

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of
Lazer Licenses, LLC
For Minor Change to the Licensed Facilities of
Station KMLY(FM), Carmel Valley, CA
and
For Renewal of the License for Station
KMLY(FM), Carmel Valley, CA
Facility ID No. 164096
File No. BPH-20130411AAK
Facility ID No. 164096
File No. BRH-20130801AMB

MEMORANDUM OPINION AND ORDER

Adopted: June 18, 2015

Released: June 19, 2015

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us a minor change application ("Application") filed by Lazer Licenses, LLC ("Lazer"), licensee of Station KMLY(FM), Carmel Valley, California ("Station"). Lazer proposes to change the station's frequency and community of license from Channel 290A at Carmel Valley, California, to Channel 236A at Gonzales, California. We also have before us an application ("Renewal Application") to renew the Station's license. Mount Wilson FM Broadcasters, Inc. ("Mount Wilson") filed an informal objection to the Application ("Minor Change Objection") and a separate informal objection to the Renewal Application ("Renewal Objection"). For the reasons discussed below, we deny the Minor Change Objection and grant the Application. We also deny the Renewal Objection and grant the Renewal Application. Given our concerns about the Station's silence during its most recent license term, however, we renew the Station's license for a term of two - rather than eight - years from the release date of this Memorandum Opinion and Order.

II. BACKGROUND

2. Lazer's license for the Station was filed on July 10, 2012, and granted on July 12, 2012, one day before expiration of its construction permit. On July 19, 2012, Lazer filed a request for special temporary authority ("STA") for the station to remain silent, explaining that it constructed the authorized

1 We also have before us: (1) Lazer's Opposition to Informal Objection ("Minor Change Opposition") (July 11, 2013); (2) Mount Wilson's Reply to Opposition to Informal Objection ("Minor Change Reply") (Aug. 23, 2013); (3) Lazer's Supplemental Declaration of Lloyd M. Moss ("Moss Supplemental Declaration") (Sept. 4, 2013); (4) Mount Wilson's unauthorized Supplement to Informal Objection (Sept. 6, 2013); and (5) Lazer's Opposition to Informal Objection (Nov. 18, 2013) ("Renewal Opposition"). Mount Wilson filed its Supplement to Informal Objection in response to the Moss Supplemental Declaration, which Lazer submitted in response to a request from Commission staff. We generally do not offer third parties like Mount Wilson the opportunity to respond to pleadings or information submitted in response to a Commission staff request or inquiry. Accordingly, we do not consider the Supplement to Informal Objection herein.

2 See FM Broadcast Station License, File No. BLH-20120710ACV (granted July 12, 2012) ("Initial License").

3 See Construction Permit, File No. BNPH-20050103AIN (granted April 22, 2008) ("Initial CP").

facilities and operated them for testing purposes for a short period of time.⁴ Lazer requested the STA to allow the station to remain silent pending approval of construction plans by local authorities and execution of a long-term lease. Subsequently, Lazer requested extension of its STA to remain silent, and that request was granted on April 4, 2013.⁵ Lazer has operated the Station from a different transmitter site pursuant to an engineering STA since June 10, 2013.⁶

3. Lazer filed the Application on April 11, 2013. Lazer subsequently filed the Renewal Application on August 1, 2013. Mount Wilson objects to both the Application and the Renewal Application on the same grounds. Mount Wilson argues that Lazer either failed to construct the Station in accordance with its construction permit, or constructed only temporary facilities for the sole purpose of filing a license application just prior to expiration of the Station's permit. Mount Wilson contends that we should find that the Station's construction permit expired on July 13, 2012. This in turn, would necessitate revocation of the Station's license and dismissal of the Application and the Renewal Application. Mount Wilson further urges us to examine whether, given Lazer's alleged misrepresentations or lack of candor regarding the Station's construction, Lazer possesses the character qualifications to be a Commission licensee.

III. DISCUSSION

A. Grant of Station's License

4. In opposing the Application, Mount Wilson urges us to revoke the Station's license.⁷ In so doing, Mount Wilson is indirectly challenging our grant of the Initial License.⁸ The deadline for filing a petition for reconsideration of that grant, however, expired well before Mount Wilson filed the Minor Change Objection. Because the time period for filing petitions for reconsideration is prescribed by statute,⁹ the Commission may not – with one extremely narrow exception not applicable here – waive or extend the filing period.¹⁰ We find, as the Commission has, that indirect challenges to decisions that

⁴ See Notification of Suspension of Operations/Request for Silent STA, File No. BLSTA-20120719ACA; *Letter from Lisa Scanlan, Assistant Chief, Audio Division, Media Bureau, to Harry C. Martin, Counsel for Lazer* (dated Aug. 23, 2012).

⁵ See Request to Extend STA, File No. BLSTA-20130205AAB; *Letter from Lisa Scanlan, Assistant Chief, Audio Division, Media Bureau, to Harry C. Martin, Counsel for Lazer* (dated April 4, 2013).

⁶ See Engineering STA, File No. BSTA-20130506ABM; *Letter from Dale Bickel, Senior Engineer, Audio Division, Media Bureau, to Harry C. Martin, Counsel for Lazer* (dated May 16, 2013); Extension of Existing Engineering STA, File No. BESTA-20131104ACI; *Letter from Dale Bickel, Senior Engineer, Audio Division, Media Bureau, to Harry C. Martin, Counsel for Lazer* (dated Nov. 26, 2013); Extension of Existing Engineering STA, File No. BESTA-20140502ABM; *Letter from Dale Bickel, Senior Engineer, Audio Division, Media Bureau, to Harry C. Martin, Counsel for Lazer* (dated May 22, 2014); Extension of Existing Engineering STA, File No. BESTA-20141110AFO; *Letter from Dale Bickel, Senior Engineer, Audio Division, Media Bureau, to Harry C. Martin, Counsel for Lazer* (dated Dec. 18, 2014).

⁷ Minor Change Objection at 6.

⁸ See *M&M Broadcasters, Ltd.*, Letter, 25 FCC Rcd 4942, 4946 (MB 2010) (finding informal objection amounted to untimely petition for reconsideration).

⁹ See 47 U.S.C. § 405 (“A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report or action complained of.”). See also 47 C.F.R. § 1.106(f).

¹⁰ See *Reuters Ltd. v. FCC*, 781 F.2d 946, 952 (D.C. Cir. 1986) (“[W]e conclude that the Commission acted beyond its lawful authority when it entertained the belated petition for reconsideration.”). See also *Metromedia Inc.*, Memorandum Opinion and Order, 56 FCC 2d 909, 909-10 ¶ 2 (1975) (Commission may not waive 30-day filing period to accept a petition for reconsideration filed one day late); *Fortuna Systems Corp.*, Order on Reconsideration, 3 FCC Rcd 5122, 5123 ¶ 9(CCB 1988). Specifically, the courts have held that the Commission may not accept (continued....)

were adopted in proceedings in which the right to review has expired are considered impermissible collateral attacks and are properly denied.¹¹ Accordingly, we will not consider Mount Wilson's arguments related to revocation of the Station's license.

B. Character Qualifications

5. The Commission and the courts have recognized that “[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing.”¹² Misrepresentation and lack of candor raise immediate concerns as to whether a licensee will be truthful in future dealings with the Commission.¹³ Mount Wilson asserts that Lazer either made misrepresentations to the Commission regarding its construction of the Station in its application for its initial license or lacked candor in its dealings with the Commission regarding that application. Because Lazer's character qualifications are relevant to our consideration of the Application and the Renewal Application,¹⁴ we consider each of these allegations in turn.

6. *Misrepresentation.*¹⁵ Mount Wilson questions whether Lazer constructed the Station at the coordinates specified in the Initial CP.¹⁶ Mount Wilson suggests that Lazer did not and thus made misrepresentations to the Commission when it certified that it had done so.¹⁷ In support of this argument, Mount Wilson submits a Google Map photograph of the site authorized in the Station's permit.¹⁸ No antenna structure or other physical facilities are visible in the photograph.

7. Lazer notes, though, that the photograph submitted by Mount Wilson was taken on May 5, 2012, more than two months before Lazer constructed the Station and filed its initial license application.¹⁹ Lazer argues that it thus is not surprising that the Station's transmitter does not appear in the

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untimely reconsideration petitions in the absence of extremely unusual circumstances. *See, e.g., Virgin Islands Tel. Corp. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993).

¹¹ *Motions for Declaratory Rulings Regarding Commission Rules and Policies for Frequency Coordination in the Private Land Mobile Radio Services*, Memorandum Opinion and Order, 14 FCC Rcd 12752, 12757 ¶ 11(1999); *MCI Telecommunications Corp. v. Pacific Northwest Bell Telephone Co.*, Memorandum Opinion and Order, 5 FCC Rcd 216, 228 n. 38 (1990) *recon denied*, 5 FCC Rcd 3463 (1990) *appeal dismissed sub nom. Mountain States Tel. and Tel. Co. v. FCC*, 951 F. 2d 1259 (10th Cir. 1991)(*per curiam*).

¹² *See Contemporary Media, Inc., v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000).

¹³ *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1210-11 ¶¶60-61 (1986).

¹⁴ *See, e.g., Applications for Consent to Transfer of Control from License Subsidiaries of Allbritton Communications Co. to Sinclair Television Group, Inc.*, 29 FCC Rcd 9156 (MB 2014) (considering character-related allegations related to earlier applications in evaluating later-filed ones); *Apple 107.1, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 15722 (MB 2013) (considering allegations of misrepresentation or lack of candor with respect to an earlier application when evaluating a later-filed one).

¹⁵ A misrepresentation is a false statement of fact made with intent to deceive the Commission. *Fox River Broadcasting, Inc.*, Order, 93 F.C.C.2d 127, 129 (1983). A false certification also may constitute a misrepresentation. *San Francisco Unified School District*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334 nn.40-41 (2004) (subsequent history omitted) (“*SFUSD*”).

¹⁶ Minor Change Objection at 2.

¹⁷ *Id.* at 3-4. Mount Wilson cites Lazer's certification at Section 1, Item 7 of FCC Form 302-FM, that “the facility was constructed as authorized in the underlying construction permit or complies with 47 C.F.R. §73.1690.” *Id.* at 2.

¹⁸ *Id.*, Attach. 7.

¹⁹ Minor Change Opposition at 1-2.

photographs.²⁰ In addition, Lazer supplies a sworn declaration of its Corporate Chief Engineer, Lloyd M. Moss (“Moss”), who states that he was present for the timely construction of the Station’s facilities.²¹ Lazer also submits photographs of the constructed Station²² and a copy of a short-term lease for property centered on the geographic coordinates specified in the Initial CP.²³

8. Despite this evidence, Mount Wilson continues to claim that Lazer failed to construct the Station at the coordinates authorized in the Station’s permit. It notes that the photographs submitted by Lazer do not include any landmarks or other information that would allow verification that the Station was constructed at its authorized coordinates.²⁴ Mount Wilson also states that its employee visited the specified reference coordinates on August 3, 2013, and that he “discovered the installation would have been in the middle of a drive way to a home. Very close to the home.”²⁵ Given this, Mount Wilson argues it is “beyond reason” to believe that Lazer constructed at the location specified in the Initial CP.²⁶

9. Lazer submitted a second sworn declaration from Moss in response to a Commission staff request. Moss states that he personally verified the reference coordinates of the facilities and supervised construction at the reference coordinates specified in the Station’s permit.²⁷ Moss also confirms that the facilities featured in the photographs submitted by Lazer were constructed at the coordinates specified in the Initial CP.²⁸ Finally, Moss explains that “[t]he station was not constructed in the landowner’s driveway, but on a nearby limited access dirt road.”²⁹

10. We find that Lazer has adequately rebutted Mount Wilson’s allegations that it failed to construct at the coordinates specified in the Station’s permit, particularly given the inconsistencies in those allegations.³⁰ Accordingly, we find Lazer did not make misrepresentations to the Commission in its license application.

11. *Lack of Candor.*³¹ Mount Wilson states that we processed and granted the Station’s

²⁰ *Id.* at 2.

²¹ *Id.*, Decl. of Lloyd M. Moss.

²² *Id.*, Exhs. 2 and 3. Mr. Moss states that Exhibit 2 consists of photographs of the constructed tower and antenna taken during station broadcasts conducted on July 10, 2012, and that Exhibit 3 consists of photographs of the tower and antenna taken on August 18, 2012. *Id.*, Decl. of Lloyd M. Moss.

²³ *See Id.*, Exh. 1. The lease term covers the period of construction and licensing, extending from July 1, 2012, through September 30, 2012.

²⁴ Minor Change Reply at 3.

²⁵ *Id.* at 3.

²⁶ *Id.*

²⁷ *See Moss Supplemental Declaration* at 2.

²⁸ *See id.*

²⁹ *See id.*

³⁰ In the Minor Change Objection, Mount Wilson includes a Google Map photograph of the construction permit coordinates, which it describes as depicting “a heavily forested area which does not indicate the presence of any 35 meter antenna structure.” Minor Change Objection at 3. Subsequently, in its Minor Change Reply, Mount Wilson states that its employee visited the coordinates specified in the Station’s construction permit on August 3, 2013, and that he “discovered the installation would have been in the middle of a drive way to a home. Very close to the home.” Minor Change Reply at 3. Mount Wilson makes no attempt to reconcile its conflicting statements.

³¹ Lack of candor is a concealment, evasion, or other failure to be fully informative, accompanied by intent to deceive the Commission. *SFUSD*, 19 FCC Rcd at 13334 nn.40-41.

license application while unaware that Lazer had constructed only temporary facilities and dismantled them shortly after construction. Mount Wilson asserts that this constituted a lack of candor on Lazer's part.³² Lazer disputes this characterization, noting that it complied with the Commission's rules ("Rules"). It argues that the Rules merely specify that "[a]ny construction permit for which construction has not been completed and for which an application for license has not been filed shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission."³³ It also points out that the Rule requiring notice to the Commission if a Station discontinues operation applies to licensees not permittees.³⁴ Lazer notes that it notified the Commission within ten days of the Station being licensed, as required by the Rules.³⁵

12. Lazer ignores, however, Section 1.65 of the Rules. That section specifies that an applicant "is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application."³⁶ As such, it requires an applicant to amend its application to furnish additional or corrected information if the information furnished in its application is "no longer substantially accurate or complete in all significant respects."³⁷ Additionally, it requires an applicant to furnish additional or correct information to the Commission if "there has been a substantial change as to any other matter which may be of decisional significance."³⁸

13. We recently released a decision clarifying that "the Commission expects a permittee's constructed facilities to endure beyond the *de minimis* period necessary for it to file a license to cover its construction permit."³⁹ We concluded that temporarily constructed facilities cannot be declared "ready for operation" within the meaning of Section 319(b) of the Act and therefore that the construction permit for such facilities are subject to automatic forfeiture pursuant to Section 73.3598(e) of the Rules.⁴⁰ Given these findings, we take this opportunity to clarify that it constitutes "a substantial change" of "decisional significance" if an applicant dismantles the facilities for which it is seeking a license to cover and takes those facilities off the air. The notice requirements of Section 1.65 of the Rules apply.

14. We acknowledge, though, that at the time Lazer engaged in the behavior at issue here, Lazer may not have known such behavior would implicate Section 319(b) of the Act and Section 73.3598(e) of the Rules. Given this and the fact that Lazer did disclose the temporary nature of its construction, we cannot find the intent to deceive necessary to a lack of candor finding. We take this opportunity, however, to put future applicants on notice that Section 1.65 requires them to promptly notify us if they dismantle a Station's facilities while an application for a license to cover those facilities is pending, and/or take a Station for which they are seeking a license to cover off the air while the application for such license is pending. We also note that, in the future, taking such actions without notifying the Commission would raise lack of candor issues.⁴¹

³² Minor Change Objection at 4.

³³ Renewal Opposition at 2, *citing* 47 C.F.R. § 73.3598(a).

³⁴ *Id.*, *citing* 47 C.F.R. § 73.1740(a)(4).

³⁵ *Id.*

³⁶ 47 C.F.R. § 1.65(a).

³⁷ *Id.*

³⁸ *Id.*

³⁹ Centro de Intercesión y Adoación Inernacional, Inc. Letter, DA 15-613, at 4 (rel. May 21, 2015)

⁴⁰ *Id.* at 5.

⁴¹ *See* 47 C.F.R. § 1.17.

C. Minor Change Application – Section 307(b) Analysis

15. A station may change its community of license without subjecting the license to other expressions of interest if (1) the proposed allotment is mutually exclusive with the current allotment; (2) the current community of license will not be deprived of its only local service; and (3) the proposed arrangement of allotments is preferred under the Commission's FM allotment priorities.⁴² The proposed allotment of Channel 236A at Gonzales is mutually exclusive with the existing allotment of Channel 290A at Mount Carmel,⁴³ and the proposed move would not deprive Carmel Valley of its only local service. Neither the current nor the proposed new community of license meet the requirements of Priorities 1, 2, or 3, so the relevant comparison of the two communities must be based upon analysis under Priority 4, other public interest matter.⁴⁴

16. Station KMLY does not provide city grade coverage to 50 percent of any urbanized area from Carmel Valley, nor would it be able to provide such coverage from its new community of license, Gonzales. Carmel Valley, the current community of license, has three local stations, and would be left with two following the proposed change of community of license. Gonzales, the new community, would gain a third local station. Significantly, Gonzales, a growing city with a population of 8,187,⁴⁵ is nearly twice as large as Carmel Valley (population of 4,407), which has been decreasing in population.⁴⁶ Moreover, Gonzales, an incorporated city, has its own local government,⁴⁷ school system,⁴⁸ and approximately 150 business establishments. In contrast, Carmel Valley, a census-designated place, has no local government, depends on Monterey County for public services, and has approximately 44 business establishments.

17. Although the proposed change of community would result in a net reduction in the total number of persons served,⁴⁹ the entirety of the current service area for the Station will continue to be

⁴² See *Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870, 4872-74 ¶¶ 15-35 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

⁴³ The proposed change of community satisfies the mutual exclusivity requirement of Section 73.3573(g)(2), 47 C.F.R. § 73.7373(g)(2), because Channel 236A is the fifty-fourth adjacent channel to Channel 290A, and the transmitter sites for Carmel Valley and Gonzales, respectively, are less than the required spacing of 10 kilometers apart. See 47 C.F.R. §207(b)(1), Table A.

⁴⁴ See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local service and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). Because there is no claim that Station KMLY would provide a first local service, we need not consider applicability of the Urbanized Area Service Presumption. See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order On Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556, 2572-77 ¶¶ 30-35 (2011) ("*Rural Radio Second R&O*").

⁴⁵ From 2000 to 2010, the population of Gonzales increased from 7,525 to 8,187 persons.

⁴⁶ Lazer states that Carmel Valley's 2010 population of 4,407 persons is a decrease from 4,700 at the 2000 census.

⁴⁷ Gonzales has a police department, a fire department, a planning commission, a recreation commission, a community development director, a city attorney, a public works department, a fire marshal, and an emergency services director.

⁴⁸ Gonzales has its own elementary, middle and high schools, in addition to a continuing education program.

⁴⁹ Our engineering analysis estimates a net loss of 237,416 persons.

well-served by five or more reception services,⁵⁰ with Carmel Valley itself receiving approximately 30 services. Under the circumstances, we find that the public interest benefit from providing a third local service to the much larger (and growing) city of Gonzales outweighs the net decrease in the number of persons served.⁵¹ Accordingly, we find that the proposed community of license modification, from Carmel Valley to Gonzales, results in a preferential arrangement of allotments under Priority 4.

D. Renewal Application

18. The Commission's longstanding policy is to review a station's service record to determine whether it complied with the Commission's licensing requirements, including service to the station's community of license, prior to action on its license renewal application.⁵² In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.⁵³ 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.⁵⁴ 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."⁵⁵

19. 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."⁵⁶ The Commission held that denial of the renewal application of the

⁵⁰ Lazer also points out that that the Station is "100% Hispanic-owned and operated and broadcasts in Spanish," and that the population of Gonzales "is 88.9% Hispanic or Latino . . . (of any race)." To the extent that Lazer is implying that Gonzales's Latino population would benefit from programming targeted to a Latino audience, we note that the Commission has rejected public interest showings premised on the argument that specific types of programming are uniquely appealing to certain population segments of a station's potential audience. See *Suburbanaire, Inc.*, Decision, 104 FCC2d 909 (Rev. Bd. 1986), citing *Debra D. Carrigan*, Decision, 100 FCC2d 721 (Rev. Bd. 1985) ("Section 307(b) addresses the needs and entitlements of competing 'communities' for new or improved broadcast services, not on indigenous applicant (or audience) characteristics."). Moreover, we note that the station is free to change its format and programming at any time. See *FCC v. WNCN Listeners Guild*, 450 US 582 (1981) (upholding Commission reliance on market forces, rather than licensing procedures, to influence licensee format and programming decisions). See also *Mr. Rod Kovel and John W. Zucker, Esq.*, Letter, 23 FCC Rcd 1884 (MB 2008) (rejecting license renewal objections based on format and programming issues).

⁵¹ See *Rural Radio Second R&O*, 26 FCC Rcd at 2578 ¶ 39 ("With regard to Priority (4) claims, we seek to limit the presumption that raw net population gains, in and of themselves, represent a preferential arrangement of allotments or assignments under Section 307(b)... [U]nder Priority (4) applicants may offer any other information they believe to be pertinent to a public interest showing..."). See also *Dulac, Louisiana*, Report and Order, 24 FCC Rcd 10154, 10155 (MB 2009) ("net loss is acceptable because it is outweighed by the overall public interest benefits of the hybrid application-rulemaking proposal").

⁵² See *Suburban Community Policy, Berwick Doctrine, and De Facto Reallocation Policy*, Report and Order, 93 FCC 2d 436, 456 ¶ 38 (1983), recon. denied, 56 RR 2d 835 (1984).

⁵³ 47 U.S.C. § 309(k).

⁵⁴ 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).

⁵⁵ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁵⁶ *Birach Broadcasting Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 5015, 5020 ¶ 13 (2001) ("*Birach*").

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. 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.

20. 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.

21. Since being licensed, the Station has been silent for a little over 10 months and has operated pursuant to STA for over 22 months. We recognize, though, that the Station's periods of silence do not involve "most or all of the prior license term." Moreover, despite operating pursuant to STA, the Station's signal reaches almost its entire community of license. Despite this, we conclude that Lazer's conduct has fallen short of that which would warrant routine license renewal. Its stewardship of the Station failed 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 more than 10 months. On the facts presented here, we conclude that a short-term license renewal is the appropriate sanction.

22. Although Licensee sought Commission authorization pursuant to Section 73.1740 of the Rules for its period of silence, we cannot find that the Station served the public interest, convenience and necessity during the license term due to the extended period of non-operation. Additionally, although the Station has resumed operations and is currently broadcasting, 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 short-term license renewal.⁵⁷ The new license term will be limited to a period of two years.⁵⁸ 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.

IV. ORDERING CLAUSES

23. We find that the proposed community of license modification for Station KMLY(FM) would serve the public interest. We have evaluated the Application and find that it complies with all pertinent statutory and regulatory requirements. IT IS ORDERED, that the Informal Objection filed by Mount Wilson FM Broadcasters, Inc. on June 26, 2013, IS HEREBY DENIED. IT IS FURTHER ORDERED that the application filed by Lazer Licenses, LLC (File No. BPH-20130411AAK) for the

⁵⁷ See 47 U.S.C. § 309(k)(2).

⁵⁸ 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 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 (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").

community of license modification for Station KMLY(FM), from Channel 290A, Carmel Valley, California, to Channel 236A at Gonzales, California, and modification of its facilities to reflect the change IS HEREBY GRANTED.

24. In addition, we have evaluated the Renewal Application pursuant to Section 309(k) of the Act, and we find that there have been no serious violations of the Act or the Rules involving the Stations which, taken together, would constitute a pattern of abuse. We cannot find, however, that the Station KMLY(FM) served the public interest, convenience and necessity during the license term due to the extended period of non-operation during its most recent license term. Accordingly, pursuant to Section 309(k)(2) of the Communications Act of 1934, as amended, we grant a short-term renewal of Station KMLY(FM)'s license . IT IS ORDERED that the Informal Objection filed by Mount Wilson FM Broadcasters, Inc. on November 18, 2013, IS DENIED. IT IS FURTHER ORDERED that, pursuant to Section 309(k)(2) of the Communications Act of 1934, as amended, the license renewal application of Lazer Licenses, LLC for Station KMLY(FM) (File No. BRH-20130801AMB), IS GRANTED and the license for Station KMLY(FM) IS HEREBY RENEWED for a period of two years from the release date of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division, Media Bureau