



Federal Communications Commission
Washington, D.C. 20554

March 8, 2023

In Reply Refer to:
1800B3-VMM

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Mount Wilson FM Broadcasters, Inc.
1500 Cotner Avenue
Los Angeles, CA 90025
Sent via email: mlevine@mountwilsoninc.com

In re: **Mount Wilson FM Broadcasters, Inc.**
KSUR(AM), Monterey, CA
Facility ID No. 7721
File No. 0000155853

K294CA, Monterey, CA
Facility ID No. 147613
File No. 0000155855

Dear Licensee:

We have before us the applications (Applications) of Mount Wilson FM Broadcasters, Inc. (Licensee) for renewal of its licenses for Stations KSUR(AM) and K294CA, Monterey, California (collectively, Stations).¹ For the reasons set forth below, we grant the Applications for a renewal period of two years 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 Stations' terms will expire on March 8, 2025, and renewal applications for the Stations will be due on or before December 1, 2024.**³

Background. The Applications were filed on August 2, 2021, seeking to renew the Stations' licenses. The KSUR(AM) license term began on July 31, 2015,⁴ and ended on December 1, 2021. The K294CA license term began on February 4, 2014,⁵ and ended on December 1, 2021. KSUR(AM) was silent for three periods: from July 31, 2015 to October 22, 2015,⁶ April 8, 2020 to October 20, 2020,⁷ and from December 10, 2020 to November 5, 2021.⁸ Thus, KSUR(AM) was silent for 26% of its license term

¹ Application File Nos. 0000155853, 0000155855.

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").

⁴ Application File No. BAL-20150417AAW (gr. Jun. 15, 2015); Notice of Consummation (dated Jul. 31, 2015).

⁵ Application File No. BLFT-20131122ASW (gr. Feb. 4, 2014).

⁶ See Application File No. BLSTA- 20150130ADS (gr. Apr. 6, 2015); Notice of Resumption of Operations, dated Oct. 27, 2015).

⁷ See Application File No. BLSTA- 202004114AAK (gr. May 6, 2020); Notice of Resumption of Operations, dated Oct. 22, 2020).

⁸ See Application File Nos. BLSTA-20210127AAH (gr. Mar. 24, 2021); BLESTA-20210726AAB (gr. Oct. 19, 2021); Notice of Resumption of Operations, dated Nov. 9, 2021.

and 22% of its extended term under section 307(c)(3).⁹ K294CA was silent for three periods during the license term: from September 24, 2015 to October 22, 2015,¹⁰ December 19, 2019 to October 20, 2020,¹¹ and December 10, 2020 to November 5, 2021.¹² Thus, K294CA was silent for 23% of its license term and 20% of its extended term under section 307(c)(3).¹³

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.¹⁴

The basic duty of broadcast licensees to serve their communities is reflected in section 309(k) of the Act.¹⁵ 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 rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁶ 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

⁹ 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 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).

¹⁰ *See* Application File No. BLFT-20150810ADY (gr. Sept. 24, 2015, changing primary station to KSUR(AM), which was silent for that period, but no STA or silent notification filed.).

¹¹ *See* Application File Nos. BLSTA-20200106AAH (gr. Feb. 7, 2020); BLESTA-20200803AAP (gr. Oct. 2, 2020); Notice of Resumption of Operations, dated Nov. 12, 2020).

¹² *See* Application File Nos. BLSTA-20201214AAB (gr. Feb. 22, 2021); BLESTA-20210726AAC (gr. Oct. 19, 2021); Notice of Resumption of Operations dated Nov. 9, 2021.

¹³ *See* Note 10 *supra*.

¹⁴ *See Radioactive, LLC*, Hearing Designation Order, 32 FCC Rcd 6392, para. 2 (2017).

¹⁵ 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 reconsideration*, 14 FCC Rcd 17525, 17539, paras. 35-36 (1999); *Liberian Broad. of Dallas License LLC*, Letter, 25 FCC Rcd 4765, 4768 (MB 2010).

¹⁶ 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).

and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”¹⁷

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.”¹⁸ 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.¹⁹ 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.²⁰ 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 Stations fails to meet the public service commitment which licensees are expected to provide to their communities of license on a daily basis because the Stations were silent for a significant portion of their license terms.²¹

On the facts presented here, we conclude that a short-term license renewal for the Stations is the appropriate sanction. Although the Stations sought Commission authorization for the periods of silence, we cannot find that the Stations served the public interest, convenience and necessity during the license term due to the extended periods of non-operation. Accordingly, pursuant to section 309(k)(2) of the Act, we will grant the Stations a short-term license renewal, limited to a period of two years from the date of this letter.²² This limited renewal period will afford the Commission an opportunity to review the Stations’ 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.

¹⁷ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁸ See *Birach Broad. Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 5015, 5020, para. 13 (2001) (*Birach*).

¹⁹ *Id.* at para. 12 (“[C]onsideration of post-term developments is fundamentally at odds with this backwards-looking standard.”).

²⁰ 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.

²¹ 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).

²² 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).

Conclusion. Accordingly, for the reasons set forth above, **IT IS ORDERED THAT** the license renewal applications (Application File Nos. 0000155853 and 0000155855) filed by Mount Wilson FM Broadcasters, Inc. for Stations KSUR(AM) and K294CA, Monterey, California **ARE GRANTED** pursuant to section 309(k)(2) of the Communications Act of 1934, as amended,²³ for a license term of **two years from the date of this letter.**²⁴ The license renewal applications must be filed no later than December 1, 2024.

Sincerely,

Albert Shuldiner

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc (via electronic mail):

David D Oxenford, Esq. (doxenford@wbklaw.com)
(Counsel to Mount Wilson FM Broadcasters, Inc.)

²³ 47 U.S.C. § 309(k)(2).

²⁴ The date set in this letter for the new license term supersedes any notice generated from the FCC Licensing and Management System (LMS).