

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
)
SNAKE RIVER RADIO, LLC ) MB Docket No. 22-53
)
Application for Renewal of License ) File No. 0000151021
Station KPCQ(AM), Chubbuck, ID ) Facility ID No. 24627

HEARING DESIGNATION ORDER AND NOTICE OF OPPORTUNITY FOR HEARING

Adopted: February 7, 2022

Released: February 8, 2022

By the Chief, Media Bureau:

I. INTRODUCTION

1. This Hearing Designation Order and Notice of Opportunity for Hearing commences a hearing proceeding designating the Administrative Law Judge as the presiding officer to determine whether the captioned application (Renewal Application) by Snake River Radio, LLC (SRR) to renew the license of AM radio station KPCQ, Chubbuck, Idaho (KPCQ or Station) should be granted or denied pursuant to section 309(k) of the Communications Act of 1934, as amended (Act).1 We are designating the Renewal Application for hearing based on KPCQ's record of extended silence and operation at significantly reduced power from the time SRR became the licensee of the Station (December 31, 2019) to the present, as well as substantial and material questions of fact concerning whether the Station's license expired automatically under section 312(g) of the Act.

II. BACKGROUND

2. A broadcast licensee's authorization to use radio spectrum in the public interest carries with it the obligation that the station must serve its community, providing programming responsive to local needs and interests.2 Broadcast licensees also are required to operate in compliance with the Act and the Commission's rules (Rules). These requirements include the obligation to transmit potentially lifesaving national level Emergency Alert System (EAS) messages in times of emergency and to engage in periodic tests to ensure that their stations are equipped to do so.3

3. The basic duty of broadcast licensees to serve their communities is reflected in the license renewal provisions of the Act.4 In 1996, Congress revised the Commission's license renewal process and the renewal standards for broadcast stations by adopting section 309(k) of the Act.5 Section 309(k)(1) of the Act provides that the Commission shall grant a license renewal application if it finds, with respect to the applying station, that during the preceding license term: (a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations by the licensee of the Act or the

1 47 U.S.C. § 309(k). We will not use the (AM) suffix when referring to the Station herein, except in the caption and ordering clauses.

2 See In the Matter of Broadcast Localism, Report on Broadcast Localism and Notice of Proposed Rulemaking, 23 FCC Rcd 1324, 1327 (2007).

3 See 47 CFR §§ 11.1 et seq., particularly 11.51.

4 47 U.S.C. § 309(k).

5 47 U.S.C. § 309(k)(1); see Pub. L. No. 104-104, Sec. 204(a)(1).

Rules; and (c) there have been no other violations by the licensee of the Act or the Rules which, taken together, would constitute a pattern of abuse. Section 309(k)(2) of the Act provides that if a station fails to meet the foregoing standard, the Commission may deny the renewal application pursuant to section 309(k)(3) or grant the application on appropriate terms and conditions, including a short-term renewal. Section 309(k)(3) of the Act provides that if the Commission determines, after notice and opportunity for hearing, that the licensee has failed to meet the standard of section 309(k)(1) and that no mitigating factors justify the imposition of lesser sanctions, the Commission shall issue an order denying the license renewal application for the station.

4. Section 312(g) of the Act, which Congress also added in 1996 and then amended in 2004, provides, in relevant 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 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.<sup>6</sup>

5. Thus, section 312(g) has relieved the Commission of the need to conduct license renewal or revocation proceedings, with their lengthy and resource-intensive procedural requirements, including evidentiary hearings, for stations that remain silent for extended periods of time.<sup>7</sup> However, in response to section 312(g), some licensees of silent stations<sup>8</sup> have adopted a practice of resuming operation for a short period of time, in some cases as little as a day or less, before the one-year limit in section 312(g) applies and the station license automatically expires. Other stations have alternated between periods of silence and operations with minimal power levels—in some cases as low as five watts—that cover a small portion of their service areas and may be insufficient to allow them to provide service to their communities of license.<sup>9</sup>

6. These practices raise a question as to whether the licenses for such stations should be renewed pursuant to section 309(k) of the Act. 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.”<sup>10</sup> This warning in *Birach* borrowed from the

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<sup>6</sup> 47 U.S.C. § 312(g); see Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), and Consolidated Appropriations Act, 1995, Pub. L. No. 108-447, 118 Stat. 2809 (2004); see also *Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543, 545 (D.C. Cir. 2009) (*Eagle*).

<sup>7</sup> See *Eagle*, 563 F.3d at 545.

<sup>8</sup> A “silent station” is a radio or television station that is authorized to broadcast but is not doing so. Any station that remains silent for more than 30 days must obtain special temporary authority (STA) to remain silent. See 47 CFR § 73.1740(a)(4). Similarly, a station that is operating with reduced power for more than 30 days must obtain an STA to do so. See 47 CFR § 73.1560(c).

<sup>9</sup> As the Commission has stated on multiple occasions, “[T]he association of a broadcast station with a community of license is a basic tenet of the Commission’s allocation scheme for broadcast stations.” *1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules In Parts 73 and 74 of the Commission’s Rules*, First Report and Order, 14 FCC Rcd 5272, 5278 n.24 (1999). See also, e.g., *1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules In Parts 73 and 74 of the Commission’s Rules*, Notice of Proposed Rulemaking and Order, 13 FCC Rcd 14849, 14876, para. 57 (1998); *Amendments of Parts 73 and 74 of the Commission’s Rules To Permit Certain Minor Changes In Broadcast Facilities Without a Construction Permit*, Report and Order, 12 FCC Rcd 12371, 12381, para. 11, n.11 (1997).

<sup>10</sup> *Birach Broad. Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 5015, 5020, para. 13 (2001) (*Birach*), appeal dismissed sub nom. *New World Radio, Inc. v. FCC*, 294 F.3d 164 (D.C. Cir. 2002).

court's language in *Office of Communication of the United Church of Christ*,<sup>11</sup> where the court stated: "When past performance is in conflict with the public interest, a very heavy burden rests on the renewal applicant to show how a renewal can be reconciled with the public interest. Like public officials charged with a public trust, a renewal applicant . . . must literally 'run on his record.'"<sup>12</sup> The *UCC* decision further stated: "A broadcaster seeks and is granted the free and exclusive use of a limited and valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations . . . a broadcast license is a public trust subject to termination for breach of duty."<sup>13</sup> Although *UCC* was decided long before section 309(k) was adopted, these principles aptly describe the public interest standard codified there.

7. In *Birach*, where the licensee was silent for all but 56 days of its initial four-year license term, the Commission acknowledged that the agency's longstanding policy before the 1996 enactment of section 312(g) had been to encourage silent stations to resume broadcast operations rather than to terminate their operation.<sup>14</sup> However, the Commission noted that section 309(k)(1) applies a "backwards-looking standard" that does not give any weight to post-term efforts to return a station to full-time operation.<sup>15</sup> The Commission held that denial of the renewal application of the station in question in *Birach* would have been fundamentally unfair because the Commission had not provided sufficient notice of how the section 309(k)(1) renewal standard would be applied to silent stations.<sup>16</sup> However, after noting that, given the lack of notice, it was renewing the license in question, the Commission provided the following clear warning to all licensees: "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 . . . fell far short of the service commitment which most licensees fulfill to their communities of license on a daily basis."<sup>17</sup>

8. The policy against allowing extended periods of silence or minimal operation by licensed stations is to ensure "that scarce broadcast spectrum does not lie fallow and unavailable to others capable of instituting and maintaining service to the public."<sup>18</sup> In addition to enforcing section 312(g) of the Act, the Commission has stressed its interest in promoting efficient use of radio broadcast spectrum for the benefit of the listening public in several different contexts since the enactment of section 312(g).<sup>19</sup> These

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<sup>11</sup> *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966) (*UCC*).

<sup>12</sup> *Id.* at 1007.

<sup>13</sup> *Id.* at 1003.

<sup>14</sup> *Birach*, 16 FCC Rcd at 5019, para. 10.

<sup>15</sup> *Id.* at 5020, para. 12 ("[C]onsideration of post-term developments is fundamentally at odds with this backwards-looking standard"); see also note 24 *infra*.

<sup>16</sup> The *Birach* station's period of non-operation commenced prior to the enactment of section 312(g). The Commission's policy was that, for such stations, the 12-month period for purposes of section 312(g) would commence on that date of enactment, February 8, 1996. Thus, had *Birach* failed to resume broadcast operations by February 8, 1997, its station license would have expired the next day. *Birach*, 16 FCC Rcd 5018, n.16.

<sup>17</sup> *Id.* at 5021, para. 13. See also *LKCM Radio Group, L.P.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 1045, 1048-50, paras. 10-16 (MB 2014); *Lazer Licenses, LLC*, Memorandum Opinion and Order, 30 FCC Rcd 6357, 6364, para. 21 (MB 2015); *Roger L. Hoppe, II*, Memorandum Opinion and Order and Notice of Apparent Liability, 31 FCC Rcd 8790, 8793, para. 11 (MB 2016).

<sup>18</sup> *Family Life Ministries, Inc.*, Letter Order, 23 FCC Rcd 15395, 15397 (MB 2008).

<sup>19</sup> 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, 23093, para. 90 (1998), on reconsideration, 14 FCC Rcd 17525, 17539, para. 35 (1999); *Lieberman Broad. of Dallas License LLC*, Letter Order, 25 FCC Rcd 4765, 4768 (MB 2010) ("continued warehousing of this spectrum by Susquehanna

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concerns about efficient use of spectrum are also reflected in the Commission’s statutory authority to award licenses at auction.<sup>20</sup>

**III. DISCUSSION**

**A. KPCQ Operational History**

9. We are designating the Renewal Application for hearing to determine whether the Station’s license should be renewed in light of the Station’s minimal record of operation during SRR’s tenure as licensee. We are also designating the question of whether the Station’s license expired pursuant to section 312(g) of the Act. SRR consummated the assignment of the KPCQ license from Inspirational Family Sunny Radio, Inc. on February 1, 2018.<sup>21</sup> KPCQ’s operational history during SRR’s tenure as licensee is as follows:

Silent	Operating
<b>License term record (1339 days total)</b>	
06/30/2018-06/14/2019 350 days	02/01/2018-06/29/2018 149 days
06/17/2019-06/13/2020 363 days	06/15/2019-06/16/2019 2 days
06/15/2020-06/13/2021 364 days	06/14/2020-06/14/2020 1 day (250 watts – special temporary authority (STA))
	06/14/2021-10/1/2021 110 days
<b>1077 days (80% of the license term)</b>	<b>262 days (20% of the license term)</b>
<b>Section 307(c)(3) record<sup>22</sup></b>	
none	10/1/2021-present 104 days

10. As depicted in the chart above, during SRR’s tenure as licensee of KPCQ from February 1, 2018, through the balance of the license term ending on October 1, 2021, the Station was silent for 80%

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in the face of Liberman’s long-standing competing demand is plainly contrary to the public interest’); *Great Lakes Community Broad., Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 13487, 13489, para. 3 (MB 2009). See also *Roger L. Hoppe, II*, 31 FCC Rcd at 8793, para. 11, citing *Birach* (“Silence instead of licensed operation is a fundamental failure to serve [a] 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 in to the station’s frequency.”).

<sup>20</sup> See 47 U.S.C. §§ 309(j)(3)(D) (obligation to promote the objective of “efficient and intensive use of the electromagnetic spectrum”); 309(j)(4)(B) (auction rules shall include performance requirements in part “to prevent stockpiling or warehousing of spectrum”).

<sup>21</sup> See FCC file no. BAL-20170816ABI.

<sup>22</sup> 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). For purposes of this chart, we will use the Station’s history through the end of 2020 for calculating days of silence.

of the time.<sup>23</sup> During that period, SRR reported that it initially went silent when the site owner required that SRR remove the Station's tower on June 30, 2018.<sup>24</sup> However, on June 26, 2019, SRR filed a notice of resumption stating that the Station had resumed operation using its licensed facilities on June 15, 2019.<sup>25</sup> This discrepancy is not mentioned or explained in the exhibit to the Renewal Application.<sup>26</sup> Because it is improbable that SRR was able to resume operation with the Station's licensed facilities after dismantling its tower, we are designating an issue to determine whether the Station's license expired pursuant to section 312(g) of the Act because the Station failed to operate with its authorized facilities for more than 12 months.<sup>27</sup>

11. The Station went silent again on June 17, 2019, when SRR claimed that a construction crew clipped and severed a tower guy wire causing collapse of the tower.<sup>28</sup> This is also not explained in the Renewal Application.<sup>29</sup> On June 24, 2019, SRR filed an application for construction permit to change site, which was granted on September 12, 2019, expiring on September 12, 2022. Subsequently, on June 14, 2020, the Station operated for one day, using a temporary long wire facility,<sup>30</sup> which the Renewal Application characterized as operating for "less than 30 days."<sup>31</sup> It went silent again when that facility was destroyed by a construction crew,<sup>32</sup> and requested extension of silent authority because it was still constructing its new facility.<sup>33</sup> The Station remained silent until June 14, 2021, when it resumed operation using program test authority prior to filing its license application to cover the construction permit.<sup>34</sup> It has operated since that date, while its license application remains pending.

12. On June 24, 2020, SRR filed the Renewal Application. Section 309(k)(1) of the Rules provides that grant of a renewal application is appropriate if 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 that, taken together, constitute a pattern of abuse.<sup>35</sup>

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<sup>23</sup> KPCQ is a Class C AM station operating pursuant to program test authority with .75 kW of power daytime and 1kW of power nighttime from a site in Chubbuck, Idaho. *See* pending license application FCC File No. BL-20210625AAA.

<sup>24</sup> *See* file nos. BLSTA-20180808AAJ, BLESTA-20190220ABH.

<sup>25</sup> *See* Notice of resumption of operations filed June 26, 2019.

<sup>26</sup> File no. 0000151021, Attachment 1: "licensee Snake River Radio, LLC was granted their transfer application on 11/17 and operated the station until filing an STA on 6/18 indicating that the tower site had been sold to a developer and the tower was to be removed. Snake River did not own the land as it was sold by another unaffiliated party. An STA was filed in 6/19 requesting silent authority due to the tower being felled by construction equipment."

<sup>27</sup> *See Eagle*, 563 F.3d at 553 ("an unauthorized transmission counts for nothing" in the FCC's application of section 312(g) of the Act); *see also Chinese Voice of Golden City*, Memorandum Opinion and Order, FCC 20-169 (rel. Nov. 25, 2020) at 7, para. 14 (reaffirming "that unauthorized transmissions are not sufficient to avoid expiration of a station's license by operation of law" under section 312(g)).

<sup>28</sup> File no. BLSTA-20190703ADD, Exh. 1.

<sup>29</sup> *See* Note 26 *supra*.

<sup>30</sup> *See* File no. BSTA-20200610AAM, Notice of resumption of operations filed June 15, 2020, file no. BLSTA-20200626AAL.

<sup>31</sup> File no. 0000151021, Attachment 1 (the long-wire destroyed by construction equipment again less than 30 days after resuming operation).

<sup>32</sup> File no. BLSTA-20200626AAL.

<sup>33</sup> File no. BLESTA-20210218AAC.

<sup>34</sup> Notice of resumption of operations filed June 14, 2021, file no. BL-20210625AAA (pending).

<sup>35</sup> 47 U.S.C. § 309(k)(1).

When such a finding cannot be made on the basis of the application, section 309(k) provides that the license renewal application will be designated for a hearing. Because of the Station's extended periods of silence during SRR's tenure as licensee, and because substantial and material questions of fact exist concerning whether the Station's license expired automatically under section 312(g) of the Act, we are unable to find that grant of the renewal application is in the public interest. Accordingly, we designate this matter for hearing.

#### IV. PROCEDURES FOR HEARING

13. *Written Hearings Report and Order.* The Commission recently supplemented its formal hearing processes by adopting rules that, *inter alia*, expand the use of a hearing procedure that relies in appropriate cases on written submissions and documentary evidence.<sup>36</sup> These hearing proceedings shall be resolved on a written record consisting of affirmative case, responsive case, and reply case submissions, along with all associated evidence in the record, including stipulations and agreements of the parties and official notice of material facts. Based on that record, the presiding officer will issue an Initial Decision pursuant to section 309(k) of the Act and sections 1.267 and 1.274(c) of the Rules.<sup>37</sup> Based on the information before us, we believe this matter can be adequately resolved on a written record, and we therefore find that this is an appropriate case for use of those procedures.

14. *Notice of Appearance.* All parties shall file a timely notice of appearance in accordance with the Rules.<sup>38</sup>

15. *Initial Case Order.* After release of this *Hearing Designation Order and Notice of Opportunity for Hearing*, the presiding officer shall promptly release an Initial Case Order. The Initial Case Order shall put all parties on notice that they are expected to be fully cognizant of Part I of the Rules concerning Practice and Procedure, 47 CFR Part 1, Subparts A and B. The Initial Case Order shall also set a date for the initial status conference and a date by which each party should file a pre-conference submission that would include (a) whether discovery is expected in this case, and if so, a proposed discovery schedule; (b) any preliminary motions they are intending to file; and (c) a proposed case schedule. The parties' pre-conference submission should also indicate whether they request that a Protective Order be entered in this case.

16. *Requests for Admissions.* In accordance with section 1.246 of the Rules, any party may serve upon any other party written requests for the admission of the genuineness of any relevant documents or of the truth of any relevant matters of fact.<sup>39</sup> Such requests shall be served within twenty (20) days after the deadline for filing a notice of appearance unless the presiding officer sets a different time frame.<sup>40</sup>

17. *Initial Status Conference and Initial Status Conference Order.* During the initial status conference, the presiding officer shall set the case schedule, including any deadlines by which the parties should submit the motions they identified in their pre-conference submissions.<sup>41</sup> If discovery is

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<sup>36</sup> See *Procedural Streamlining of Administrative Hearings*, Report and Order, EB Docket No. 19-214, Report and Order, 35 FCC Rcd 10729 (2020) (*Written Hearings Report and Order*). These new procedures became effective on Nov. 5, 2020. See 85 Fed. Reg. 63166 (Oct. 6, 2020).

<sup>37</sup> 47 U.S.C. § 309(k); 47 CFR §§ 1.267, 1.274(c). That Initial Decision will be subject to review by the Commission pursuant to 47 CFR §§ 1.276-277 under the circumstances described therein.

<sup>38</sup> See 47 CFR § 1.221(c).

<sup>39</sup> See *id.* § 1.246.

<sup>40</sup> See *id.*

<sup>41</sup> Section 1.294 of the Rules shall determine the deadlines for oppositions (and replies, if permitted) for most interlocutory motions submitted to the presiding officer. See 47 CFR § 1.294. The filing deadlines for oppositions (and replies, if permitted) to motions to enlarge, change, or delete issues made pursuant to section 1.229 of the Rules

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anticipated, the presiding officer shall also set the discovery period. The presiding officer shall also set the deadlines for the parties' affirmative case, responsive case, and reply case submissions in accordance with sections 1.371-1.377 of the Rules.<sup>42</sup> If the parties have requested the entrance of a Protective Order, the presiding officer shall also set a deadline by which a joint proposed Protective Order shall be submitted for consideration. In accordance with section 1.248(b) of the Rules, the presiding officer may adopt a schedule to govern the hearing proceeding during the status conference or in an order following the conference.

18. Additional status conferences may be scheduled throughout the course of the proceeding at the request of the parties and/or at the discretion of the presiding officer. Any requests by a party for a status conference must be made in writing to the presiding officer and shall be copied on all other parties.

19. *Transcripts.* In accordance with section 1.248 of the Rules, an official transcript of all case conferences shall be made, unless the parties and the presiding officer agree to forego a transcript.<sup>43</sup> Transcripts shall be made available to the public as part of the official record in the Commission's Electronic Comment Filing System (ECFS) in MB Docket No. 22-53.

20. *Evidentiary Rules.* In the *Written Hearings Report and Order*, the Commission amended section 1.351 of the Rules to adopt the evidentiary standard set forth in the formal APA hearing requirements. In relevant part, section 1.351 of the Rules now states, "any oral or documentary evidence may be adduced, but the presiding officer shall exclude irrelevant, immaterial, or unduly repetitious evidence."<sup>44</sup> The parties remain free to make evidentiary arguments based on the Federal Rules of Evidence.

21. *Petitions to Intervene.* Any person or entity seeking status as a party in interest in this proceeding must file a petition to intervene in accordance with section 1.223(a) of the Rules.<sup>45</sup> Any person or entity seeking to participate in this proceeding as a party may file a petition for leave to intervene in accordance with section 1.223(b) of the Rules.<sup>46</sup>

22. *Motions to Enlarge, Change or Delete Issues.* Motions to enlarge, change, or delete issues to be considered in this proceeding shall be allowed, consistent with section 1.229 of the Rules.<sup>47</sup>

23. *Restricted Proceeding.* This hearing proceeding is a "restricted" proceeding pursuant to section 1.1208 of the Rules and thus *ex parte* presentations to or from Commission decision-making personnel, including the presiding officer and her staff and staff of the Commission's Media Bureau, are prohibited, except as otherwise provided in the Rules.<sup>48</sup>

24. *Electronic Filing of Documents.* All pleadings in this proceeding, as well as all letters, documents, or other written submissions including discovery requests, and objections and responses thereto, except those containing confidential and/or other protected information, must be filed

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and motions to intervene made pursuant to section 1.223 of the Rules, for example, shall be at the discretion of the presiding officer.

<sup>42</sup> See 47 CFR §§ 1.371-1.377.

<sup>43</sup> See 47 CFR § 1.248.

<sup>44</sup> 47 CFR § 1.351.

<sup>45</sup> See 47 CFR § 1.223(a).

<sup>46</sup> See 47 CFR § 1.223(b).

<sup>47</sup> See 47 CFR § 1.229.

<sup>48</sup> See 47 CFR § 1.1208 ("Proceedings in which *ex parte* presentations are prohibited, referred to as 'restricted' proceedings, include . . . all proceedings that have been designated for hearing . . ."). See also 47 CFR §§ 1.1202(b) (describing what constitutes an *ex parte* presentation), 1.1204 (exceptions).

electronically in MB Docket No. 22-53 using ECFS. Written submissions that include confidential and/or other protected information shall be filed under seal with the Office of the Secretary, along with an additional courtesy copy transmitted to the presiding officer.<sup>49</sup>

25. *Case Caption.* The caption of any pleading filed in this proceeding, as well as all letters, documents, or other written submissions including discovery requests and objections and responses thereto, shall indicate whether it is to be acted upon by the Commission or the presiding officer.<sup>50</sup> The presiding officer shall be identified by name.

26. *Service.* Service on the Enforcement Bureau shall be made using the following email address: [EBHearings@fcc.gov](mailto:EBHearings@fcc.gov).

27. *Confidential and/or Otherwise Protected Materials.* To the extent any party to this proceeding wishes to submit materials or information that it would like withheld from the public record, it may do so in accordance with the procedures set forth in section 1.314 of the Rules.<sup>51</sup> The parties may also enter into a Protective Order. As stated above, requests for a Protective Order should be made in the parties' pre-conference submission in accordance with the schedule set forth in the Initial Case Order.

28. *Initial Decision.* The presiding officer shall issue an Initial Decision on the issues set forth herein, as well as any other issues designated for hearing in the course of the proceeding. This Initial Decision shall contain, at a minimum, findings of fact and conclusions of law, as well as the reasons or basis therefor, and the appropriate rule or order or policy and the sanction, relief or denial thereof, as appropriate.<sup>52</sup>

## V. ORDERING CLAUSES

29. **ACCORDINGLY, IT IS ORDERED** that, pursuant to sections 309(e) and 309(k) of the Communications Act of 1934, as amended, and pursuant to authority delegated under section 0.284 of the Commission's Rules,<sup>53</sup> that the captioned application **IS DESIGNATED FOR HEARING** before the FCC Administrative Law Judge, at a time and place to be specified in a subsequent order, upon the following issues:

(a) To determine, with respect to station KPCQ(AM), Chubbuck, Idaho, whether, during the preceding license term, (i) the Station has served the public interest, convenience, and necessity, (ii) there have been any serious violations by the licensee of the Communications Act of 1934, as amended, or the rules and regulations of the Commission, and (iii) there have been any other violations of the Communications Act of 1934, as amended, or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse;

(b) To determine, with respect to station KPCQ(AM), Chubbuck, Idaho, whether the station's license expired automatically pursuant to section 312(g) of the Communications Act of 1934, as amended because the Station failed to operate with its authorized facilities for more than 12 months;

(c) In light of the evidence adduced pursuant to issues (a) and (b) above, whether the captioned application for renewal of the license for station KPCQ(AM) should be (1) dismissed as moot because the Station's license expired automatically pursuant to section

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<sup>49</sup> See 47 CFR § 1.51.

<sup>50</sup> See 47 CFR § 1.209.

<sup>51</sup> See 47 CFR § 1.314.

<sup>52</sup> See 47 CFR §§ 1.267, 1.274(c).

<sup>53</sup> See 47 U.S.C. §§ 309(e), 309(k); 47 CFR § 0.284.



312(g) of the Communications Act of 1934, as amended, (2) granted on such terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted, or (3) denied due to failure to satisfy the requirements of section 309(k)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(k)(1).

30. **IT IS FURTHER ORDERED** that, pursuant to section 1.221(c) of the Commission's Rules,<sup>54</sup> in order to avail itself of the opportunity to be heard and the right to present evidence at a hearing in these proceedings, Snake River Radio, LLC, in person or by an attorney, **SHALL FILE** within 20 days of the mailing of this *Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing*, a written appearance stating its intention to appear at the hearing and present evidence on the issues specified above.

31. **IT IS FURTHER ORDERED**, pursuant to section 1.221(c) of the Commission's Rules, that if Snake River Radio, LLC fails to file a written appearance within the time specified above, or has not filed prior to the expiration of that time a petition to dismiss without prejudice, or a petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days, the pending application will be dismissed with prejudice for failure to prosecute.

32. **IT IS FURTHER ORDERED** that the Chief, Enforcement Bureau, **IS MADE A PARTY** to this proceeding without the need to file a written appearance.

33. **IT IS FURTHER ORDERED** that, in accordance with section 309(e) of the Communications Act of 1934, as amended, and section 1.254 of the Commission's Rules,<sup>55</sup> the burden of proceeding with the introduction of evidence and the burden of proof with respect to the issues at paragraph 28 (a)-(c) **SHALL BE** upon Snake River Radio, LLC.

34. **IT IS FURTHER ORDERED** that a copy of each document filed in this proceeding subsequent to the date of adoption of this *Hearing Designation Order and Notice of Opportunity for Hearing* **SHALL BE SERVED** on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations & Hearings Division of the Enforcement Bureau at (202) 418-1420. Such service copy **SHALL BE ADDRESSED** to the named counsel of record, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

35. **IT IS FURTHER ORDERED** that the parties to the captioned application shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and section 73.3594 of the Commission's Rules,<sup>56</sup> **GIVE NOTICE** of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the satisfaction of such requirements as mandated by section 73.3594 of the Commission's Rules.<sup>57</sup>

36. **IT IS FURTHER ORDERED** that copies of this *Hearing Designation Order and Notice of Opportunity for Hearing* shall be sent via Certified Mail, Return Receipt Requested, and by regular first-class mail to Snake River Radio, LLC, Ted Austin, PO Box 17, St. Anthony, ID 83445 and Jeffrey L Timmons, Esq., Timmons Communications Law, 974 Branford Lane NW, Lilburn, GA 30047-2680.

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<sup>54</sup> See 47 CFR § 1.221(c).

<sup>55</sup> See 47 U.S.C. § 309(e); 47 CFR § 1.254.

<sup>56</sup> See 47 U.S.C. § 311(a)(2); 47 CFR § 73.3594.

<sup>57</sup> See 47 CFR § 73.3594.

37. **IT IS FURTHER ORDERED** that the Secretary of the Commission shall cause to have this *Hearing Designation Order and Notice of Opportunity for Hearing* or a summary thereof published in the Federal Register

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer  
Chief, Media Bureau