



Federal Communications Commission  
Washington, D.C. 20554

March 14, 2023

Mr. Lyle Reynolds  
Red Mountain Ventures, LLC  
PO Box 35124  
Indian Springs Village, AL 35209  
Sent by email to [reynoldstyle@gmail.com](mailto:reynoldstyle@gmail.com)

In re: **WZGX(AM), Bessemer, AL**  
Facility ID No. 4926  
Application File Nos. 92310, 105672

Dear Mr. Reynolds:

We have before us an application (Application) filed by Red Mountain Ventures, LLC (Licensee), to renew the license for WZGX(AM), Bessemer, Alabama (Station).<sup>1</sup> 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).<sup>2</sup> As a result, the Station's license will expire on March 14, 2024, and Licensee must file a renewal application on or before November 1, 2023.<sup>3</sup>

**Background.** Licensee filed the Application on December 2, 2019. The Station's license term began on November 29, 2017,<sup>4</sup> and ended on April 1, 2020. The Station was silent for two periods of almost twelve months: from January 18, 2018, to January 17, 2019;<sup>5</sup> and from March 25, 2019, to March 15, 2020.<sup>6</sup> The Station was silent for 84% of its license term. The Station has been on the air 100% of its extended license term under section 307(c)(3) of the Act.<sup>7</sup>

---

<sup>1</sup> See Application File No. 92310 (filed Dec. 2, 2019), as amended by File No. 1005672 (Renewal Application).

<sup>2</sup> 47 U.S.C. § 309(k)(2).

<sup>3</sup> See 47 CFR § 73.3539(a) ("an application for renewal of license shall be filed not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed").

<sup>4</sup> See Application File No. BAL-20170607AAH; Broadcast Actions, Public Notice, Report No. 49093, at 2 (MB Oct. 18, 2017); Notice of Consummation (rec'd Nov. 29, 2017). See also 47 U.S.C. § 309(k)(1) (limiting the Commission's renewal analysis to whether, during the preceding license term, (1) the station served the public interest, convenience, and necessity, (2) "there have been no serious violations by the *licensee*" of the Act or the Rules, and (3) "there have been no other violations by the *licensee*" of the Act or the Rules "which, taken together, would constitute a pattern of abuse") (emphasis added).

<sup>5</sup> See Application File No. BLSTA-20180126ADA (granted Feb. 16, 2018); Notice of Resumption of Operations, (rec'd Jan. 18, 2019). Licensee did not request an extension of its special temporary authority (STA) to remain silent for more than 180 days. See 47 CFR § 73.1635(a)(4) (STA may only be granted for initial period of 180 days).

<sup>6</sup> See Application File No. BLSTA-20190326AAF (granted April 17, 2020); Notice of Resumption of Operation, (rec'd Aug. 5, 2020). Licensee did not request an extension of its special temporary authority (STA) to remain silent for more than 180 days. See *supra* note 5.

<sup>7</sup> Section 307(c)(3) of the Act mandates that the Commission continue a broadcast license in effect while the license renewal application is pending. 47 U.S.C. § 307(c)(3); see *Fox Television Stations, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9564, 9571 n.40 (MB 2014) (in acting on a renewal application, the Commission considers the

**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.<sup>8</sup>

The basic duty of broadcast licensees to serve their communities is reflected in section 309(k) of the Act.<sup>9</sup> That section provides that if, upon consideration of a station’s license renewal application and related pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations by the licensee of the Act or the rules; and (3) there have been no other violations by the licensee which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>10</sup> 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.”<sup>11</sup>

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.”<sup>12</sup> 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.<sup>13</sup> 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

---

licensee’s performance since the beginning of its most recent license term but gives less weight to improved performance during the pendency of the renewal application).

<sup>8</sup> See *Radioactive, LLC*, Hearing Designation Order, 32 FCC Rcd 6392, 6392, para. 2 (2017).

<sup>9</sup> 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—Streamlining of Mass Media Applications, Rules, and Processes*, Report and Order, 13 FCC Rcd 23056, 23090-93, paras. 83-90 (1998), *on recon.*, 14 FCC Rcd 17525, 17539, paras. 35-36 (1999); *Liberman Broad. of Dallas License LLC*, Letter Order, 25 FCC Rcd 4765, 4768 (MB 2010).

<sup>10</sup> 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).

<sup>11</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>12</sup> See *Birach Broad. Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 5015, 5020, para. 13 (2001) (*Birach*).

<sup>13</sup> *Id.* at para. 12 (“[C]onsideration of post-term developments is fundamentally at odds with this backwards-looking standard.”).

silent stations.<sup>14</sup> 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 failed 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.<sup>15</sup>

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 the periods of silence, we cannot find that the Station served the public interest, convenience and necessity during the license term due to the extended periods of non-operation. We acknowledge that, generally, where a station has been off the air for a large percentage of its license term, we have designated an application to renew the station's license for hearing rather than granting a short-term renewal.<sup>16</sup> However, in this case, one of the extended periods of silence was attributable to a one-time event beyond the Licensee's control. Specifically, a fire damaged the building housing the Station's studio facilities.<sup>17</sup> 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.<sup>18</sup> This limited renewal period will afford the Commission an opportunity to review the Station's public service performance, as well as compliance with the Act and the Commission's rules, and to take whatever corrective actions, if any, that may be warranted at that time.

**Ordering Clauses.** Accordingly, for the reasons set forth above, **IT IS ORDERED THAT** the license renewal application (Application File No. 92310, as amended by Application File No. 105672) filed by Red Mountain Ventures, LLC, for WZGX(AM), Bessemer, Alabama, **IS GRANTED** pursuant to

---

<sup>14</sup> 4 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.

<sup>15</sup> *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).

<sup>16</sup> *See, e.g., Snake River Radio, LLC*, Hearing Designation Order and Notice of Opportunity for Hearing, MB Docket No. 22-53, DA 22-115 (MB Feb. 8, 2022) (designating renewal application for hearing because station was silent for 80% of its license term).

<sup>17</sup> Application at Attach. (Supplement to Clarify On-Air Operations). *See also*, BLSTA-20180126ADA at Exh. 1 ("A fire in the transmitter building has caused WZGX(AM) to cease operation." The licensee will fix the damage (including the transmitter) and return to normal operations as soon as possible.").

<sup>18</sup> *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).

section 309(k)(2) of the Communications Act of 1934, as amended,<sup>19</sup> for a license term of one year from the date of this letter.<sup>20</sup>

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

---

<sup>19</sup> 47 U.S.C. § 309(k)(2).

<sup>20</sup> The date set in this letter for the new license term supersedes any notice generated from the FCC Licensing and Management System (LMS)