



Federal Communications Commission
Washington, D.C. 20554

October 23, 2023

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED AND E-MAIL

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Sent via email: JEVega@co.cameron.tx.us

In re: Cameron County, Texas
KCCP-LP, South Padre Island, Texas
Facility ID No. 135175
File No. 0000144275

Dear Licensee:

We have before us the application (Application) of Cameron County, Texas (Licensee), for renewal of its license for station KCCP-LP, South Padre Island, Texas (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 term will expire on October 23, 2024, and a renewal application will be due on or before June 1, 2024.**³

Background. The Application was filed on April 30, 2021, seeking to renew the Station's license. The Station's license term began on August 1, 2013,⁴ and ended on August 1, 2021. The Station was silent for approximately 19 consecutive months during the previous license term: from October 30, 2019, to May 27, 2021.⁵ Thus, the Station was silent for approximately 23% of the previous license term.

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. Additionally, section 312(g) of the Act provides, in pertinent part:

If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except

¹ Application File No. 0000144275.

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 See Application File No. BRL-20130401ALP (granted July 26, 2013).

⁵ Cameron County_KCCP LP_Exhibit.pdf, attached to Application File No. 0000144275 (filed Apr. 30, 2021). See also Letter from Juan A. Gonzalez, Chief Legal Counsel, Cameron County Commissioners Court, Civil Legal Division, to Victoria McCauley, Esq., Audio Division, Media Bureau, FCC at 3 (Aug. 19, 2022) (Amended LOI Response).

that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness.⁶

Thus, under section 312(g), the KCCP-LP license expired as of October 30, 2020.

On July 7, 2022, the Media Bureau (Bureau) sent Licensee a Letter of Inquiry regarding the Station's period of more than twelve months of silence, and asked Licensee to provide a showing that the period of silence was due to circumstances beyond its control, and that the Station license should be extended to promote equity and fairness.⁷ On August 19, 2022, Licensee sent the Amended LOI Response to the Bureau. It explained that the Station "ceased operation due to damages from past storms, elements, and other weather events," including a severe storm with high winds on October 25, 2019.⁸ The damaged antenna and other equipment were placed into storage while Licensee attempted to locate the original equipment vendor.⁹ Its efforts were hampered by the onset of the novel coronavirus pandemic in the spring of 2020, as well as by other weather events such as a severe winter storm in February 2021.¹⁰ Eventually, Licensee located the company that had acquired the original equipment vendor, but learned that it was no longer selling or servicing broadcast equipment. This company assisted Licensee in locating a broadcast engineer who was able to assess the Station's equipment, found it to be unusable, and installed replacement equipment that he recommended and the Licensee purchased.¹¹ Thus, after reaching a new lease agreement with the new owner of the Station's transmitter site, the Station returned to operation on May 27, 2021.¹²

On May 8, 2023, Licensee filed a request for special temporary authorization (STA), stating it had lost its site and was seeking to operate from a county-owned tower south of its previous site.¹³ The Bureau granted the STA Request on May 12, 2023, and STA was set to expire on November 9, 2023. On July 3, 2023, Licensee filed an application for minor modification of its facilities, seeking permanent relocation of its antenna and transmitter.¹⁴ The Bureau granted the Modification Application on September 8, 2023, with a construction permit set to expire on September 8, 2026. On September 14, 2023, Licensee filed a request to extend its STA, referencing grant of the Modification Application, but noting that there would be insufficient time between grant of the Modification Application and expiration of the current STA in which to construct the modified Station facility.¹⁵ Licensee thus sought an

⁶ 47 U.S.C. § 312(g).

⁷ Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, FCC, to Cameron County, Texas at 1 (July 7, 2022) (LOI).

⁸ Amended LOI Response at 2.

⁹ *Id.*

¹⁰ *Id.* at 2-3.

¹¹ *Id.* at 3.

¹² *Id.*

¹³ File No. 0000214582 (filed May 8, 2023, amended May 10, 2023) (STA Request).

¹⁴ File No. 0000217503 (filed July 3, 2023) (Modification Application).

¹⁵ File No. 0000220987 (filed Sept. 14, 2023, amended Sept. 14, 2023) (STA Extension Request). *See also* Attachment KCCP1_EXT1.pdf, attached to STA Extension Request.

additional six-month STA, from November 9, 2023, to May 9, 2024, to enable it to complete construction on the modified facility. The STA Extension Request remains pending.

The basic duty of broadcast licensees to serve their communities is reflected in section 309(k) of the Act.¹⁶ 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.¹⁷ 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.”¹⁸

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.”¹⁹ 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.²⁰ 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.²¹ 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.

¹⁶ 47 U.S.C. § 309(k). See also 47 U.S.C. § 312(g), *supra* note 6 and accompanying text. 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); *Liberman Broad. of Dallas License LLC*, Letter, 25 FCC Rcd 4765, 4768 (MB 2010).

¹⁷ 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).

¹⁸ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁹ See *Birach Broad. Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 5015, 5020, para. 13 (2001) (*Birach*).

²⁰ *Id.* at para. 12 (“[C]onsideration of post-term developments is fundamentally at odds with this backwards-looking standard.”).

²¹ 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.

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, and for more than 12 consecutive months during 2019-21, which would result in automatic license expiration unless the license is reinstated or extended in accordance with section 312(g) of the Act.²²

On the facts presented here, we conclude that a short-term license renewal for the Station is the appropriate sanction. Licensee presents evidence that the Station's extended 19-month period of silence was largely due to circumstances beyond its control, including weather events and the novel coronavirus pandemic, and we note the public service that the Station provides both to tourists and residents, in an area where transmission of emergency information by Cameron County is especially important due to hurricanes and other severe weather events. We therefore find that equity and fairness warrant renewal of the license despite its failure to transmit broadcast signals for over 12 consecutive months. However, 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.²³ This limited renewal period will afford the Commission an opportunity to review the Station's public service performance, its progress in constructing the modified Station facilities, and its compliance with the Act and the Commission's rules, and to take whatever corrective actions, if any, that may be warranted at that time. We remind Licensee that the Station must continue to broadcast in accordance with our rules, whether by commencing operation from the modified Station facilities within 12 months or by continuing to seek STA to broadcast from alternative facilities pending construction of the modified facilities.

²² See 47 U.S.C. § 312(g). See also *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).

²³ 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 application (Application File No. 0000144275) filed by Cameron County, Texas, for Station KCCP-LP, South Padre Island, Texas, **IS GRANTED** pursuant to section 309(k)(2) of the Communications Act of 1934, as amended,²⁴ for a license term of one year from the date of this letter.²⁵

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc (via electronic mail):
Michelle Bradley (mae@recnet.com)
(Technical Representative for Cameron County, Texas)

²⁴ 47 U.S.C. § 309(k)(2).

²⁵ The date set in this letter for the new license term supersedes any notice generated from the FCC Licensing and Management System (LMS).