

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

INITIAL DECISION

Appearances: Jeffrey L. Timmons, Esq., on behalf of Snake River Radio, LLC; Pamela S. Kane, Esq., on behalf of the Enforcement Bureau, Federal Communications Commission

Issued: April 5, 2023

Released: April 5, 2023

PRELIMINARY STATEMENT

1. On February 8, 2022, the Media Bureau of the Federal Communications Commission initiated the above-captioned hearing proceeding pursuant to sections 309(e) and 309(k) of the Communications Act, 47 U.S.C. §§ 309(e), 309(k), to determine whether the license of Snake River Radio, LLC, for KPCQ(AM), Chubbuck, ID, expired automatically for failure to operate at its authorized facilities for more than 12 months, and, if not, whether the license should be renewed. By Hearing Designation Order and Notice of Opportunity for Hearing, the Media Bureau designated the following issues for resolution:

(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; and

(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 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).¹

The burden of proceeding with the introduction of evidence and the burden of proof were assigned to licensee Snake River Radio.²

2. This hearing proceeding was conducted on a written record pursuant to sections 1.370 through 1.377 of the Commission's rules, 47 CFR §§ 1.370 - 1.377. Those rules direct that after discovery is completed, the party with the burden of proof is to file its Affirmative Case. The opposing party then files its Responsive Case, to which the party with the burden of proof files a Reply Case. Those written submissions are to include all associated evidence. Neither additional pleadings nor oral argument are contemplated unless specifically permitted by the Presiding Judge. Snake River Radio filed its Affirmative Case on November 9, 2022,³ the Enforcement Bureau filed its Responsive Case on December 9, 2022,⁴ and Snake River filed its Reply Case on January 10, 2023.⁵

3. On February 9, 2023, the Presiding Judge released an order taking official notice of all publicly-available Commission records for KPCQ(AM), beginning when the assignment to Snake River Radio was consummated on February 1, 2018, excluding those already in the record of this proceeding.⁶ As provided by section 1.203 of the Commission's rules, 47 CFR § 1.203, the parties were afforded an opportunity to make a showing to challenge these documents and to respond to any such challenge. At the request of the Enforcement Bureau, the Presiding Judge clarified by order released February 17, 2023, that she may refer in this Initial Decision to publicly available materials that are not already in the record in order to construct a detailed timeline of KPCQ's operations since the time that Snake River became the licensee.⁷ The Enforcement Bureau indicates that it does not challenge use of the portion of the records necessary to establish a timeline of the dates on which Snake River submitted information to the Commission or requested special operating authority, and the dates on which Commission staff responded to Snake River's requests. It does, however, intend to reserve the right, pursuant to section 1.203, to challenge reliance in the Initial Decision on "substantive portions of the Commission's records on which the parties did not rely in their case brief submissions, and to show the contrary thereto, after release of the Initial Decision."⁸

BACKGROUND

4. Section 312(g) of the Communications Act provides that, as a general matter, a broadcast station's license expires automatically if the station fails to broadcast for any consecutive 12-month

¹ *Snake River Radio, LLC*, Hearing Designation Order and Notice of Opportunity for Hearing, MB Docket No. 22-53, DA 22-115 (MB Feb. 8, 2022) (*Snake River HDO*) at para. 29.

² *Id.* at para. 33.

³ Snake River Radio, Affirmative Case, MB Docket No. 22-53 (filed Nov. 9, 2022) (*Snake River Affirmative Case*).

⁴ Enforcement Bureau's Responsive Case Submission, MB Docket No. 22-53 (filed Dec. 9, 2022) (*EB Responsive Case*).

⁵ Snake River Radio, Reply Case, MB Docket No. 22-53 (filed Jan. 10, 2023) (*Snake River Reply Case*).

⁶ *Snake River Radio, LLC*, Order, MB Docket No. 22-53, FCC 23M-02 (ALJ Feb. 9, 2023).

⁷ *Snake River Radio, LLC*, Order, MB Docket No. 22-53, FCC 23M-03 (ALJ Feb. 17, 2023) (responding to Enforcement Bureau's Initial Response to *Order*, FCC 23M-02, and Request for Clarification, MB Docket No. 22-53 (filed Feb. 15, 2023)).

⁸ Enforcement Bureau's Supplemental Response to *Order*, FCC 23M-02, MB Docket No. 22-53 (filed February 24, 2023) at para. 3.

period. Snake River Radio consummated the assignment of the license for KPCQ from its previous owner on February 1, 2018, and the station was apparently operational until at least June 30 of that year. On August 8, 2018, the station filed with the Commission an application for special temporary authority (STA) to remain silent, i.e. off the air, indicating that its tower had been dismantled on June 30, 2018.⁹ Almost a year later, however, on June 26, 2019, Snake River informed the Commission that it had resumed operation on June 15, 2019, at its authorized location. It was this discrepancy – the licensee notifying the Commission that the station’s tower had been dismantled but later certifying that it was operating at its licensed facilities – that led the Media Bureau to question whether the station had been silent for more than 12 consecutive months at its authorized location, which would trigger the automatic cancellation provision of section 312(g).¹⁰

5. If Snake River’s station was not off the air for 12 consecutive months, the question remains whether its history of non-operation during the license term is inconsistent with the public interest. The *Snake River HDO* demonstrates that from the time Snake River took over the station on February 1, 2018, until the end of that license term on October 1, 2021, the station was off the air for 1,077 days, or 80 percent of the license term.¹¹ If that record is found to be inconsistent with the public interest, the *Snake River HDO* designates for consideration whether renewal of the license should be denied or should alternatively be granted for less than a full term.

FINDINGS OF FACT

Snake River Radio, LLC

6. Snake River Radio, LLC, is wholly-owned by Managing Member Ted W. Austin, Jr.¹² It acquired KPCQ(AM), Chubbuck, Idaho, from previous licensee Inspiration Family Radio, Inc., by assignment that was granted by the Commission on November 7, 2017.¹³ The sale was consummated on February 1, 2018.¹⁴ Snake River asserts that the sale did not convey any legal claim for it to continue to use the existing tower site. Rather, as the station’s lease for tower space had expired, the previous licensee was using the tower on a month-to-month basis when Snake River acquired the station. The tower site was owned by Rockwell Homes, which planned to redevelop the site for housing and had made it known that the station’s access to the tower could be terminated at any time on short notice.¹⁵

Operational History of KPCQ(AM)

7. By email of August 5, 2018, Mr. Austin asked his attorney, Jeffrey Timmons, to file for an STA from the Commission to reflect that the station fell silent on June 30, 2018, and indicated in his email, “tower to be dismantled.”¹⁶ Mr. Timmons, Snake River contends, misunderstood Mr. Austin’s

⁹ Pursuant to 47 CFR § 73.1740(a)(4), a commercial broadcast station must obtain authority from the FCC to remain silent for more than 30 days.

¹⁰ *Snake River HDO* at para. 10 (citing Notice of Resumption of Operations filed June 26, 2019).

¹¹ *Id.* at paras. 9-10.

¹² Snake River Affirmative Case at Exh. A (Declaration of Ted W. Austin, Jr.).

¹³ Consent to Assignment, FCC File No. BAL-20170816ABI (Nov. 7, 2017).

¹⁴ Snake River Affirmative Case at para. 1 (citing Consummation Notice, FCC File No. BAL-20170816ABI (filed Feb. 12, 2018)) and Exh. A (Declaration of Ted W. Austin, Jr.).

¹⁵ *Id.*

¹⁶ *Id.* at Exh. B (Email from Ted Austin to Jeff Timmons (August 5, 2018)).

message and misstated in his STA request of August 8, 2018 (and subsequent extension request) filed on the licensee's behalf that the tower had already been removed, and that removal of the tower caused the station to go silent. Specifically, that STA application provided, "[t]he leased tower site for [the station] was sold by its owner to a housing developer, who required dismantlement and removal of the station's tower, which occurred on 6/30/18, causing the station to go silent."¹⁷ On the contrary, however, Snake River maintains that the tower was not in fact dismantled at that time but that the station was voluntarily taken off the air on June 30, 2018, for the safety of the construction crew working at the site, and in anticipation of the tower eventually being destroyed.¹⁸ It is this miscommunication, Snake River posits, that ultimately caused the Media Bureau to question whether the station had in fact cancelled automatically because it had been silent for more than 12 consecutive months.¹⁹

8. An STA permitting KPCQ to remain silent until February 23, 2019, was granted on August 27, 2018, and an extension of that STA was granted on March 29, 2019, to expire on June 30, 2019.²⁰ With the STA expiration date approaching, Snake River obtained permission from the site owner, Rockwell Homes, to resume use of the tower and filed a notice on June 26, 2019, indicating that KPCQ had resumed operation on June 15, 2019, at its licensed facilities.²¹ Accordingly, Snake River submits, the station was off the air for less than 12 consecutive months – from June 30, 2018, to June 15, 2019.²² The station was only operational for two days, however, as Snake River filed a second STA request on July 3, 2019, indicating that the station was knocked off the air on June 17, 2019, when construction activity at the site severed a guy wire supporting the tower and caused it to collapse.²³ Thus, Snake River contends, the tower at which the station was licensed was standing and usable until June 17, 2019, despite the statement in its first STA application that the tower had been dismantled on June 30, 2018.²⁴ The second STA was granted on July 22, 2019, and permitted the station to remain silent until January 18, 2020.²⁵ Upon request from Snake River, that second STA was extended until June 17, 2020.²⁶

9. With the expiration date of its second STA approaching, its tower destroyed, and the station still silent, Snake River obtained permission from the site owner, Rockwell Homes, to erect a "long wire" antenna. It also sought and was granted an engineering STA from Commission staff that

¹⁷ File No. BLSTA-20180808AAJ (filed Aug. 8, 2018) at Exh. 1.

¹⁸ Snake River Affirmative Case at paras. 7-9 (citing CBDS File Nos. BLSTA-20180808AAJ at Exhibit 1 and BLESTA-20190220ABH) and Exh. A (declaration of Ted W. Austin, Jr.).

¹⁹ *Id.* at para. 10.

²⁰ Letter from Lisa Scanlan, Deputy Chief, Audio Division, FCC Media Bureau, to Jeffrey L Timmons, Esq. (Mar. 29, 2019).

²¹ Snake River Affirmative Case at para. 11 and Exhs. A (Declaration of Ted W. Austin, Jr.), C (Affidavit of Fritz John Ashauer), and D (Notice of Resumption of Operations filed June 26, 2019).

²² *Id.*

²³ *Id.* at para. 12 and Exhs. E (Request for Silent STA filed July 3, 2019) and F (Emails between Jeff Timmons and Ted Austin (June 26 - July 1, 2019)).

²⁴ *Id.*

²⁵ Letter from Lisa Scanlan, Deputy Chief, Audio Division, FCC Media Bureau, to Jeffrey L. Timmons, Esq. (July 22, 2019).

²⁶ Letter from Victoria McCauley, Attorney, Audio Division, FCC Media Bureau, to Jeffrey L Timmons, Esq. (Feb. 20, 2020).

permitted KPCQ to return to the air at its licensed facilities using the long wire antenna.²⁷ KPCQ resumed broadcasting on June 14, 2020, via the long wire antenna.²⁸ No more than a day later, however, a construction crew knocked down and damaged the long wire.²⁹ Accordingly, on June 26, 2020, Snake River requested a third STA permitting it to remain silent. The requested STA was granted on August 21, 2020, and was extended until June 16, 2021.³⁰

10. Having acquired KPCQ without the right to use the tower at the location authorized by the Commission, Snake River performed the necessary logistical and engineering work to apply for a construction permit at a new location.³¹ During the period of silence permitted by the first STA, Snake River applied for the construction permit,³² which was granted on September 12, 2019, to expire after 36 months.³³ Snake River submits that KPCQ resumed operation using the new site on June 14, 2021, less than 12 consecutive months after damage to the long wire knocked it off the air at the former site, and prior to the expiration of the third STA.³⁴ According to Snake River, the station has been on the air continuously since that date, operating under program test authority.³⁵ On June 23, 2021, Snake River filed its license application for the new location, which remains pending.³⁶ On June 24, 2021, Snake River filed the renewal application that is the subject of this proceeding, as required by section 73.3539 of the Commission's rules, 47 CFR § 73.3539.

11. These events can be summarized into a timeline, as follows:

February 1, 2018	Assignment consummated; Snake River takes operational control of KPCQ but does not own or control the FCC-authorized tower site
June 30, 2018	Period of silence begins pursuant to STAs approved by Commission staff,

²⁷ Snake River Affirmative Case at para. 13; Engineering STA, FCC File No. BSTA-20200610AAM (filed June 9, 2020); Letter from Jerome J. Menarchuck, Audio Division, FCC Media Bureau, to Snake River Radio (June 11, 2020).

²⁸ Snake River Affirmative Case at para. 13 and Exh. G (Notice of Resumption of Operations filed June 15, 2020). While the Notice indicates that the station "resumed operations on Sunday 6/15/20," June 15, 2020, was a Monday. Sunday, June 14, 2020 is the date cited in both Snake River's Affirmative Case and the contemporaneous email from Mr. Austin to Mr. Timmons (Snake River Exh. H) as the date of resumption of service using the long wire antenna.

²⁹ *Id.* at para. 14.

³⁰ Letter from Victoria McCauley, Attorney, Audio Division, FCC Media Bureau, to Jeffrey L. Timmons, Esq. (Apr. 13, 2021).

³¹ Snake River Reply Case at para. 14 (citing Exh. A (Declaration of Ted W. Austin, Jr.) at para. 2).

³² Application for Construction Permit for Commercial Broadcast Station, FCC File No. BP-20190624ABF (filed May 16, 2019).

³³ AM Broadcast Station Construction Permit, FCC File No. BP-20190624ABF (granted Sept. 12, 2019). The deadline to complete construction was September 12, 2022.

³⁴ Snake River Affirmative Case at para. 15.

³⁵ *Id.* Program test authority is one step short of granting a broadcast license. *WHDH, Inc. v. U.S.*, 457 F.2d 559, 561 (1st Cir. 1972). It authorizes newly constructed stations to begin broadcasting in order to perform operational testing while the Commission considers the application for a broadcast license. Program test authority continues in effect until such time as the Commission acts upon the license application or otherwise revokes it. 47 CFR § 73.1620; *see also WHDH*, 457 F.2d at 561.

³⁶ Snake River Affirmative Case at para. 15 (citing Application for AM Broadcast Station License, FCC File No. BL-20210625AAA (filed June 23, 2021)).

	broken by brief periods of broadcasting (June 15-17, 2019, June 14-15, 2020) with the permission of tower site owner to avoid automatic cancellation; Snake River searches for and performs engineering work related to new site
May 16, 2019	Snake River files application for construction permit at new site
September 12, 2019	Commission staff grants construction permit
June 14, 2021	Snake River completes construction and begins broadcasting at new site pursuant to program test authority
June 23, 2021	Snake River files application for license at new site
June 24, 2021	Snake River files application for renewal of license as required by the Commission's rules

Other Rule Violations

12. While not specifically referenced in the *Snake River HDO*, it was revealed during the discovery phase of this proceeding that Snake River violated other Commission rules. Specifically, Snake River avers that it failed to place quarterly issues/programs lists in its online public inspection file for every quarter and failed to timely upload a certification regarding completion of the local public notice requirement with respect to its application for renewal, as required by section 73.3526(e) of the Commission's rules, 47 CFR § 73.3526(e). It also admits that it failed to put its agreement with its chief operator in writing, as required by section 73.1870(b)(3) of the Commission's rules, 47 CFR § 73.1870(b)(3).³⁷ In addition, the Enforcement Bureau notes that Snake River acknowledged in response to interrogatories that it had not maintained required station logs and other records, but did keep required Emergency Alert System logs.³⁸

CONCLUSIONS OF LAW

Automatic Cancellation Pursuant to Section 312(g)

Contentions of the Parties

13. Snake River submits that it has used two tower sites since taking over KPCQ(AM) in 2018 – the Rockwell Homes site from the time it acquired the station until June 15, 2020, and its new site since June 14, 2021.³⁹ While the August 8, 2018, STA request and the February 20, 2019, extension request indicated that the tower from which the station operated had been removed on June 30, 2018, Snake River contends that the tower remained standing until a construction crew severed a guy wire and knocked it down on June 17, 2019.⁴⁰ Its attorney, Mr. Timmons, asserts that he misunderstood the

³⁷ Snake River Affirmative Case at para. 21.

³⁸ EB Responsive Case at para. 44 and Exh. 20 (Snake River Radio, Licensee Supplemental Response to Interrogatories, MB Docket No. 22-53 (filed May 2, 2022)).

³⁹ Snake River Affirmative Case at n.4.

⁴⁰ *Id.* at para. 12.

situation and as a result incorrectly indicated in the STA applications that the tower had already been dismantled.⁴¹

14. The Enforcement Bureau disputes this timeline. The Bureau notes that Snake River never explained how it was possible for the station to have resumed operation at its original facilities after it had told the Commission that its tower had been dismantled, either at the time it notified the Commission that it had resumed operation or when it filed its second STA reporting the clipping of a guy wire.⁴² It submits that Snake River was unable to provide contact information for anyone at Rockwell Homes who could corroborate the licensee's assertion that it had initially taken the station off the air at the request of Rockwell Homes and not because the tower had been dismantled.⁴³ Nor, the Bureau asserts, could Snake River provide any documentation to prove that the tower was standing until June 17, 2019.⁴⁴ Rather, the Bureau points out, the only evidence Snake River has presented to support its argument that its license did not automatically cancel pursuant to section 312(g) are the declarations of Mr. Austin and of Fritz John Ashauer, who is a broadcast engineer hired by the station, an August 5, 2018, email from Mr. Austin to Mr. Timmons indicating that the tower was "to be dismantled," and four undated photographs of the tower site.⁴⁵ While Mr. Austin's declaration indicates that two of the photos showed the tower still standing in early June 2019, the Bureau submits that Snake River has not been able to provide metadata showing when the photos were taken despite saying that it would do so.⁴⁶

15. In addition, the Bureau contends that Snake River was not able to document its hiring of Mr. Ashauer or his company, or to document the work that he had performed for the station. The Bureau notes that in response to its discovery request for that information, Snake River responded that Mr. Ashauer worked for Mr. Austin pursuant to a verbal barter arrangement, whereby Mr. Ashauer would use equipment owned by Mr. Austin to operate several FM translator stations and in exchange would assist Mr. Austin with engineering projects on an ad-hoc basis.⁴⁷ The Bureau also points out that Snake River indicated to it that Mr. Ashauer is no longer able to work or take telephone calls due to medical issues.⁴⁸ The Enforcement Bureau contends that because Snake River cannot provide evidence beyond the statements of Mr. Austin and Mr. Ashauer indicating that the tower was still standing and that the station did broadcast from its licensed facilities beginning on June 15, 2019, Snake River has failed to prove its case by a preponderance of the evidence. Accordingly, the Bureau argues, the Presiding Judge should rule that the station license cancelled as a matter of law for failure to broadcast for 12 consecutive months, and that, consequently, Snake River's application for renewal should be dismissed as moot.⁴⁹

16. In its Reply Case, Snake River acknowledges that the conflicting statements in its STA requests regarding the use of its licensed facilities warrant further inquiry. It reiterates that the source of the confusion over whether its license for KPCQ(AM) automatically cancelled is the drafting error of its attorney, Mr. Timmons, who incorrectly indicated in 2018 that the station's tower had been dismantled.⁵⁰

⁴¹ *Id.* at para. 9.

⁴² EB Responsive Case at 1.

⁴³ *Id.* at 3-4.

⁴⁴ *Id.* at 5.

⁴⁵ *Id.* at 6.

⁴⁶ *Id.* at 6-9.

⁴⁷ *Id.* at 11.

⁴⁸ *Id.* at 10.

⁴⁹ *Id.* at 18.

⁵⁰ Snake River Reply Case at paras. 1, 7.

As a small, one-person operation that conducted business informally, usually in person or over the phone, Snake River submits that there is limited documentation available regarding the station's business arrangements.⁵¹ That is why, it argues, it could not provide contemporaneous written communications with its former contact at property owner Rockwell Homes, or written records regarding Mr. Ashauer's work for the station.⁵² Nor did it possess the technical ability to provide digital file details proving that the photos of the tower that it submitted earlier in this proceeding were taken in early June 2019, as Mr. Austin asserts.⁵³ Snake River cites its earlier explanation that the file information was lost when the photos were transferred from Mr. Austin's old mobile phone to his computer.⁵⁴ Nonetheless, Snake River contends, it provided declarations from individuals with personal knowledge of the relevant events, Mr. Austin and Mr. Ashauer, averring that the station was put back on the air on June 15, 2019, using the station's authorized facilities.⁵⁵ It contends that these statements, as well as the email of August 5, 2018, from Mr. Austin to station counsel and subsequent STA requests, show by a preponderance of the evidence that the tower was still standing on June 15, 2019, that the station was put back on the air that day and, as a result, that the license for the station did not automatically cancel under section 312(g) of the Communications Act.⁵⁶

Analysis

17. Section 312(g) was added to the Communications Act in 1996 as part of a larger revision of the process for renewing broadcast licenses. The section as originally adopted provided that a broadcast license would automatically terminate if the station failed to transmit broadcast signals for 12 consecutive months, eliminating the need for a revocation hearing.⁵⁷ In 2004, Congress qualified the automatic cancellation provision,⁵⁸ such that the statute now reads as follows:

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.

47 U.S.C. § 312(g).

18. The narrow question here with respect to section 312(g) is whether Snake River did indeed put KPCQ(AM) back on the air on June 15, 2019, at its authorized facilities. Snake River represented to the Commission at the time in its Notice of Resumption of Operations that it did so. It would certainly be useful to have additional documentation, including the metadata from the photos

⁵¹ *Id.* at para. 5.

⁵² *Id.* at para. 10.

⁵³ *Id.* See Snake River Radio, Motion to Delete Issue, MB Docket No. 22-53 (filed May 2, 2022) at Exh. A (Declaration of Ted W Austin, Jr.).

⁵⁴ Snake River Reply Case at para. 10 (citing Snake River Radio, Licensee Supplemental Response to Third Request for Production, MB Docket No. 22-53 (filed Sept. 13, 2022), attached to EB Responsive Case as Exh. 19).

⁵⁵ *Id.* at para. 8.

⁵⁶ *Id.* at paras. 6-9.

⁵⁷ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁵⁸ Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 118 Stat. 2809 (2004).

Snake River submitted and email or other written evidence corroborating that the tower was standing and the station transmitted broadcast signals from its authorized location on June 15, 2019. But the Enforcement Bureau's contention that such evidence is necessary is misplaced. To prove its case by a preponderance of the evidence, a movant needs to show that its position is supported by "[t]he greater weight of the evidence," which is "sufficient to incline a fair and impartial mind to one side of the issue rather than the other."⁵⁹ There are several indicia that Snake River took steps to ensure that its license for KPCQ(AM) did not automatically cancel under section 312(g), either in 2019 or later. As corroborated by contemporaneous Commission filings, it appears that the licensee twice put the station back on the air at its authorized site, first by using the existing tower in 2019 and then in 2020 via the long wire antenna. Snake River indicated to the Commission in June 2020 that it needed to use the long wire antenna because its tower had been knocked down. Had the tower not been available in June 2019, Snake River could have proposed the long wire operation at that time rather than waiting until the second time that it was facing the possibility of automatic cancellation. The Enforcement Bureau implies that Snake River misrepresented to the Commission that the original tower was still standing in June 2019. Considering Snake River's efforts to avoid automatic cancellation, however, a more logical conclusion is consistent with Snake River's assertion that its counsel, Mr. Timmons, was mistaken in stating on the initial STA application that the tower had been dismantled in 2018.

19. The direct statements submitted by Snake River are also persuasive. Mr. Austin and Mr. Ashauer both certify under penalty of perjury that the station was put on the air on June 15, 2019, using its licensed facilities. Mr. Austin further certifies that the station's original tower was standing until it was knocked down by a construction crew on June 17, 2019. Moreover, by signing Snake River's pleadings in this proceeding, Mr. Timmons avers under penalty of perjury that his earlier assertion that the tower had been dismantled in June 2018 was incorrect. He indicates that Mr. Austin's August 5, 2018, email to him stating that the tower is "to be dismantled" sometime in the future "is the best evidence to reflect the status of the KPCQ tower" at that time.⁶⁰ The statements of Mr. Timmons in this regard are especially compelling. Not only is he admitting that he made an error in a Commission filing, but a finding that he is now misrepresenting the situation could threaten his license to practice law.

20. Snake River's explanation for why it cannot provide metadata containing the date of the photographs of the tower – the metadata was lost when the photos were uploaded from a mobile phone to a computer and that the mobile phone no longer is in the possession of Mr. Austin – is believable. Consumers tend to replace mobile phones periodically and, in the process, trade in or otherwise dispose of their old phones. They also may save photos from the old phones to another medium. While the Enforcement Bureau questions the veracity of Snake River's explanation, it has not presented any evidence to controvert it.

21. It is well-established that "[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing."⁶¹ The *Snake River HDO* points out that Snake River did not take the opportunity in its renewal application to explain why it had previously said that the tower had been removed in 2018, but later stated that the tower was knocked down in 2019.⁶² Snake River should have reviewed its filings more carefully and corrected the error earlier, especially in seeking renewal after such a significant record of silence. But that lapse does not nullify the weight of the evidence, which supports the licensee's reasonable explanation that the 2018 statement was erroneously

⁵⁹ *Preponderance of the Evidence*, Black's Law Dictionary (11th ed. 2019).

⁶⁰ Snake River Affirmative Case at n.7.

⁶¹ *Contemporary Media v. FCC*, 214 F.3d at 193 (citing *Leflore Broadcasting Co. v. FCC*, 636 F.2d 454 (DC Cir. 1980)).

⁶² *Snake River HDO* at para. 10 & n.26.

drafted. Snake River made significant efforts, including timely seeking required FCC approvals, to put its station back on the air at its licensed location at the same time that it was pursuing a move to alternative facilities. In so doing, Snake River appears to have been aware that it needed to broadcast from its licensed site to avoid automatic cancellation.⁶³ While, as discussed below, this does not mean that Snake River adequately served its community during the license term, the Presiding Judge finds that Snake River has shown by a preponderance of the evidence that KPCQ was not silent in excess of 12 consecutive months. Accordingly, its license did not automatically cancel pursuant to section 312(g) of the Communications Act.⁶⁴

Satisfaction of Renewal Standards/Failure to Serve the Public Interest During the License Term

Contentions of the Parties

22. Snake River acknowledges that it was silent for about 80 percent of the prior license term, but asserts that it has been on the air continuously at its new location since June 14, 2021, which encompasses the last months of the regular license term as well as the period during which the application for license renewal has been pending.⁶⁵ Snake River contends that at the time it purchased KPCQ, it was a “failing” station that did not generate any revenue.⁶⁶ The circumstances that led to the station being silent were foreseeable but beyond its control, Snake River submits, and it made diligent efforts to move the station to a new location and get it back on the air.⁶⁷ The licensee argues that dismissal of its renewal application on these facts would discourage parties from investing the time and money to save a failing station, and that a better result would be to grant the application for a shortened license term.⁶⁸ Snake River also acknowledges that it disclosed violations of Commission rules during discovery, including failure to place required issues/programs lists in its online public inspection file, failure to commit its agreement with its chief operator to writing, and failure to upload a certification of completion of local public notice of its renewal application. It asserts that these types of violations generally carry an admonishment or fine.⁶⁹ If its application is denied, Snake River argues, its community would be deprived of its only licensed broadcast station and the concomitant services it provides, such as transmission of Emergency Alert System messages.⁷⁰

⁶³ Broadcasting from other than licensed parameters does not protect a licensee from automatic cancellation pursuant to section 312. See *Chinese Voice of Golden City v. FCC*, No. 20-1514, 2021 WL 6102191 (D.C. Cir. Nov. 30, 2021) (per curiam); *Kingdom of God, Inc. v. FCC*, 17 Fed Appx. 19 (D.C. Cir. 2018) (per curiam); *Eagle Broadcasting Group, Ltd. v. FCC*, 385 F.3d 543 (D.C. Cir. 2009).

⁶⁴ Because the station did not fail to transmit signals for more than twelve consecutive months, it is not necessary to examine in detail whether the portion of the statute that allows the Commission to reinstate an automatically cancelled license “to promote equity and fairness” is applicable here. Reinstatement pursuant to this provision has been rare, and is generally interpreted to require an act of nature or some other unusual circumstance out of the licensee’s control. *Chinese Voice of Golden City* at *2 (citing *Christian Broad. of E. Point, Inc.*, 30 FCC Rcd 13975, 13976 (2015); *V.I. Stereo Commc’ns Corp.*, 21 FCC Rcd 14259, 14262 (2006)); *Kingdom of God, Inc.*, 17 Fed. Appx. at 20. It is not clear whether the fact that Snake River did not gain any rights to the original site when it acquired the station would be considered a circumstance beyond its control in this context. Snake River asserts that the circumstances that led to its silence were beyond its control. See, e.g., Snake River Affirmative Case at para. 18.

⁶⁵ Snake River Affirmative Case at paras. 17-18.

⁶⁶ *Id.* at para. 1 (citing Exh. A (Declaration of Ted W. Austin, Jr.) at para. 2).

⁶⁷ *Id.* at para. 18.

⁶⁸ *Id.* at paras. 19-20.

⁶⁹ *Id.* at paras. 21-22.

⁷⁰ *Id.* at para. 26.

23. The Enforcement Bureau submits that if the license for KPCQ did not automatically cancel, Snake River has failed to show that the station served the public interest, convenience, and necessity when it was silent for 80 percent of its license term. It reiterates the observation of the *Snake River HDO* 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.”⁷¹ The Bureau contends that Snake River has failed to meet that burden and notes that the potential loss of the station to the community of Chubbuck was anticipated by the *Snake River HDO*. It contends that the Media Bureau concluded in deciding to release the *Snake River HDO* that resolution of the issues designated for hearing outweighed the risk that the market would lose its station.⁷² Moreover, the Bureau argues, Snake River has failed to show that its violations of Commission rules were not serious or did not constitute a pattern of abuse. The Bureau submits that Snake River promised to remedy its violations in a timely manner but did not do so before the close of discovery in this case. Even if Snake River did cure its rule violations, the Enforcement Bureau asserts, the licensee has presented no evidence that the violations were not serious or that they did not create a pattern of abuse.⁷³ Accordingly, the Enforcement Bureau contends that Snake River has not met its burden to prove that it has satisfied the qualifications for renewal of its license.⁷⁴

24. In its Reply Case, Snake River contends that its periods of silence should be evaluated in light of the circumstances that it acquired a failing station with no right to the existing tower site and it invested significant time and expense to move the station to a new location and get it back on the air. It reiterates that non-renewal is too harsh a penalty and would discourage others from saving failing stations, which in turn would lead to loss of service, particularly in rural areas.⁷⁵ Similarly, Snake River submits that its rule violations, about which it has been forthcoming, were not sufficiently serious to lead to a denial of its renewal application.⁷⁶ Rather, it contends that a short-term renewal is appropriate.⁷⁷

Analysis

25. Renewal standards for broadcast stations are governed by Section 309(k) of the Communications Act. Paragraph 309(k)(1) provides that the Commission shall grant a renewal application if it finds 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 Communications Act or the Commission’s rules; and (C) there have been no other violations by the licensee of the statute or the rules that, taken together, would constitute a pattern of abuse. Pursuant to

⁷¹ EB Responsive Case at para. 41; *Snake River HDO* at para. 6 (quoting *Birach Broadcasting Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 5015, 5020 (2001), *appeal dismissed sub nom. New World Radio, Inc. v. FCC*, 294 F.3d 164 (D.C. Cir. 2002)).

⁷² EB Responsive Case at paras. 42-43.

⁷³ *Id.* at paras. 44-47. On October 31, 2022, after the discovery period in this proceeding had ended, Snake River filed a document that purported to provide some of the missing information and demonstrate that it had updated its renewal application. When the Bureau moved to strike the post-discovery pleading, Snake River indicated that it did not plan to use the information to gain advantage in this proceeding. Accordingly, the Presiding Judge struck the pleading from the record and does not rely on it here. *Snake River Radio*, Order, MB Docket No. 22-53, FCC 22M-29 (ALJ Nov. 7, 2022).

⁷⁴ *Id.* at para. 49.

⁷⁵ Snake River Reply Case at para. 14.

⁷⁶ *Id.* at para. 15.

⁷⁷ *Id.* at para. 16.

paragraphs 309(k)(2) and (k)(3), if the Commission determines that the licensee has not satisfied those standards and finds no mitigating factors that justify the imposition of lesser sanctions, it may deny renewal after providing the licensee notice and an opportunity for hearing. Or, it may grant the renewal with conditions, including for a shortened license term.

26. A silent station does not serve the public interest, convenience, and necessity. In its 2001 decision in *Birach Broadcasting Corporation*, the Commission found that the licensee of a station that had been silent for an extended period “fell far short of the service commitment which most licensees fulfill to their communities of license on a daily basis.”⁷⁸ As noted by the Enforcement Bureau in this case, the Commission has made clear that a station that is silent for most of its license term faces a “very heavy burden” in proving that it has served the public interest. In 2017, in *Radioactive, LLC*, the Commission addressed the practice of some stations that, like Snake River, went on the air for very limited periods of time in order to avoid automatic cancellation under section 312(g) but otherwise remained silent. The station in that case had operated for a total of five non-consecutive days over four-and-a-half years.⁷⁹ There, as well as in two subsequent silent station cases, the Commission determined that there were no factual issues to be decided via a hearing before an Administrative Law Judge. Accordingly, the Commission used expedited procedures that gave the licensees the opportunity to show that their licenses should be renewed.⁸⁰ In all three cases, the licensees chose instead to surrender their authorizations and requested that their licenses be cancelled.⁸¹

27. The Commission’s analysis of a renewal application considers the licensee’s performance during the entire license term, affording no greater weight to improved performance that occurs while that application is pending.⁸² After an extended period of silence that was very briefly interrupted during much of the license term, Snake River put its station back on the air only ten days prior to its filing for renewal and less than four months before the end of its license term. Its final STA extension was set to expire two days after it resumed operation. Unlike the licensees in the *Radioactive* line of cases, however, Snake River appears to have made a steady effort throughout the license term to get its station back on the air at full capacity when it could no longer regularly broadcast from its licensed facilities. Contemporaneous Commission records demonstrate not only the licensee’s activities aimed at avoiding automatic cancellation, but also parallel efforts, involving considerable time and expense over the course of two years, to move its facilities to a new location where it could serve the Chubbuck community free of the impediments extant at its original site. As outlined above, within 18 months of acquiring the station and 11 months after its station first went silent, Snake River identified a new transmission site and performed the engineering work necessary to be granted a construction permit at that site. The station

⁷⁸ *Birach Broadcasting Corporation*, *supra*, 16 FCC Rcd 5015 at 5021.

⁷⁹ *Radioactive, LLC*, 32 FCC Rcd 6392 (2017).

⁸⁰ *Birach Broadcasting Corporation*, 33 FCC Rcd 852 (2018) (not related to 2001 Birach decision referenced above); *Family Voice Communications, LLC*, 33 FCC Rcd 4654 (2018).

⁸¹ See *Broadcast Actions*, Public Notice, Report No. 49046 (MB Aug. 10, 2017) at 1, 18 (*Radioactive*); *Broadcast Actions*, Public Notice, Report No. 49320 (MB Sept. 13, 2018) at 3-5 (*Birach*); *Broadcast Actions*, Public Notice, Report No. 49253 (MB June 8, 2018) at 5, 10 (*Family Voice*).

⁸² *Fox Television Stations, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9564, 9571 n.40 (MB 2014). While the *Snake River HDO* at n.22 briefly characterizes the *Fox* case as indicating that the Commission “gives less weight to improved performance during the pendency of the renewal application,” a more precise reading is that the decision expresses “the Commission’s traditional reluctance to afford greater weight to improved performance during the pendency of a renewal proceeding than to past negative performance.” 29 FCC Rcd at 9571 n.40. Regardless of whether late-term improved performance is given “no greater” weight or “less” weight, evaluation of Snake River’s record appropriately takes into account Snake River’s continuous efforts to cure the tower site problems it inherited when it acquired the stations. Even applying “less” weight to improved performance during the pendency of Snake River’s renewal application, the Presiding Judge’s decision would be the same.

was constructed and operational at the new location pursuant to program test authority more than a year before its construction permit was due to expire, and Snake River filed an application to commence full-power operation very shortly thereafter.

28. Moreover, the Presiding Judge agrees with Snake River that, but for the genuine question of whether the station had automatically cancelled, the Media Bureau might not have designated this case for hearing. A number of other silent station cases have been resolved by granting renewal for a truncated license term, typically for one year rather than the eight-year full term of a radio license. Snake River cites *AASAA Media*, which is a 2022 order of the Audio Division of the Media Bureau that granted a one-year renewal of a station that had been silent for 36 percent of its license term.⁸³ Snake River was silent for considerably more of its license term -- 80 percent of its regular term and 20 percent of its extended term -- and has admitted to other rule violations.⁸⁴ There are several Media Bureau cases involving stations that both experienced significant periods of silence and violated other Commission rules that were not designated for hearing but resulted in the licensee agreeing, via consent decree, to short-term renewal and other corrective actions. Like *AASAA Media*, those decisions involved less overall time off the air than Snake River, ranging from less than ten percent of the license term to half the license term.⁸⁵ In this case, even if the Media Bureau had found that Snake River's record of silence was too extreme to support a consent decree, or if it was unable to reach agreement with the licensee, it still had the option of resolving the renewal application before the Commission using expedited procedures such as those followed in the *Radioactive, LLC* line of cases. The Media Bureau instead chose to proceed to a formalized hearing before the Administrative Law Judge, which bolsters the conclusion that the primary impetus for this proceeding was uncertainty as to whether the license had automatically cancelled.

29. Nonetheless, Snake River clearly has not satisfied the public interest mandate of section 309(k)(1)(A) of the Communications Act due to its extended silences during the license term. As the

⁸³ *KMRI(AM), West Valley City, UT*, Letter Order, Application File Nos. 0000149459 and BAL-20201028AAU (MB AD Apr. 21, 2022) (*AASAA Media*). Curiously, the Enforcement Bureau argues that because Snake River failed to provide a complete citation for *AASAA Media*, it is unable to evaluate its relevance to this case. EB Responsive Case at n.130. Snake River did, however, provide an appropriate citation to the decision that included the release date, application file numbers, delegated authority, reference number, and Licensing and Management System (LMS) file number. See Snake River Affirmative Case at n.5.

⁸⁴ *Snake River HDO* at paras. 9-11. For these purposes, a station's "extended term" is the period of time after the designated license term has ended but during which an application for renewal for a new term is pending. *Id.* at n.22.

⁸⁵ See, e.g., *Radio Hawaii, Inc.*, Order, DA 22-614 (MB AD June 7, 2022), 2022 WL 2072035 (station silent for approximately 35 percent of license term, failed to comply with public inspection file requirements); *Birach Broadcasting Corporation*, Order, DA 22-761 (MB AD July 15, 2022), 2022 WL 2805643 (station silent for 50 percent of license term and 40 percent of extended term, failed to comply with public inspection file requirements); *Mekaddesh Group*, Memorandum Opinion and Order, DA 22-772 (MB AD July 18, 2022), 2022 WL 2828283 (seven stations silent for approximately 25 percent of license term, six of those silent for at least 40 percent of extended term, remaining station silent for 25 percent of extended term, failed to comply with public inspection file requirements); *Deportes y Musica Comunicaciones*, Order, DA 22-953 (MB AD Sept. 14, 2022), 2022 WL 4245045 (station silent for 27 percent of license term and 33 percent of extended term, failed to comply with public inspection file requirements); *Carlos Lopez*, Memorandum Opinion and Order, DA 22-1095 (MB AD Oct. 14, 2022), 2022 WL 10380133 (station silent for eight percent of license term and 30 percent of extended term, failed to comply with public inspection file requirements). One case decided after the start of the pleading cycle in this proceeding permitted a short-term renewal of a station that had been silent for virtually all of its license term, but that situation involved unique circumstances not present here, including a Commission effort to ensure that tribal and nonprofit entities could acquire FCC licenses. See *Winnebago Tribe of Nebraska*, Order, DA 22-1229 (MB AD Nov. 29, 2022), 2022 WL 17335983 (station silent for almost all of license term and extended term, failure to comply with public inspection file requirements).

Media Bureau has expressed,

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.⁸⁶

In addition, the rule violations that came to light during discovery raise the issue of whether Snake River satisfied the other two prongs of section 309(k)(1), i.e., that there have been no serious violations of the Communications Act or the Commission's rules and that there have been no other violations that could constitute a pattern of abuse. Snake River acknowledges that it did not timely prepare and upload all required issues/programs lists and other items to its station's local public inspection file, did not commit its agreement with its chief operator to writing, and did not maintain all required station logs. Snake River contends that these recordkeeping omissions are not sufficiently significant to warrant denial of its renewal application, while the Enforcement Bureau argues that Snake River has failed to prove that the violations were not serious or did not belie a pattern of abuse, and has not shown that they have been resolved.

30. Section 73.3526 of the Commission's rules, 47 CFR § 73.3526, specifies the items that a broadcast licensee is required to maintain in its public inspection file, including issues/programs lists, which are compiled quarterly and describe "programs that have provided the station's most significant treatment of community issues."⁸⁷ Snake River admitted during discovery that it did not file timely issues/programs lists for the first two quarters of 2018 and the second quarter of 2022. Nor did it maintain all required station logs or timely upload to its public inspection file required notifications of its application for renewal and the commencement of this hearing proceeding, among other things. Some of those violations were later rectified.⁸⁸ The Commission's public inspection file rules serve the critical purpose of ensuring that broadcast stations are consistently responsive to listener needs. The Commission has explicitly deemed a station's omission of issues/programs lists to be a serious transgression, indicating, "such a violation is serious in that it diminishes the public's ability to determine and comment at renewal time on whether the station is serving its community."⁸⁹ Repeated failure to prepare and upload issues/programs lists has also been considered a "pattern of abuse" under 309(k)(1),⁹⁰ as have other public inspection file violations.⁹¹

31. Based on this record, the Presiding Judge finds that Snake River has failed to satisfy the requirements of section 309(k)(1). This is not the end of the analysis, however, as it simply means that Snake River is not eligible for pro forma renewal of its license. Section 309(k)(2) of the Act, 47 U.S.C. §

⁸⁶ *AASAA Media* at 4; *see also Radio Hawaii, Inc.* at *1, para. 3; *Birach Broadcasting Corporation (2022)* at *1, para. 3; *Mekaddesh Group* at *2, para. 10; *Deportes y Musica Comunicaciones* at *1, para. 3; *Carlos Lopez* at *3, para. 10; *Winnabago Tribe of Nebraska* at *1, para. 4.

⁸⁷ 47 CFR § 73.3526(e)(12).

⁸⁸ EB Responsive Case at Exhs. 8, 20. The rectifications reflected in these exhibits are different from those not being considered for procedural reasons. *See* note 73, *supra*.

⁸⁹ *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997) at para. 39.

⁹⁰ *Seaview Communications, Inc.*, 34 FCC Rcd 9340 (MB AD 2019) at para. 11

⁹¹ *Gallup Public Radio*, 28 FCC Rcd 13847 (MB AD 2013) at para. 10.

309(k)(2), affords the Commission flexibility to renew a station's license with conditions if it finds mitigating factors that justify a lesser consequence than outright denial, and the Commission has often done so, as described above. Snake River's station was silent for effectively its entire license term, except for attenuated periods of operation that were obviously aimed at avoiding automatic cancellation rather than serving the community. The station's required recordkeeping suffered as a result. At the same time, and without regard to whether the actions of parties other than Snake River led to the periods of silence, the licensee made consistent and demonstrable efforts to overcome the factors that caused it to cease broadcasting. The station's brief periods of operation, which required permission of site owner Rockwell Homes while it was actively redeveloping the site, enabled Snake River to maintain its license as part of a longer term effort to move the station to a new location where it could broadcast normally. Despite these circumstances, Snake River accepts responsibility for its deficiencies, and acknowledges that some sanction is appropriate.

32. Snake River is correct that, while serious, the type of public file and other violations that it committed tend to carry a penalty of short-term renewal and/or monetary forfeiture rather than denial of renewal.⁹² And, as demonstrated by the cases referenced above, it is not uncommon for silent stations to be renewed on a restricted basis when circumstances warrant. In granting short-term renewal in these situations, the Media Bureau has indicated that, "[t]his 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 FCC's rules, and to take whatever corrective actions, if any, that may be warranted at that time."⁹³ Having determined that Snake River restored service to its broadcast community during the license term, and that it made genuine progress in ensuring future service by moving from a location to which the prior licensee could convey no continuing right of use to a new location to which it has legal rights of use, the Presiding Judge concludes that it is consistent with the public interest to renew the license of KPCQ(AM) for one year, in accord with the *Snake River HDO*. In particular, as the public file and other rule violations discussed herein did not come to light until after this matter was designated for hearing, short-term renewal will give the Commission a chance to properly evaluate Snake River's continued adherence to the Communications Act and Commission rules and to respond as appropriate.

33. In determining that renewal for a one-year term is the best outcome under section 309(k)(2), it has not been necessary to consider whether the problems with the original tower site were beyond Snake River's control or otherwise excuse Snake River from being held to account for the periods of silence that occurred after it acquired the station. It appears, however, that consideration of those factors might also support granting renewal, at least for a shortened term. Snake River submits that the station was failing when Snake River acquired it, and the record indicates that the prior licensee allowed the lease for the tower site to lapse and therefore could convey only a month-to-month tenancy. The site owner, in turn, exercised its right to not continue the month-to-month arrangement, and its crew's construction activity twice destroyed the antennae Snake River had been using to broadcast so as to avoid automatic cancellation. Snake River posits that the site issues that it ultimately rectified by relocating were mostly beyond its control, and that should be weighed in its favor when evaluating its renewal application. On the other hand, Snake River was aware that the continued availability of the site was tenuous when it acquired the station. The Commission recently indicated that, "[s]ite related matters are considered within a licensee's control because the licensee chooses the site."⁹⁴ The Commission in that

⁹² See, e.g., *Seaview Communications, Inc.* (\$15,000 forfeiture and two-year renewal); *Gallup Public Radio* (\$12,000 forfeiture and four-year renewal).

⁹³ *AASAA Media* at 5; see also *Radio Hawaii, Inc.* at *2, para. 7; *Birach Broadcasting Corporation (2022)* at *2, para. 7; *Mekaddesh Group* at *3, para. 14; *Deportes y Musica Comunicaciones* at *2, para. 7; *Carlos Lopez* at *4, para. 14; *Winnebago Tribe of Nebraska* at *3, para. 8.

⁹⁴ *International Aerospace Solutions, Inc.*, Memorandum Opinion and Order, FCC 23-8, 2023 WL 2012155 at para. 11 n.32 (Feb. 13, 2023).

case was referring to justification for reinstating a license that had automatically cancelled, and in support of that statement referred to cases involving failure to broadcast caused by the “licensee’s own actions, finances, or business judgments.”⁹⁵ That observation raises the question of whether the Commission would take the same position with respect to granting renewal, as opposed to reinstating an automatically cancelled license, where the licensee didn’t itself select the site but acquired the station knowing that the site was problematic.

34. Regardless, renewing Snake River’s license is a far better outcome than denial. As the *Snake River HDO* indicates, “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.’”⁹⁶ On the record in this proceeding, Snake River is the “other” party that is “capable of instituting and maintaining service to the public.” It has demonstrated this during the license term by overcoming the missteps of the prior licensee and the site owner and following the Commission’s processes to construct a permanent facility at a new location. In doing so, Snake River has restored service to the Chubbuck community far more quickly than would have been the case had the station first been allowed to fail completely and the license reverted to the Commission for reassignment.

CONCLUDING STATEMENT

35. The *Snake River HDO* designated for hearing a determination of whether the license for KPCQ(AM), Chubbuck, Idaho, automatically cancelled pursuant to section 312(g) of the Communications Act, 47 U.S.C. § 312(g), due to silence that lasted for more than 12 consecutive months. Based on the foregoing, the Presiding Judge concludes that Snake River Radio has proved by a preponderance of the evidence that the station was not off the air for more than 12 consecutive months. In the event that the license did not automatically cancel, the *Snake River HDO* designated for hearing a determination of whether the station, during the preceding license term, satisfied the renewal standards enumerated in section 309(k)(1) of the Communications Act, 47 U.S.C. § 309(k)(1), and whether the licensee’s application for renewal should be granted on such terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted, or should be denied. Based on the foregoing, the Presiding Judge concludes that Snake River Radio has not proved by a preponderance of the evidence that it satisfied the renewal standards of section 309(k)(1), but that mitigating factors exist to find that a one-year renewal of the station’s license pursuant to section 309(k)(2) is in the public interest and constitutes an appropriate sanction.

ORDERING CLAUSES

36. Accordingly, IT IS ORDERED that, pursuant to section 309(k)(2) of the Communications Act, 47 U.S.C. § 309(k)(2), the application for renewal of license for Station KPCQ(AM), Chubbuck, Idaho (File No. 0000151021), filed by Snake River Radio, LLC, IS GRANTED FOR A TERM OF ONE YEAR from the release date of this Initial Decision.

37. IT IS FURTHER ORDERED that this hearing proceeding, MB Docket No. 22-53, IS

⁹⁵ *Id.* (citing *Kingdom of God, Inc.*, Memorandum Opinion and Order, 31 FCC Rcd 7522, 7528 (2016)).

⁹⁶ *Snake River HDO* at para. 8 (quoting *Family Life Ministries, Inc.*, Letter Order, 23 FCC Rcd 15395, 15397 (MB 2008)).

TERMINATED.⁹⁷

FEDERAL COMMUNICATIONS COMMISSION

Jane Hinckley Halprin
Administrative Law Judge

⁹⁷ This Initial Decision shall become effective 50 days after release if exceptions are not filed within 30 days after release, unless the Commission elects to review the case on its own motion. 47 CFR § 1.276.