

ALERT

Media Bureau Designates AM Renewal Application for Hearing Based on “Extended Periods of Silence”

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The Federal Communications Commission’s (FCC’s or Commission’s) Media Bureau is questioning whether the license of an AM radio station should be renewed after that station was silent for a lengthy period of time during the prior license period.

On March 9, 2021, the Media Bureau issued a Hearing Designation Order and Notice of Opportunity for Hearing (HDO) to determine whether NIA Broadcasting, Inc.’s (NIA’s) application to renew its license for AM radio station WSYL in Sylvania, Georgia (WSYL or station) should be granted or denied pursuant to Section 309(k) of the Communications Act of 1934 (Act). The Commission explained that it issued the HDO due to WSYL’s “record of extended periods of silence” since NIA became the station’s licensee in January 2018. We have provided a summary of the HDO below.

Summary

Section 312(g) of the Act provides that “[i]f 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[,]” although the Commission may “extend or reinstate such station license . . . for any [] reason to promote equity and fairness.” According to the Commission, the licensees of some silent stations have attempted to circumvent this automatic license expiration by “resuming operation for a short period of time, in some cases as little as a day or less,” or alternating between periods of silence and

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operations with insufficient power levels before Section 312(g)'s one-year limit applies. The Commission explained that such practices "raise a question as to whether the licenses for such stations should be renewed" under Section 309(k) of the Act.

The Commission previously has cautioned licensees that they will "face a very heavy burden" in demonstrating that they have served the public interest when their stations have remained silent for the majority of their prior license term. The Commission maintained that this policy against permitting lengthy periods of silence or minimal operation by licensed stations is intended to ensure that already-scarce broadcast spectrum does not remain unused and inaccessible to others capable of using that spectrum to serve the public, and that this spectrum is used efficiently to benefit listeners.

NIA filed a renewal application for WSYL on November 25, 2019. According to the Commission, from the time NIA acquired WSYL's license in January 2018 to the end of the license term in 2020, WSYL was largely either silent or operating at unauthorized power levels. Specifically, in 2018, WSYL only operated for 16 days. Although WSYL operated for 270 days in 2019, the Commission explained that this operation was at an unauthorized power level, either in whole or in part. Finally, in 2020, WSYL operated for only two days at its authorized power level.

As a result of these long periods of silence, the Media Bureau determined that it could not find that grant of WSYL's renewal application was in the public interest, and thus designated the matter for hearing.

Looking Forward

The WSYL HDO should serve as a reminder to licensees to minimize the time their stations are off the air. When it is necessary to take a station silent or to operate at reduced power, licensees should timely request special temporary authority and communicate the reason for a variance from the station's license.

If you have any questions about this proceeding or the FCC's operating requirements, please contact one of the attorneys listed on this alert or the Wiley attorney who regularly handles your FCC matters.