



Federal Communications Commission
Washington, D.C. 20554

December 22, 2023

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In Reply Refer to:
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CERTIFIED MAIL RETURN RECEIPT REQUESTED

Birach Broadcasting Corporation
21700 Northwestern Highway Tower 14, Suite 1190
Southfield, MI 48075
Sent via email: sima@birach.com

In re: **Birach Broadcasting Corporation**
Station KJMU(AM), Sand Springs,
Oklahoma
Facility ID No. 47101
Application File No. 0000210889

Dear Licensee:

We have before us the application (Application) of Birach Broadcasting Corporation (Licensee) for renewal of its license for Station KJMU(AM), Sand Springs, Oklahoma (Station).¹ For the reasons set forth below, we grant the Application for a shortened renewal period, 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 December 22, 2024, and a renewal application will be due on or before August 1, 2024.**³ **If, at the end of this one-year license renewal period, the Commission finds that the Licensee's conduct has again fallen short of that which would warrant routine license renewal, or if the Licensee has failed to restore the Station to unlimited operation at the power levels specified in its license, then we will either 1) place a condition on the grant of the next license renewal that specifies any additional license renewals will be conditioned on the Licensee returning the Station to unlimited operation during that license term or 2) designate the license for hearing based on the Licensee's failure to serve the public interest.**

Background. The Application was filed on February 16, 2023, seeking to renew the Station's license. The Station is currently operating under a shortened one-year license term that began on July 15, 2022, and ended on July 15, 2023.⁴ The Bureau granted Licensee a shortened renewal term because the Station had been silent for extended periods of time during its prior license term.⁵ During this shortened

¹ Application File No. 0000210889.

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 *Birach Broadcasting Corporation*, Order and Consent Decree, 37 FCC Rcd 8429 (MB 2022) (*Birach-KJMU*); Application File No. 0000133723 (Renewal of License, granted July 15, 2022).

⁵ *Birach-KJMU*, 37 FCC Rcd at 8429, paras. 1-2.

renewal term, the Station was silent for more than four months, from January 8, 2023 to May 24, 2023.⁶ Licensee explained in the Silent STA Request that the reason for its silence was its transmitter was malfunctioning.⁷ Thus, the Station was silent for 37% of its license term and 27% of its extended term under section 307(c)(3).⁸

In the Resumption Notice, Licensee disclosed that the Station had resumed operations on May 24, 2023 at 25% of authorized power during the daytime and was not operating at night.⁹ Licensee subsequently filed a request for special temporary authority (STA) to operate the Station at reduced power, citing the issues with its transmitter and delays in obtaining parts to repair it, which the Bureau granted on July 20, 2023.¹⁰ Thus, from May 24, 2023 to July 20, 2023, the Station operated at reduced power without authorization from the Commission.¹¹ Based upon Licensee's certifications and statements in the Resumption Notice and the July 2023 STA Request, the Station continues to operate during the day at 25% of its licensed power level pursuant to STA, and does not operate at night, even though the Station is a Class C station operating on a local channel and therefore required to operate unlimited time.¹²

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.¹³

In addition, operating at a reduced power level without authorization from the Commission is a violation of section 301 of the Act, and sections 73.1350, 73.1560(a)(1), 73.1635, 73.1690(b)(5) and 73.1745(a) of the Rules.¹⁴ Section 73.1745(a) of the Rules requires licensees to operate pursuant to the

⁶ See Application File No. 000206594 (Request for Silent STA, granted Jan. 26, 2023) (Silent STA Request); Application File No. 0000215126 (Resume Operations, filed May 24, 2023) (Resumption Notice).

⁷ Silent STA Request at Attach. "Silent KJMU.01.10.2023.docx".

⁸ 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).

⁹ See Resumption Notice at Attach. "KJMU.On.Air.05.24.2023.docx".

¹⁰ See Application File No. BSTA-20230717AAB (Engineering STA, granted July 20, 2023) (July 2023 STA Request).

¹¹ See Application File Nos. 0000215126 (Notice of Resumption of Operations disclosing that the Station resumed operations at 25% of authorized power); BSTA-20230717AAB (Engineering STA, granted July 20, 2023).

¹² Section 73.21(c) provides that a local channel is one on which stations operate unlimited time. See 47 CFR § 73.21(c).

¹³ See *Radioactive, LLC*, Hearing Designation Order, 32 FCC Rcd 6392, para. 2 (2017).

¹⁴ 47 U.S.C. § 301; 47 CFR §§ 73.1350, 73.1560, 73.1635, 73.1690, 73.1745. Section 301 of the Act and sections 73.1350(a), and 73.1745 of the Rules each require licensees to operate in accordance with their Commission-granted authorizations. Section 73.1560 requires AM stations to maintain their antenna input power "as near as practicable to the authorized antenna input power" and specifies that it "may not be less than 90 percent nor greater than 105

terms contained in their authorizations. In order for a station to operate at a variance from such terms, the licensee must file and have been granted either an application to modify its station authorization or a request for STA.¹⁵ In this case, the Station operated at an unauthorized reduced power level for nearly two months before it obtained STA to operate at a reduced power level. Additionally, operating at reduced power for extended periods, even when authorized, is not in the public interest because the station may not serve its community of license.¹⁶

The basic duty of broadcast licensees to serve their communities is reflected in section 309(k) of the Act.¹⁷ 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.¹⁸ 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.”¹⁹

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.”²⁰ It also acknowledged the agency's longstanding policy to encourage stations

percent of the authorized power.” Section 73.1560(d) provides that a station that is operating with reduced power for more than 30 days must obtain an STA to do so. Section 73.1635 requires a licensee to obtain STA in order to operate “a broadcast facility for a limited period at a specified variance from the terms of the station authorization.” Section 73.1690(b)(5) requires the licensee of a commercial AM station to apply for and obtain a construction permit from the Commission before reducing the AM station's authorized power.

¹⁵ See 47 CFR § 73.1635.

¹⁶ See *Alaska Educational Radio System, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 6749, 6755, para. 17 (MB 2018) (finding that the licensee failed to meet the public service commitment licensees are expected to provide to their communities of license because it operated its station at reduced power for extended periods and was silent for a significant portion of its license term); see also *Vandalia Media Partners 2, LLC*, Hearing Designation Order and Notice of Opportunity for Hearing, 36 FCC Rcd 7012, 7013, para. 5 (MB 2021) (noting that reduced power operations “cover a small portion of their service areas and may be insufficient to allow [stations] to provide service to their communities of license.”).

¹⁷ 47 U.S.C. § 309(k). See also 47 U.S.C. § 312(g). 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).

¹⁸ 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).

¹⁹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²⁰ See *Birach Broad. Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 5015, 5020, para. 13 (2001) (*Birach 2001 Order*).

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.²¹ The Commission held that denial of the renewal application of the station in question in the *Birach 2001 Order* 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.²² Since the issuance of the *Birach 2001 Order*, licensees, and particularly this Licensee that was the subject of the 2001 Order, have been on notice as to how section 309(k)(1) applies to silent stations.

In this case, Licensee’s conduct has repeatedly 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 operated at reduced power for a significant period of time without Commission authorization.²³

On the facts presented here, we conclude that a short-term license renewal for the Station is the appropriate sanction. Although the Licensee did seek and obtain Commission authorization for the period of silence, 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 and the extended period of operation at reduced power without authorization from the Commission. While the usual sanction for unauthorized reduced power operation is a Notice of Apparent Liability for forfeiture,²⁴ in this case the Licensee notified the

²¹ *Id.* at para. 12 (“[C]onsideration of post-term developments is fundamentally at odds with this backwards-looking standard.”).

²² In the *Birach 2001 Order*, 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.

²³ *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).

²⁴ *See, e.g., Augustus Foundation, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 37 FCC Rcd 12250, 12253 (MB 2022) (proposing a \$3,000 forfeiture amount for the station’s failure to request an extension of its STA to operate at reduced power, which resulted in unauthorized reduced power operations); *Roy E. Henderson*, Memorandum Opinion and Order and Notice of Apparent Liability, 33 FCC Rcd 5223, 5230 (MB 2018) (proposing a \$10,000 forfeiture amount for the station’s failure to operate in accordance with the terms of its authorization, by, among other things, operating at reduced power without authorization); *Nassau Broadcasting II, LLC, Debtor-in-Possession*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 322, 324 (EB 2012) (proposing a forfeiture amount of \$5,000 for operating the station at reduced power in contravention of the terms of its authorization).

Commission when it began operating at reduced power,²⁵ and has since taken corrective action to come into compliance with the Act and the Rules by submitting the July 2023 STA Request.²⁶

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.²⁷ Additionally, we admonish Licensee for its violation of the Rules by failing to request STA to operate at reduced power. The Commission does not take unauthorized operation lightly. Licensee should take care to avoid further unauthorized operation and ensure it is fully in compliance with the Act and the Rules.

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 Commission's rules, and to take whatever corrective actions, if any, that may be warranted at that time. Additionally, we expect Licensee during this time to return the Station to unlimited time operation at the power levels specified in its license (0.5 kW daytime, 1 kW nighttime, subject to the tolerances specified by section 73.1560(a)) by the end of the one-year license term. If, at the end of this limited renewal period, the Commission finds that the Licensee's conduct has again fallen short of that which would warrant routine license renewal, or if the Licensee has failed to restore the Station to full operations, **we will either 1) place a condition on the grant of the next license renewal that specifies any additional license renewals will be conditioned on the Licensee returning the Station to unlimited operation during that term or 2) designate the license for hearing based on the Licensee's failure to serve the public interest.**

²⁵ See Resumption Notice.

²⁶ See July 2023 STA Request.

²⁷ 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. 0000210889) filed by Birach Broadcasting Corporation, for Station KJMU(AM), Sand Springs, Oklahoma, IS GRANTED pursuant to section 309(k)(2) of the Communications Act of 1934, as amended,²⁸ for a license term of one year from the date of this letter.²⁹

IT IS FURTHER ORDERED that Birach Broadcasting Corporation **IS ADMONISHED** for its violations of section 301 of the Communications Act of 1934, as amended, and sections 73.1350, 73.1560(a)(1), 73.1635, 73.1690(b)(5) and 73.1745(a) of the Commission's rules.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc (via electronic mail):
John C. Trent, Esq. (fccman3@shentel.net)
(Contact Representative for Birach Broadcasting Corporation)

²⁸ 47 U.S.C. § 309(k)(2).

²⁹ The date set in this letter for the new license term supersedes any notice generated from the FCC Licensing and Management System (LMS).