

**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

ORDER

Issued: February 17, 2023

Released: February 17, 2023

1. On February 9, 2023, the Presiding Judge released an order in the above-captioned proceeding indicating that she would take official notice of all publicly available Commission records for KPCQ(AM), Chubbuck, Idaho, since February 1, 2018, which is the date that the assignment of the license to Snake River Radio, LLC, was consummated.¹ The Presiding Judge explained that she took this action because the current record of the case includes some, but not all, publicly available Commission records regarding the station. She specifically excluded from official notice those station records that were already submitted into evidence and, citing section 1.203 of the Commission’s rules, 47 C.F.R. § 1.203, gave the parties an opportunity to challenge her decision. Challenges were to be filed within 14 days, or by February 23, 2023, and oppositions to any challenges were to be filed within 21 days, or by March 2, 2023.

2. On February 15, 2023, the FCC’s Enforcement Bureau filed a request for clarification and an extension of time to respond to the February 9 *Official Notice Order*.² The Bureau submits that the Presiding Judge did not identify which portions of the many documents covered by the order that she intends to rely on in deciding this case. As a result, the Bureau contends, it is premature for it to make a decision as to whether to challenge any portion of those documents. The Bureau accordingly asks that the Presiding Judge identify the specific documents and material facts on which she intends to rely so as to inform the parties’ decision as to whether to file a challenge. The Bureau also asks that the deadlines to respond to the *Official Notice Order* be suspended until she rules on this request.

3. The Presiding Judge is persuaded that some clarification is appropriate to explain the impetus for the *Official Notice Order*. As indicated therein, section 1.203 of the Commission’s Rules, which is based on section 556(e) of the Administrative Procedure Act, 5 U.S.C. § 556(e), provides that, “[w]here any decision rests on official notice of a material fact not appearing in the record, any party shall on timely request be afforded an opportunity to show the contrary.” In a recent line of hearing designation orders involving stations that were off the air for extended periods of time, like in this case, the Commission stated that it intended to take official notice of all publicly available Commission records regarding the subject station and, pursuant to section 1.203, provided the parties a separate pleading cycle

¹ *Snake River Radio, LLC*, Order, MB Docket No. 23-53, FCC 23M-02 (ALJ Feb. 9, 2023) (*Official Notice Order*).

² Enforcement Bureau’s Initial Response to *Order*, FCC 23M-02, and Request for Clarification, MB Docket No. 22-53 (filed Feb. 15, 2023).

to file and respond to challenges to that action.³ The Commission also indicated in each of those cases that it would specify in its ultimate decision which portions of the record were ultimately relied upon.⁴

4. Out of an abundance of caution in light of the approach the Commission took in those silent station cases, the Presiding Judge issued the admittedly sparse *Official Notice Order* to provide the parties an opportunity to weigh in. Other agency decisions, however, have taken official notice of publicly available Commission records without reference to section 1.203. For instance, in reviewing a Media Bureau order that granted renewal of a licensee's stations, the Commission in 2018 rejected the challenger's argument that the Bureau improperly relied on issues/programs lists that had been submitted to the Commission but were not made part of the record in the renewal proceeding. The Commission concluded that, "The issues/programs lists are housed on the Commission's website, and we may take official notice of these lists under section 309(d) of the Act."⁵

5. Perhaps the Commission expressly invoked section 1.203 in the silent station cases because it intended to conduct the hearing itself, without involving an Administrative Law Judge, using summary hearing procedures. In any event, the Presiding Judge has opted in this case to act in accord with section 1.203 and consider the parties' opposition, if any, to her decision to take official notice of publicly available Commission records for KPCQ(AM) during Snake River's tenure as licensee. Of course, the Presiding Judge is not at this juncture going to divulge the details of her unreleased draft decision, but she can provide a more specific description of how the publicly available station records might be used. The issues designated for hearing in this case include a determination of whether KPCQ(AM) was silent for more than 12 consecutive months and an evaluation of whether it has satisfied the renewal standards of the Communications Act and the Commission's rules.⁶ In considering the submissions of the parties with respect to both of these issues, she has found it useful to construct a timeline of KPCQ's operations for the time that Snake River has been the licensee. While the record currently contains adequate information for a general timeline, the Presiding Judge prefers to lay out a more detailed chronology that includes some publicly available Commission records that have not specifically been made part of this proceeding, including, but not limited to, all of Snake River's requests for special temporary authority to operate and related extensions, as well as staff disposition of those requests.

6. It is the intent of the Presiding Judge that this additional guidance is sufficient to enable the parties to decide how to proceed with respect to the *Official Notice Order*. She will accordingly restart the comment period such that any challenges to the *Official Notice Order* are due within 14 days of release of this clarification order, and responses to those challenges are due within 21 days of release of this order. The Presiding Judge intends to address such challenges and responses as part of her Initial Decision in this proceeding.

7. Accordingly, **IT IS ORDERED** that the relief requested in the Enforcement Bureau's Initial Response to *Order*, FCC 23M-02, and Request for Clarification, filed February 15, 2023, **IS GRANTED** to the extent indicated herein and **IS OTHERWISE DENIED**.

³ *Radioactive, LLC*, 32 FCC Rcd 6392, 6398 (2017); *Birach Broadcasting Corp.*, 33 FCC Rcd 852, 860 (2018); *Family Voice Communications, LLC*, 33 FCC Rcd 4654, 4660 (2018).

⁴ *Radioactive* at 6398 n.48; *Birach* at 860 n.60; *Family Voice* at 4660 n.46.

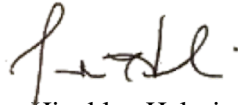
⁵ *Fox Television Stations, Inc.*, 33 FCC Rcd 7221 (2018) at n.110. *See also Channel 32 Hispanic Broadcasters, Ltd.*, 15 FCC Rcd 22649, 22652 (2000) (Commission records are facts of which official notice may be taken such that supporting affidavit is not required); *Abacus Broadcasting Corp.*, 8 FCC Rcd 5110 at n.4 (Rvw Board 1983) (official notice taken of Commission records without elaboration).

⁶ *Snake River Radio, LLC*, Hearing Designation Order and Notice of Opportunity for Hearing, MB Docket No. 23-53, DA 22-115 (MB Feb. 7, 2022) at para. 29.

8. **IT IS FURTHER ORDERED** that the above schedule for filing challenges and responses to the officially noticed documents **IS ADOPTED** and that the parties **SHALL FILE** challenges and responses, if any, in accordance therewith.

9. This action is taken pursuant to sections 1.243(i), 1.243(n), and 1.298(a) of the Commission's rules, 47 CFR §§ 1.243(i), 1.243(n), and 1.298(a).⁷

FEDERAL COMMUNICATIONS COMMISSION



Jane Hinckley Halprin
Administrative Law Judge

⁷ Section 1.243(i) authorizes the presiding official in a hearing proceeding to dispose of procedural requests and ancillary matters. Section 1.243(n) authorizes the presiding official to conduct proceedings “as will best conduce to the proper dispatch of business and the ends of justice.” Section 1.298(a) allows the presiding official to rule on requests for extension of time without waiting for the filing of responsive pleadings.