Federal Communications Commission
Washington, D.C. 20554

July 26, 2018

In Reply Refer to:
1800B3-TH

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Mr. Dennis Wallace
Court-Appointed Receiver
1282 Smallwood Drive
Waldorf, MD 20603

In re: KLUQ(FM), Hermann, MO
Facility ID No. 68579
File No. BRH-20121025ABJ

Dear Licensee:

We have before us the application (Application) for renewal of the license for FM radio station KLUQ, Hermann, Missouri (Station). 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).[1]

Background. The Application was filed by the then-licensee, Twenty-One Sound Communications, Inc., on October 25, 2012, seeking to renew the Station's license. Based on our review of the Application and related Commission records, we find that the Station was silent for nearly three years during its license term ending on February 1, 2013.[2] After that point, the Station was silent for significant periods in 2013, 2014, 2015 and 2016. On May 16, 2016, you were appointed by a court to be the receiver for the Station. In the past three years, the Station has alternated between silence and operation, but has operated each day for the last four months pursuant to Section 307(c)(3) of the Act.[3]

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.[4]

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[1] 47 U.S.C. § 309(k)(2).

[2] *See* Application, Exh. 13.

[3] 47 U.S.C. § 307(c)(3). The Station has operated with facilities authorized by special temporary authority with a signal sufficient to provide service to the Station's community of license. *See, e.g.*, FCC File No. BSTA-20180308ABA.

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

The basic duty of broadcast licensees to serve their communities is reflected in Section 309(k) of the Act.[5] 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.[6] 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."[7]

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."[8] 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.[9] 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.[10] 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, the Station's operation, primarily under the prior licensee's control, has fallen short of that which would warrant routine license renewal. The stewardship of the Station as a whole, both

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[5] 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); *Liberman Broad. of Dallas License LLC*, Letter, 25 FCC Rcd 4765, 4768 (MB 2010).

[6] 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).

[7] 47 U.S.C. §§ 309(k)(2), 309(k)(3).

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

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

[10] 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.