



Federal Communications Commission  
Washington, D.C. 20554

November 6, 2018

*In Reply Refer to:*  
1800B3-MFW

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Peace and Justice Network of San Joaquin County  
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**In re: KBCC(FM) (formerly KYNJ), Tracy, California**  
Facility ID No. 176022  
File No. BALED-20180921AAR  
BRED-20130802AAO  
**Application for License Assignment**  
**Application for License Renewal**  
**Informal Objection**

**KXVS-LP, Stockton, California**  
Facility ID No. 195758  
File No. BLL-20170926AAB

Dear Applicants and Objector:

The Media Bureau, Audio Division (Bureau) has before it: (1) an unopposed application from Peace and Justice Network of San Joaquin County (PJN) to renew the license of noncommercial educational (NCE) FM station KBCC(FM), Tracy, California (Tracy Station)<sup>1</sup> and (2) a contested application for consent to assign the Tracy Station's license to Voice of Stockton (Voice).<sup>2</sup> PJN is also the licensee of silent Low Power FM (LPFM) station KXVS-LP, Stockton, California (Stockton Station).<sup>3</sup> We also have before us the November 2, 2018, request from PJN Chair Richard Blackston to dismiss the

<sup>1</sup> See File No. BRED-20130802AAO (filed Aug. 2, 2013) (Tracy Renewal).

<sup>2</sup> See File No. BALED-20180921AAR (Second Tracy Assignment). On October 22, 2018, Westside Public Radio of San Joaquin County (Westside) filed an Informal Objection (Objection) to the Second Tracy Assignment, to which Voice filed an Opposition on November 1, 2018 (Voice Opposition). In light of our decision here dismissing the Second Tracy Assignment, all pleadings relating to that application are moot.

<sup>3</sup> Pursuant to LPFM cross-ownership rules, PJR pledged to divest the Tracy Station before operating the Stockton Station. See 47 CFR § 73.860(d); File No. BNPL-20131114BXL (granted Sept. 26, 2014) (Stockton Permit).

Second Tracy Assignment and surrender the Stockton Station authorization.<sup>4</sup> For the reasons set forth below, we dismiss the Second Tracy Assignment, cancel the KXVS-LP authorization, and grant the Application for a renewal period of one year 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 (Act).<sup>5</sup>

**Background.** In 2010, PJN received a permit to construct the Tracy Station after prevailing over a competing applicant under a point system that compared desirable factors in each proposal.<sup>6</sup> In accordance with Section 73.7003 of the Commission's rules (Rules), the Commission conditioned the Tracy Station's permit upon completion of a holding period, during which the Commission will entertain point-system related complaints from the public and the selected NCE licensee cannot sell the station to an organization that qualifies for fewer points.<sup>7</sup> The holding period remains in effect until the station achieves four years of on-air operations and is intended to maintain the integrity of the comparative process, deter speculation, and ensure that the public will receive the benefits that were the basis for the license grant.<sup>8</sup> On April 30, 2013, the Commission licensed the Tracy Station,<sup>9</sup> beginning the holding period. However, PJN took the Tracy Station silent that same day and has since filed six requests for special temporary authority (STA) to remain off-air<sup>10</sup> and three requests to operate with reduced power,<sup>11</sup> pursuant to which, apparently, the Tracy Station is currently operating.

In Fall 2013, the Commission opened a filing window for applications to construct new LPFM stations.<sup>12</sup> PJN applied on November 14, 2013 for a permit to construct a new LPFM station at Stockton,

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<sup>4</sup> See Letter from Richard Blackston, Chair, Peace and Justice Network of San Joaquin County, to Tom Hutton, Deputy Chief, Audio Division, Media Bureau (e-mailed Nov. 2, 2019) (*Blackston Letter*).

<sup>5</sup> 47 U.S.C. § 309(k)(2).

<sup>6</sup> See 47 CFR § 73.7003; *Comparative Consideration of 59 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified NCE FM Stations*, Memorandum Opinion and Order, 25 FCC Rcd 1681, 1692, 1719, paras. 40-41, 154 (2010). Specifically, PJN received a total of seven points (established local applicant, three points; diversity of ownership, two points; and best technical proposal, two points). *Id.* at 1692, paras. 40-41. The other applicant, also proposing NCE service to Tracy, received a total of two points for diversity of ownership. *Id.*

<sup>7</sup> See File Nos. BNPED-20071022AOK (granted Mar. 31, 2010), Cond. 2 (citing 47 CFR § 73.7005(a)), BLED-20130328AKC (granted April 30, 2013), Cond. 3 (citing 47 CFR § 73.7003(b)); *Reexamination of Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386, 7424-25, paras. 92-94 (2000) (subsequent history omitted) (*Comparative Standards*).

<sup>8</sup> See *Comparative Standards*, 15 FCC Rcd at 7424-25, paras. 92-94.

<sup>9</sup> See BLED-20130328AKC (Tracy License Application). The license for the Tracy Station specified an effective radiated power (ERP) of 100 Watts.

<sup>10</sup> See File Nos. BLSTA-20130430ADU, BLESTA-20140106AZE, BLSTA-20140701ACE, BLESTA-20141217ADH, BLSTA-20160927AFG, and BLESTA-20170424AAW. The stated reasons for the silent periods include: power difficulties; need to divest the license so that PJN can operate an LPFM station; and need to replace equipment.

<sup>11</sup> Concurrently with PJN's August 1, 2017 filing of the First Tracy Assignment, PJN applied for an STA to operate the Tracy Station from a different site at a reduced ERP of 11 Watts and has received extensions of that STA. See File No. BSTA-20170801AJK (granted Aug. 7, 2017); BESTA-20180205ABD (granted Feb. 7, 2018). In April of 2018, PJN renewed its request to operate the Tracy Station from that STA location with an ERP of 241 Watts using a directional antenna. BSTA-20180410ABC (granted Apr. 16, 2018); and BESTA-20181015AAI (granted Oct. 18, 2018) (indicating that "site surveys for viability of permanent facility continue to be compiled for engineering study").

<sup>12</sup> See *Media Bureau Announces Availability of the Revised FCC Form 318 and the Filing Procedures for October 15 — October 29, 2013 Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 8854 (MB 2013); see also

where PJN is located.<sup>13</sup> The Rules provide that organizations cannot simultaneously be licensed to operate an LPFM station and a station in another broadcast service.<sup>14</sup> A party with an attributable interest in a broadcast station must divest such interest prior to the commencement of operations of an LPFM station in which the party also holds an interest.<sup>15</sup> PJN pledged to divest its interest in the Tracy Station before applying to license the Stockton Station.<sup>16</sup> The Bureau granted the Stockton Permit Application on September 26, 2014 requiring PJN to construct and apply to license the Stockton Station no later than September 26, 2017. PJN subsequently filed an application to assign the Tracy Station to Delta 2000 on August 1, 2017, requesting expedited consideration so that it might divest the Tracy Station before the September 26, 2017 expiration of the Stockton Permit.<sup>17</sup> The Bureau could not expedite consideration of the Tracy Assignment, however, because its policy is not to grant a license assignment prior to renewing that license, and several matters prevented grant of the pending Tracy Renewal application. Additionally, the Westside Objection to the First Tracy Assignment raised issues that could not be resolved prior to expiration of the Stockton Permit.

When PJN filed a covering license application for the Stockton Station on September 26, 2017,<sup>18</sup> it disclosed that it still owned the Tracy Station, and characterized that dual interest as a condition that prevented it from operating the Stockton Station with program test authority.<sup>19</sup> The Bureau granted the Stockton License Application on October 2, 2017. On October 16, 2017, PJN filed a request for STA to remain silent, stating that the Stockton Station had not been on-air since September 26, 2017, the date that it applied to license that facility.<sup>20</sup>

The staff rescinded the Stockton License Application grant and returned that application to pending status on August 23, 2018.<sup>21</sup> In the *Staff Decision*, the staff also granted the Westside First Objection in part and held the First Tracy Assignment in abeyance, providing PJN with 30 days to take one of the following actions: (1) request cancellation of the Tracy Station license, which would also moot the license renewal matters pertaining thereto; (2) request dismissal of the pending Stockton License Application and deletion of the Stockton Station's call sign; or (3) amend the First Tracy Assignment to demonstrate that, on its August 1, 2017 filing date, the proposal met an exception to the holding period

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*Media Bureau Extends Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 14101 (MB 2013) (extending window through Nov. 14, 2013).

<sup>13</sup> File No. BNPL-20131114BXL (Stockton Permit Application). Tracy and Stockton are approximately 20 miles apart. See Objection at 2.

<sup>14</sup> See 47 CFR § 73.860(a) ("no [LPFM] license will be granted to any party if the grant of such authorization will result in the same party holding an attributable interest in any other non-LPFM broadcast station").

<sup>15</sup> See 47 CFR § 73.860(d).

<sup>16</sup> See Stockton Permit application at Exh. 2. PJN's application for the Stockton Permit claimed points for local diversity of ownership based on the pledged divestiture. *Id.* PJN had also claimed local diversity of ownership points in the Tracy Application based upon a requirement in its own governing documents to maintain diversity. See 47 CFR § 73.7003(b)(2).

<sup>17</sup> See BALED-20170801AJL (First Tracy Assignment). Westside filed an informal objection to the First Tracy Assignment on August 28, 2017 (Westside First Objection), to which PJN responded on September 18, 2017. Those pleadings became moot when the Bureau dismissed that application, as described below in note 23.

<sup>18</sup> File No. BLL-20170926AAB (Stockton License Application).

<sup>19</sup> See Stockton License Application, Section I, Exh. 4.

<sup>20</sup> See File No. BLSTA-20171116AEQ (granted Nov. 1, 2017).

<sup>21</sup> See *KBCC(FM)*, Letter Order, Ref. 1800B3-IB (MB Aug. 23, 2018) (*Staff Decision*).

requirement.<sup>22</sup> The staff indicated that, if PJN elected an option in which the Tracy Station survived, it would at that time take up the Tracy Renewal and consider any impact thereon of the Tracy Station's periods of silence.

In response to the *Staff Decision*, PJN rejected the staff's three proffered options and instead requested dismissal of the First Tracy Assignment and filed the Second Tracy Assignment, proposing to assign the Tracy Station for \$1.00 to Voice, "a separate and qualified entity."<sup>23</sup> After additional discussion with the Bureau staff,<sup>24</sup> PJN tendered the *Blackston Letter* requesting dismissal of the Second Tracy Assignment and cancellation of the authorization for KXVS-LP.

**Discussion.** In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.<sup>25</sup> 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.<sup>26</sup> 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."<sup>27</sup>

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.<sup>28</sup>

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

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<sup>22</sup> See 47 CFR § 73.7005

<sup>23</sup> See *Letter to Albert Shuldiner, Chief, Audio Division from Michael Couzens, Counsel for PJN* (Sep. 24, 2018), and the Second Tracy Assignment at Exhibit 3. The staff dismissed the First Tracy Assignment on September 28, 2018. See *Broadcast Actions*, Public Notice, Report No. 49334 (Oct. 3, 2018).

<sup>24</sup> See, e.g., *e-mail from Tom Hutton, Deputy Chief, Audio Division, Media Bureau, to Michael Couzens, Counsel for PJN* (sent Oct. 4, 2018).

<sup>25</sup> 47 U.S.C. § 309(k).

<sup>26</sup> 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).

<sup>27</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>28</sup> 47 U.S.C. § 312(g); see Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), and Consolidated Appropriations Act, 1995, Pub. L. No. 108-447, 118 Stat. 2809 (2004); see also *Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543, 545 (D.C. Cir. 2009).

maintaining service to the public.”<sup>29</sup> 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).<sup>30</sup>

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.<sup>31</sup> 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. Other stations have alternated between periods of silence and operations with minimal power levels—in some cases as low as five watts—that cover a small portion of their service areas and may be insufficient to allow them to provide service to their communities of license.<sup>32</sup>

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 a station’s community of license, because a silent station offers that community no public service programming such as news, public affairs, weather information, and Emergency Alert System notifications. Moreover, brief periods of station operation sandwiched between prolonged periods of silence are of little value because the local audience is not accustomed to tuning 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.”<sup>33</sup> 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.<sup>34</sup> 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.<sup>35</sup>

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<sup>29</sup> *Family Life Ministries, Inc.*, Letter, 23 FCC Rcd 15395, 15397 (MB 2008).

<sup>30</sup> 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); *Liberman Broad. of Dallas License LLC*, Letter, 25 FCC Rcd 4765, 4768 (MB 2010).

<sup>31</sup> See *Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d at 545.

<sup>32</sup> See *Birach Broad. Corp.*, Memorandum Opinion and Order, 33 FCC Rcd 852, 853, para. 5 (2018).

<sup>33</sup> See *Birach Broad. Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 5015, 5020 (2001) (*Birach*).

<sup>34</sup> *Id.* (“[C]onsideration of post-term developments is fundamentally at odds with this backwards-looking standard.”).

<sup>35</sup> 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.

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 its license term. The Tracy Station had multiple periods of silence that each lasted for several months and operated, if at all, with temporary facilities, mostly with substantially reduced power. In fact, PJN did not operate the Tracy Station with its licensed facilities for a single day of the license term.

On the facts presented here, we conclude that a short-term license renewal is the appropriate sanction.<sup>36</sup> Although PJN sought Commission authorization pursuant to Section 73.1740 of the Rules<sup>37</sup> for each of the Station's periods of silence and sought STA to operate with reduced facilities from an alternate location, we cannot find that the Station served the public interest, convenience and necessity during the license term due to the extended periods of non- and substandard operation. Although the Station has resumed operations and is currently broadcasting with STA facilities, we believe that additional measures are necessary in order to ensure that Licensee endeavors in the future to 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 license renewal for a period of one year from today's date.<sup>38</sup> This limited renewal period will afford the Commission an opportunity to review the Station's compliance with the Act and the Rules and to take whatever corrective actions, if any, that may be warranted at that time.

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<sup>36</sup> We note that, under current Media Bureau practice, the fact that PJN took the Tracy Station silent on the very day that the staff granted the Tracy License Application would raise an issue regarding whether PJN actually constructed the Tracy Station according to its authorization or simply erected a makeshift facility for the sole purpose of applying for a covering license and then immediately dismantling it. See, e.g., *Texas Tango, LLC*, Memorandum Opinion and Order, 30 FCC Rcd 10564, 10568, para. 8 (2015); *KCIY(FM), Helendale, California*, Letter Order, 30 FCC Rcd 4989, 4901 (MB 2015) (a license applicant may not rely on temporarily constructed facilities to satisfy construction requirements; rather, under 47 U.S.C. § 319(b), the station facilities must "endure beyond the *de minimis* period necessary to file a license application). However, we acknowledge that, at the time in 2013 that PJN filed the Tracy License Application and subsequently took the station silent, we had not made applicants aware that such actions would implicate Section 319(b) of the Act and 47 CFR § 73.3598 and could result in an automatic forfeiture of the Tracy Station permit. Accordingly, we find that launching an inquiry into the circumstances surrounding the filing of the Tracy License Application is not warranted at this time.

<sup>37</sup> 47 CFR § 73.1740.

<sup>38</sup> See, e.g., *LKCM Radio Group, LP*, Memorandum Opinion and Order and Notice of Apparent Liability, DA 14-122 (MB rel. Feb. 3, 2014) (two-year renewal due to extended periods of silence); *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 radiation exposure guidelines at two stations); *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); *Enid Pub. Radio Ass'n*, 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").

**Conclusion.** Accordingly, for the reasons set forth above, IT IS ORDERED THAT the license renewal application (File No. BRED-20130802AAO) filed by Peace and Justice Network of San Joaquin County IS GRANTED pursuant to 47 U.S.C. § 309(k)(2) for a license term of one year from the date of this letter.

IT IS FURTHER ORDERED that the Application (File No. BALED-20180921AAR) for Commission consent to assign the license of station KBCC(FM), Tracy, California, to Voice of Stockton IS DISMISSED.

IT IS FURTHER ORDERED, that the authorization (BNPL-20131114BXL, as modified by BMPL-20170918AAJ) for Low Power FM Station KXVS-LP, Stockton, California, IS CANCELLED and the call letters KXVS-LP ARE DELETED. To the extent relevant, it is imperative to the safety of air navigation that any prescribed painting and illumination of the station's tower be maintained until the tower is dismantled. Accordingly, the owner of the towers supporting the referenced stations' transmitting antennas must maintain the tower in the manner prescribed by the Commission's rules and the terms of the expired license.<sup>39</sup>

Finally, IT IS ORDERED, that license application no. BLL-20170926AAB IS DISMISSED.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Shuldiner", with a long horizontal flourish extending to the right.

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>39</sup> See 47 U.S.C. § 303(q) and 47 CFR § 17.6.