest, convenience and necessity during the

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Streamlining of Mass Media Applications, Rules, and Processes, Report and Order, 13 FCC Rcd 23056, 23090-93, paras. 83-90 (1998), *on reconsideration*, 14 FCC Rcd 17525, 17539, paras. 35-36 (1999); *Liberman Broad. of Dallas License LLC*, Letter, 25 FCC Rcd 4765, 4768 (MB 2010).

[6] 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Implementation of Sections 204(a) and 204(c) of the Telecomm. Act of 1996*, Order, 11 FCC Rcd 6363 (1996).

[7] 47 U.S.C. §§ 309(k)(2), 309(k)(3).

[8] *See Birach Broad. Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 5015, 5020, para. 13 (2001) (*Birach*).

[9] *Id.* at para. 12 ("[C]onsideration of post-term developments is fundamentally at odds with this backwards-looking standard.").

[10] In *Birach*, the station was silent for the entire period (approximately two and one-half years) in which the license renewal applicant (Birach) held the license. Section 312(g) of the Act took effect during that period, and Birach returned the station to operation before that provision would have applied. *See* 47 U.S.C. § 312(g). The Commission stated: "The fact that Birach resumed WDMV operations only when faced with the potential license cancellation is not lost on us. Although we have concluded that Birach is qualified to be a licensee and that grant of the renewal application was proper, it is equally clear to us that Birach's conduct as a licensee upon acquiring WDMV fell far short of the service commitment which most licensees fulfill to their communities of license on a daily basis." *Id.*, 16 FCC Rcd at 2021, para. 13.

[11] *See Fox Television Stations, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9564, 9571 n. 40 (MB 2014) (Commission considers the licensee's performance since the beginning of its most recent license term, but performance during the pendency of a renewal application is given less weight).

license term due to the extended periods of non-operation. Accordingly, pursuant to Section 309(k)(2) of the Act, we will grant the Station a short-term license renewal, limited to a period of one year from the date of this letter.[12] This limited renewal period will afford the Commission an opportunity to review the Station's compliance with the Act and the FCC's rules and to take whatever corrective actions, if any, that may be warranted at that time.

Conclusion. Accordingly, for the reasons set forth above, IT IS ORDERED THAT the license renewal application (File No. 0000097834) filed by Westburg Broadcasting Montgomery, LLC, for AM Station WALQ, Carrville, Alabama, IS GRANTED pursuant to 47 U.S.C. § 309(k)(2), for a license term of one year from the date of this letter. (Note: the date set in this letter for the new license term supersedes any notice generated from the FCC Licensing and Management System (LMS)).

Sincerely,

Albert Shuldiner

Albert Shuldiner
Chief, Audio Division
Media Bureau

Sent by email to johnhweller@comcast.net
cc: David G. O'Neil , Esq. (via email to doneil@rinioneil.com)

[12] *See, e.g., South Seas Broad., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 24 FCC Rcd 6474 (MB 2008) (two-year renewal granted, NAL issued, for willfully and repeatedly violating 47 CFR § 73.1350 by engaging in operation of the station at an unauthorized site and willfully and repeatedly violating 47 CFR § 73.1740 by leaving the station silent without the proper authorization).