



Federal Communications Commission
Washington, D.C. 20554

August 10, 2015

In Reply Refer to:
1800B3-TH

Dan J. Alpert, Esq.
2120 N. 21st Road
Arlington, VA 22201

In re: Procter-Williams, Inc.
KSET(AM), Lumberton, TX
Facility ID No. 31108
File No. BR-201300328AAA

Dear Counsel:

We have before us the application ("Application") of Procter-Williams, Inc. ("PWI") for renewal of the license of AM radio station KSET, Lumberton, Texas (the "Station"). For the reasons set forth below, we grant the Application for a renewal period of two years from the date of this letter, instead of a full term of eight years, pursuant to Section 309(k)(2) of the Communications Act of 1934, as amended (the "Act").¹

Background. PWI filed the Application on March 28, 2013, seeking to renew the Station's license for a term running from August 1, 2013 to July 31, 2021. In Section III of the Application, Question 4 required PWI to disclose whether or not the Station had been silent for more than 30 days at any time during the pending license term of August 1, 2005 to July 31, 2013. In response, PWI disclosed that the Station had been silent pursuant to special temporary authority for several different periods in the license term.² PWI stated that the silent periods were due to extensive damage from Hurricane Rita, subsequent floods and personnel problems, difficulties encountered in a change of transmitter site, and financial difficulties arising from the death of the owner's son and wife, followed by the owner's heart attack. However, some of the instances of silence occurred under a prior licensee rather than during the period when PWI was the licensee, and we calculate that the Station operated for more than half the time in the latter period. PWI has filed for Commission approval to assign the Station's license to a buyer, and went silent again as of May 7, 2015, pending approval of that transaction.³ The Station otherwise remained in operation after the Application was filed.

¹ 47 U.S.C. § 309(k)(2).

² Application, Ex. 13. Each period of silence was authorized under special temporary authority in accordance with 47 C.F.R. § 73.1740.

³ See FCC File No. BLSTA-20150623ABC (referencing FCC File No. BAL-20150601AHZ, proposing assignment of license to Southeast Texas Telecom, LLC).

Discussion. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.⁴ That Section provides that if, upon consideration of the application and 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.⁵ 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.”⁶

Extended periods of station silence are addressed most directly in Section 312(g) of the Act, which Congress added in 1996 and amended in 2004. That Section 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.⁷

The policy against allowing extended periods of silence 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.”⁸ In addition to its enforcement of Section 312(g), the Commission has stressed its interest in promoting efficient use of radio broadcast spectrum for the benefit of the public in several different contexts since the enactment of Section 312(g).⁹

Section 312(g) has relieved the Commission from the need to conduct revocation proceedings, with their lengthy procedural requirements, including evidentiary hearings, for stations that remain silent for a consecutive 12-month period.¹⁰ However, in response to Section 312(g), some licensees of silent stations have adopted a practice of resuming operation for a short period of time, in some cases as little as a day, before the 12-month limit in Section 312(g) applies. In this case, the Station had multiple periods

⁴ 47 U.S.C. § 309(k).

⁵ 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 Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

⁶ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁷ 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 Broadcasting Group, Ltd. v. FCC*, 563 F.3d 543, 545 (D.C. Cir. 2009).

⁸ *Family Life Ministries, Inc.*, Letter, 23 FCC Rcd 15395, 15397 (MB 2008).

⁹ *See Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Third Report and Order, 26 FCC Rcd 17642, 17645 (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 (1998), *on reconsideration*, 14 FCC Rcd 17525, 17539 (1999); *Lieberman Broadcasting of Dallas License LLC*, Letter, 25 FCC Rcd 4765, 4768 (MB 2010).

¹⁰ *See Eagle Broadcasting Group, Ltd. v. FCC*, 563 F.3d at 545.

of silence that each lasted from nine to eleven months, with a period of two to three days of operation in between each extended period of silence.

These practices raise a question as to whether the licenses for such stations should be renewed pursuant to Section 309(k) of the Act. Silence instead of licensed operation is a fundamental failure to serve 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.

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."¹¹ The Commission acknowledged that the agency's longstanding policy had been to encourage stations to resume broadcast operations. 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.¹² The Commission held that denial of the renewal application of the station in question in *Birach* would be fundamentally unfair because the Commission had not provided sufficient notice of the effect the Section 309(k)(1) standard would have on silent stations.¹³ Since the issuance of the *Birach* decision in 2001, licensees have been on notice as to how Section 309(k)(1) applies to silent stations.

In this case, Licensee's conduct has fallen far 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 significant portions of PWI's license term.

On the facts presented here, we conclude that a short-term license renewal is the appropriate sanction. Although PWI faced a number of difficulties beyond its control and sought Commission authorization for each of the Station's periods of silence, we cannot find that the Station served the public interest, convenience and necessity during the license term due to the extended periods of non-operation. Additionally, although PWI has entered into a sale agreement that will enable the Station to resume operations, we believe that additional measures are necessary in order to ensure that the Station will provide the broadcast service it is licensed to provide. 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 two years from the date of this letter.¹⁴ This limited renewal period will afford the Commission an opportunity to review the

¹¹ See *Birach Broadcasting Corporation*, Memorandum Opinion and Order, 16 FCC Rcd 5015, 5020 (2001) ("*Birach*").

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

¹³ In *Birach*, the station was silent for the entire period (approximately two and one-half years) in which the license renewal applicant (*Birach*) held the license. Section 312(g) of the Act took effect during that period, and *Birach* returned the station to operation before that provision would have applied. 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.

¹⁴ See, e.g., *Visionary Related Entertainment, LLC*, Memorandum Opinion and Order, 27 FCC Rcd 1392 (MB 2012) (one-year renewal granted based on licensee's willful and repeated violations of the Commission's radiofrequency

Station's compliance with the Act and the Commission's rules and to take whatever corrective actions, if any, that may be warranted at that time.

Conclusion. Accordingly, for the reasons set forth above, IT IS ORDERED THAT the license renewal application (File No. BR-20130328AAA) filed by Procter-Williams, Inc. IS GRANTED pursuant to 47 U.S.C. § 309(k)(2) for a license term of two years from the date of this letter, subject to the following conditions:

1. The assignment of license covered by File No. BAL-20150601AHZ will be consummated within ninety (90) days of the date of the grant, and the Commission will be notified of such consummation within one (1) day thereafter;
2. Failure to consummate the assignment of license transaction will render this grant null and void and will cause the renewal application to revert to pending status; and
3. Notwithstanding the terms of this grant, the license for station KSET(AM), Fac. ID No. 31108, will expire May 7, 2016, as a matter of law if the station does not resume broadcasting operations by 12:01 a.m. See Pub. Law No. 104-104, 110 Stat. 56, Sec. 403(1) (1996).

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" with a stylized "TH" at the end.

Peter H. Doyle
Chief, Audio Division
Media Bureau

radiation exposure guidelines at two stations); *South Seas Broadcasting, 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 C.F.R § 73.1350 by engaging in operation of the station at an unauthorized site and willfully and repeatedly violating 47 C.F.R § 73.1740 by leaving the station silent without the proper authorization); *Enid Public Radio Association*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 9138, 9144 (MB 2010) (six-year renewal granted, NAL issued, after finding a pattern of abuse where “the number, nature and extent” of the violations on the record, coupled with the licensee’s apparent disregard for a prior admonition regarding those violations and refusal to address the allegations, indicate that ‘the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission’s Rules’”).