



Federal Communications Commission
Washington, D.C. 20554

April 17, 2023

In Reply Refer to: 1800B3-IB

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In re: **WGVE-FM, Gary, IN**
Facility ID No. 23278
File Nos. 0000118333
0000185607

Application for License Renewal
Application for Transfer of Control

Dear Licensee:

The Media Bureau (Bureau) has before it applications by Gary Community School Corp. (Licensee) to renew its license¹ for WGVE-FM, Gary, Indiana (Station) and for consent to transfer control of the Station to a new governing board.² For the reasons set forth below, we grant the Transfer Application and grant the Renewal 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).³ **As a result, the Station's license will expire on April 17, 2024, and Licensee must file a renewal application on or before December 1, 2023.**⁴

Renewal/Transfer Standards. When, as here, applications to renew a license and to transfer control of the licensee are pending concurrently, Bureau policy is to first consider whether the current

¹ Application File No. 0000118333 (filed May 5, 2021) as amended (Renewal Application).

² Application File No. 0000185607 (filed Jun. 1, 2022) as amended (Transfer Application).

³ 47 U.S.C. § 309(k)(2).

⁴ 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").

licensee qualifies for license renewal. If so, the Bureau then considers the transfer application and the qualifications of the proposed transferee.

The Commission's evaluation of an application to renew a broadcast station's license is governed by section 309(k) of the Communications Act of 1934, as amended (Act).⁵ The Commission must grant renewal if, upon consideration of the application and any related pleadings, it finds that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission's rules (Rules); and (3) there have been no other violations which, taken together, constitute a pattern of abuse.⁶ If, however, the licensee fails to meet that standard, we may deny the application—after notice and opportunity for a hearing—or grant the application “on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.”⁷ Here, we find that a short-term renewal is appropriate after considering public interest and pattern of abuse matters.

Among the factors central to a public interest finding in a broadcast license renewal proceeding is whether the licensee has met its obligation to provide informational programming responsive to issues it has identified as important to the station's community of license. The Commission grants licensees broad discretion to determine, in good faith, which issues are of concern to the community and to choose the best way to address those issues. For example, a licensee may address the issues it selects within public affairs programs, public service announcements (PSAs), editorials, free speech messages, community bulletin boards, and religious programming.⁸ To facilitate the Commission and public's determination of a licensee's performance, the Rules require broadcast licensees to place quarterly issues/program lists in their public inspection files identifying their most significant treatment of issues of importance to their communities.⁹ The Commission's public inspection file rules serve the critical purpose of ensuring that broadcast stations are consistently responsive to listener needs.

Also of importance to a broadcaster's overall qualifications to remain a licensee is its ownership and control.¹⁰ The Commission must approve any sudden majority ownership changes to ensure that the licensee continues to meet requirements of the Act and the Rules.¹¹ If there is a sudden majority board change or assumption of control by a new entity, the licensee must file an application seeking Commission consent to transfer control of the license from the existing board/entity to the new board/entity.¹² Gradual ownership changes in NCE licensees are handled by the requirement that licensees file biennial ownership reports identifying their governing boards and any others with

⁵ 47 U.S.C. § 309(k).

⁶ *Id.*

⁷ *Id.* at § 309(k)(2)-(3).

⁸ *Report and Order*, 84 FCC2d at 982–83.

⁹ *See* 47 CFR § 73.3527 (public file of noncommercial educational (NCE) stations).

¹⁰ In addition to the general ownership considerations applicable to all broadcast licensees, such as character and citizenship requirements, NCE-FM stations can only be licensed to a nonprofit educational organization upon showing that the station will be used for the advancement of an educational program. 47 CFR § 73.503(a).

¹¹ *See* 47 U.S.C. § 310(d); 47 CFR §§ 73.3540 (voluntary transfer), 73.3541 (involuntary transfer).

¹² *See id.*

attributable interests.¹³ Licensees also must place ownership information in their online public inspection file.¹⁴

Background. The Station is a Class A, reserved channel NCE FM facility located in the Career Center of a public school system. Our evaluation of the Station's Renewal Application is based on the Station's performance during the eight-year license term from August 1, 2012 to August 1, 2020. In the Renewal Application, Licensee disclosed that there had been a "grave disarray" of Licensee's finances for more than 10 years, which triggered a "state takeover in 2017."¹⁵ Licensee states that the "State of Indiana contracted with Gary Schools Recovery, Inc. (GSRI), a subsidiary of MGT Consulting, to operate the district in August 2017"¹⁶ but did not file any application for transfer of control, file a required biennial ownership report, or identify the impact, if any, on day-to-day operation of the Station. Licensee attributed its recordkeeping problems to staff turnover.¹⁷ It also stated that the school building was closed for some time during the COVID pandemic. The public file lacked ownership reports, and there were no issues/programs lists for the entire renewal term.

The Renewal Application drew an Informal Objection from a listener who argued that there was an unauthorized transfer of control to the State of Indiana, which placed the management of the district in the hands of an emergency fiscal manager.¹⁸ Licensee, which is not represented by communications counsel, did not respond directly, but the Indiana Department of Education (State DOE) filed an Opposition disputing Objector's characterization. State DOE explained that Licensee is currently designated as a "distressed political subdivision," but remains, under Indiana law, a local public school corporation and local education agency.¹⁹ State DOE further explained that Licensee "operates with oversight from Indiana's Distressed Unit Appeals Board but is not owned or operated by the state and vendors are encouraged to continue treating [it] as a public school corporation, separate and distinct from the state of Indiana."²⁰

In a February 7, 2022 Letter Order, the Bureau denied the Objection except to withhold action on the Renewal Application,²¹ until Licensee: (a) filed a current biennial ownership report;²² (b) submitted

¹³ See *id.* § 73.3615.

¹⁴ *Id.* § 73.3527(e)(4).

¹⁵ See WGVE licensing questions Final.pdf (Attach. to Renewal Application).

¹⁶ *Id.*

¹⁷ Licensee stated that the staff holding the position of Career Center Director turned over four times within the prior three years. *Id.*

¹⁸ See Albert Adam David, Informal Objection, Pleading File No. 0000124842 (rec. Oct. 18, 2020) (Objection).

¹⁹ See Indiana Dept. of Ed., Legal Status of Gary Community School Corp., Pleading File No. 0000140801 (rec. Mar. 23, 2021) (Opposition) at 1, citing IC 20-26-2-4.

²⁰ *Id.*

²¹ See Gary Community School Corp., File No. 0000118333, Letter Order (Feb. 7, 2022) (February Order). The Bureau stated that the matters at issue would not necessarily preclude grant of the Renewal Application with whatever additional conditions, if any, may be appropriate once Licensee took the needed actions. See February Order at 1-2.

²² See 47 CFR § 73.3615(d).

additional applications and ownership reports²³ concerning any transfer of control; and (c) ensured that the Station's online public inspection file is up-to-date and includes the required ownership report(s),²⁴ contracts/agreements relating to ownership and control of the Station,²⁵ and all quarterly issues/programs lists.²⁶ Subsequently, Licensee filed the Transfer Application, a biennial ownership report, and updated its public file. Although Licensee added some program information to the file, it was unable to reconstruct issues/programs lists for all quarters or to provide the full information that the Rules require.

Discussion. We grant the Renewal Application for a short term of one year, during which we expect Licensee to improve its record of preparing required documents and placing them in the Station's public inspection file. We also grant the Transfer Application.

Generally, the non-filing of required documents and their absence from the Station's public file would not alone prevent license renewal in total. However, the Commission has explicitly deemed a station's omission of issues/programs lists to be a serious transgression, stated that "such a violation is serious in that it diminishes the public's ability to determine and comment at renewal time on whether the station is serving its community."²⁷ Repeated failure to prepare and upload issues/programs lists has also been considered a pattern of abuse under section 309(k)(1) of the Act.²⁸ Accordingly, such violations have resulted in short-term renewals and monetary forfeitures.²⁹ The violations in the instant case are extensive enough to be classified as "serious," to constitute a pattern of abuse, and to make it difficult for us to fully evaluate the adequacy of the Station's service over the past renewal cycle. Licensee did not timely place (or file at all) any documents in its public file during the last renewal cycle. For example, licensees normally are required to file ownership reports every two years, but Licensee did not file any such reports for about ten years.³⁰ Licensee filed its current ownership report three years after license expiration, when the Bureau made a specific request in the February Order.³¹ NCE licensees are also required to notify the Commission of any sudden changes in control.³² Licensee indicated in the Renewal Application that a transfer of control might have occurred in 2017, within the renewal cycle, but did not

²³ See *id.* § 73.3615(f).

²⁴ *Id.* § 73.3527(e)(4).

²⁵ *Id.*

²⁶ *Id.* § 73.3527(e)(8).

²⁷ *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, para. 39 (1997).

²⁸ *Seaview Communications, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 9340, para. 11 (MB 2019); *Gallup Public Radio*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 13847, para. 10 (MB 2013).

²⁹ *Id.*

³⁰ *Id.* § 73.3615(f).

³¹ The February Order required Licensee to file a report within 45 days, *i.e.*, by March 24, 2022. Licensee did not file the report until March 9, 2023, after a second request. Prior to that, its last ownership report was filed in February 2012. See File No. BOA-20120221ABX (rec. Feb. 21, 2012).

³² 47 CFR §§ 73.3540, 73.3541.

seek Commission authorization for a transfer until June 1, 2022, again only in response to a specific Bureau request in the February Order.

Further, Licensee did not timely prepare or place in the public file any issues/programs lists during the renewal cycle, making it difficult to evaluate the Licensee's service.³³ As discussed above, these quarterly lists are central to evaluating a station's performance in the public interest. The lists must identify the issues given significant treatment and describe the programming that provided this treatment including the time, date, duration, and title.³⁴ The February Order required Licensee to reconstruct missing lists, which Licensee attempted to do in March 2023. Nevertheless, significant information remains missing.

The information Licensee was able to reconstruct consists of general program logs for nine of the 32 quarters in the renewal period. Information for the other 23 quarters, including all information for the years 2012, 2013, 2014, and 2016, remains missing.³⁵ For representative weeks in 2015 and 2017, Licensee submits logs showing its weekday program schedule. Likewise, for representative weeks from 2018 to 2020, Licensee submits logs of its weekend program schedule.³⁶ Such logs are not a substitute for the required lists. For example, they are not limited to informational programming and do not identify specific issues addressed in any specific program segments (with the exception of some brief PSAs for which the logs note the topics thereof). While the logs are missing important information and not in the most helpful format, they nevertheless do contain information from which one can derive required information such as program titles, whether a program consists of talk or music, date and time of broadcast, and program duration.

According to the logs, the Station has aired several types of informational programming. For example, there has been a recurring one-hour program aired weekdays at 8 a.m. entitled "Doors Wide Open." Although the logs do not identify specific issues addressed on any particular segment of this program, Licensee's website describes it as an interview show with guests who work in education, human services, and local government.³⁷ This program is included in weekday schedules for 2015 and 2017, but

³³ Licensee also failed to meet the timeframe for responding to that request. In the February Order, the Bureau advised Licensee to reconstruct and upload the lists within 45 days, but Licensee did not do so for more than a year. *See* February Order at 2.

³⁴ 47 CFR § 73.3527(e)(8).

³⁵ Licensee did not attempt to reconstruct information for the early portion of the renewal period, *i.e.*, between 2012 and 2015. Because Licensee's reconstruction attempt covers a period of eight years (2015 to 2023), it is possible that it misunderstood the need to provide information for the eight-year license renewal period (2012 to 2020) and instead counted eight years back from the present.

³⁶ Specifically, for periods within the renewal terms, Licensee has submitted logs for Q3 and Q4 2015 (weekday), Q1 and Q2 2017 (weekday), Q3 and Q4 2018 (weekend), Q1 and Q2 2019 (weekend), and Q3 2020 (weekend).

³⁷ Specifically, the website says that "[l]ocal programming like "Doors Wide Open" host a wide array of guest from the Gary Community School Corporation, the City of Gary and other valuable partners in education and human services. Frequent guest include Mayor Karen Freeman-Wilson and various department heads of the City of Gary; the leadership of Gary Community School Corporation, department directors, school principals and teachers the president of the local teachers union and other guests." *See* WGVE 88.7 FM Programs, <https://www.garycsc.k12.in.us/wgve-88-7-fm/> (accessed Apr. 4, 2023). The website also states that the Station's "[o]ther programming focuses on parenting, child development, health, aging and international affairs." *Id.*

it appears from the Licensee's website that this has been an ongoing program that still airs on the Station.³⁸

The logs also show that the Station regularly aired local school board and city council meetings on Tuesday evenings in 2015 and 2017 and Licensee's website indicates that this is an ongoing broadcast that continues to the present.³⁹ There was in 2015 and 2017 also a recurring one-hour program aired at noon on African-American History and a one-hour syndicated program on health, People's Pharmacy, airing weekdays at 9 a.m. The logs only identify the issue discussed on one segment of this programming: diet and exercise for children.

For the same period, the logs reflect that the Station aired several PSAs for about one minute several times a day, mainly addressing youth-related and school-related issues.⁴⁰ The Station also aired PSAs from non-profit and governmental organizations such as the Salvation Army, the Big Brothers/Big Sisters program, the Urban League, and a suicide prevention message from the U.S. Department of Veterans Affairs.

For years 2018 forward, the Station submits logs of its weekend program schedule reflecting that the Station airs one-hour Sunday school programs on both Saturday and Sunday mornings. The weekend logs for that period also list programming originating from various local churches throughout the day on Sundays. The weekend logs do not identify any issues presented therein.

Based on the information provided in response to the February Order and assuming *arguendo* that weekday and weekend programming for the missing quarters was similar to that provided for other quarters, we believe that Licensee's public file violations are matters of negligent recordkeeping reflecting a pattern of abuse and not any failure by the Station to broadcast programming serving the public interest. Accordingly, we find that Licensee remains qualified to hold the license for the Station and grant a short-term renewal for a period of one year. We expect that the Licensee will upload to its online public inspection file issues/program lists in accordance with the Rules going forward. Also, because the next renewal evaluation will also cover the periods from August 1, 2020 through Q1 2023, we direct Licensee to update the issues/program lists for those periods as well. Licensee has currently uploaded to the file only weekend program logs for those periods without identifying any issues to which the Station has given significant treatment in those programs.⁴¹

³⁸ *Id.*

³⁹ According to the Licensee's website, "[l]ive broadcast of the Gary School Board meetings will air at 6 PM every second and fourth Tuesdays of the month. Live meetings of the Gary Common Council will air every first and third Tuesdays of the month at 6 PM." *Id.*

⁴⁰ Examples of youth-related issues aired in PSAs in 2015 are cyber civility, teens who argue, boosting vocabulary, mentoring, adoption, and back-to-school information. Broader issues identified in the logs for PSAs include global warming, asthma, drowning prevention, and fire prevention.

⁴¹ We note that if the school was closed during the COVID pandemic, which began in March 2020, or for a recess such as summer break, the Commission would not have required the Station to operate at those times. *See* 47 CFR § 73.561; Audio Division Announces Procedures Related to Coronavirus, Public Notice, DA 20-266 (Mar. 13, 2020) (classifying COVID-related school closures as recess periods). If Licensee does not provide issues/programs lists in any quarter because the Station was not operating during a school closure, it should so indicate in its filing for that quarter.

We ordinarily would also issue a monetary forfeiture against a licensee for such violations.⁴² However, given Licensee's severe financial hardship which resulted in it being named a "distressed political subdivision," we will not assess a forfeiture here.

Having determined that Licensee is qualified for a short-term license renewal, we turn to the Transfer Application. The Transfer Application seeks our approval of a transfer from a former four-member governing board to a six-member new board. We grant the Transfer Application because we are satisfied that the ownership information in the newly provided Ownership Report and Transfer Application reflects that control of the Station is consistent with the Act and the Rules. The Bureau expressed concern in the February Order about the relationship between Licensee and MGT Consulting, LLC (MGT), a for-profit corporation that the State of Indiana appointed to oversee management of the school district.⁴³ In the Transfer Application, MGT further explains that relationship.⁴⁴ MGT states that it was appointed temporarily as Emergency Manager of the school district for a period from August 2017 through June 2024 but that the school district has at all times retained its status as a non-profit corporation. It further states that MGT has one member on the new governing board, but the remaining five members are employees of the school district and thus retain control. Indeed, the Transfer Application reflects that the MGT employee is a non-voting member and that each of the five school employees have a 20 percent voting interest. Thus, we find that Licensee's original description in the Renewal Application of MGT's involvement as a "takeover" was inaccurate. We are satisfied that Licensee remains a non-profit organization and that the addition of one non-voting board member from MGT does not violate any Rule.

Accordingly, IT IS ORDERED that the application of Gary Community School Corporation to renew the license for WGVE-FM, Gary, Indiana (Application File No. 0000118333) IS HEREBY GRANTED FOR A TERM OF ONE YEAR.

⁴² See 47 CFR § 1.80. The base forfeiture amounts are \$10,000 for public file violations and \$8,000 for unauthorized transfers of control. *Id.*

⁴³ February Order at 3.

⁴⁴ Letter from Eric V. Parish, Exec. Vice Pres., MGT (Feb 22, 2022) (Attach. To Transfer Application).

IT IS FURTHER ORDERED that the application of Gary Community School Corporation for consent to transfer control of WGVE-FM, Gary, Indiana, from its current board to a new governing board (Application File No. 0000185607) IS GRANTED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

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