



Federal Communications Commission
Washington, D.C. 20554

October 2, 2023

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Mr. David O'Shaughnessy
Hudson-Westchester Radio, Inc.
One Broadcast Forum
New Rochelle, NY 10801

In re: Hudson-Westchester Radio, Inc.
W252DX, White Plains, NY
Facility ID No. 201735
Application File No. 181470

Dear Licensee:

We have before us the application (Application) of Hudson-Westchester Radio, Inc. (Licensee) for renewal of its license for W252DX, White Plains, New York (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 **The Station's license term will expire on October 2, 2024, and an application to renew the Station's license will be due on or before June 3, 2024.**³

Background. The Application was filed on January 26, 2022. The Station's license term began on September 2, 2021,⁴ and ended on June 1, 2022. The Station was silent between January 8, 2022,⁵ and January 7, 2023.⁶ Thus, the Station was silent for 57 percent of its license term, and 45 percent of its extended term under section 307(c)(3) of the Act.⁷

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 the

¹ Application File No. 181470.

² 47 U.S.C. § 309(k)(2).

³ 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"). The first day of the fourth full calendar month prior to October 2, 2024, is June 1, 2024. June 1, 2024, is a Saturday, which as a weekend is considered a "holiday." See 47 CFR § 1.4. Accordingly, the renewal application must be filed no later than the next business day (Monday, June 3, 2024). See *id.*

⁴ See Application File No. 153768; *Actions*, Public Notice, Report No. PN-2-210907-01, at 15 (MB Sept. 7, 2021).

⁵ See Application File Nos. BLSTA-20220126AAG, 204747; Letter from Victoria McCauley, Attorney, Audio Division, Media Bureau, to Bud Williamson, Digital Radio Engineering (dated April 20, 2022); Letter from Victoria McCauley, Attorney, Audio Division, Media Bureau, to Melodie A. Virtue, Counsel for Hudson-Westchester Radio, Inc. (dated Dec. 5, 2022).

⁶ See Application File No. 206473.

⁷ 47 U.S.C. § 307(c)(3).

community no public service programming such as news, public affairs, weather information, and Emergency Alert System notifications.⁸

The basic duty of broadcast licensees to serve their communities is reflected in section 309(k) of the Act.⁹ 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 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, we are to grant the renewal application.¹⁰ 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.”¹¹

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.”¹² 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.¹³ 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.¹⁴ 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.

⁸ See, e.g., *Radio Hawaii, Inc.*, Order, 37 FCC Rcd 6656, 6656, para. 3 (MB 2022); *Birach Broad. Corp.*, Order, 37 FCC Rcd 8429, 8430, para. 3 (MB 2022) (2022 *Birach Decision*); *Mekaddesh Grp. Corp.*, Memorandum Opinion and Order, 37 FCC Rcd 8567, 8569, para. 10 (MB 2022) (*Mekaddesh*); *Deportes y Musica Comunicaciones, LLC*, Order, DA 22-953, at para. 3 (MB Sept. 14, 2022); *Carlos Lopez*, Memorandum Opinion and Order, DA 22-1095, at para. 10 (MB Oct. 14, 2022); *Winnebago Tribe of Nebraska*, Order, DA 22-1229, at para. 4 (MB Nov. 29, 2022) (*Winnebago Tribe*).

⁹ 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); *Lieberman Broad. of Dallas License LLC*, Letter Order, 25 FCC Rcd 4675, 4678 (MB 2010).

¹⁰ 47 U.S.C. § 309(k)(1).

¹¹ 47 U.S.C. § 309(k)(2), (3).

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

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

¹⁴ 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

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 its license term.¹⁵

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 period of silence discussed above, we cannot find that the Station served the public interest, convenience, and necessity during the license term due to the extended period 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.¹⁶ 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 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 (Application File No. 181470) filed by Hudson-Westchester Radio, Inc. for FM translator station W252DX, White Plains, New York, **IS GRANTED** pursuant to section 309(k)(2) of the Communications Act of 1934, as amended,¹⁷ for a license term of **one year from the date of this letter.**¹⁸ The license renewal application must be filed no later than **June 3, 2024.**

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc (via electronic mail):
Melodie A. Virtue, Esq. (melodie.virtue@foster.com)a
(Counsel to Hudson-Westchester Radio, Inc.)

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 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." *Birach*, 16 FCC Rcd at 2021, para. 13.

¹⁵ 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).

¹⁶ See, e.g., 2022 *Birach Decision*, 37 FCC Rcd at 8429, para. 2, 8431, paras 6-7 (renewing station's license for term of one year where station was silent for 50 percent of its license term and 40 percent of its extended term); *Mekaddesh*, 37 FCC Rcd at 8568-69, paras. 3-9, 8570, paras. 13-14 (renewing various stations' licenses for terms of one year where the stations were one station was silent 25 percent of its license term and 20 percent of its extended term, and the other stations were silent for over 25 percent of their license terms, and over 40 percent of their extended terms).

¹⁷ 47 U.S.C. § 309(k)(2).

¹⁸ The date set in this letter for the new license term supersedes any notice generated from the FCC Licensing and Management System.

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