

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

In the Matter of	)	
	)	
Family Voice Communications, LLC	)	MB Docket No. 18-139
	)	
For Renewal of License	)	Facility ID No. 165961
Station KLSX(FM), Rozet, WY	)	File No. BR-20130603BEV

**HEARING DESIGNATION ORDER**

**Adopted: May 4, 2018**

**Released: May 7, 2018**

By the Commission:

**I. INTRODUCTION**

1. This *Hearing Designation Order* commences a hearing proceeding before the Commission to determine whether the captioned license renewal application (Application) should be granted pursuant to Section 309(k)(1) of the Communications Act of 1934, as amended (Act).<sup>1</sup> The Application was filed by Family Voice Communications, LLC (FVC) to renew its license for radio station KLSX(FM), Rozet, Wyoming (Station). We are designating the Application for hearing based on the Station's record of extended periods of silence during and following its license renewal term.

**II. BACKGROUND**

2. A broadcast licensee's authorization to use radio spectrum in the public interest carries with it the obligation that the station serve its community, providing programming responsive to local needs and interests.<sup>2</sup> Broadcast licensees also are required to operate in compliance with the Act and the Commission's rules (Rules). These requirements include the obligation to transmit potentially lifesaving national level Emergency Alert System (EAS) messages in times of emergency and to engage in periodic tests to ensure that their stations are equipped to do so.<sup>3</sup>

3. The basic duty of broadcast licensees to serve their communities is reflected in the license renewal provisions of the Act.<sup>4</sup> In 1996, Congress revised the Commission's license renewal process and the renewal standards for broadcast stations by adopting Section 309(k) of the Act.<sup>5</sup> Section 309(k)(1) of the Act provides that the Commission shall grant a license renewal application if it finds, with respect to the applying station, that during the preceding license term: (a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations by the licensee of the Act or the Rules; and (c) there have been no other violations by the licensee of the Act or the Rules which, taken together, would constitute a pattern of abuse. Section 309(k)(2) of the Act provides that if a station fails to meet the foregoing standard, the Commission may deny the renewal application pursuant to Section 309(k)(3) or grant the application on appropriate terms and conditions, including a short-term renewal.

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<sup>1</sup> 47 U.S.C. § 309(k)(1).

<sup>2</sup> See *Broadcast Localism*, Report on Broadcast Localism and Notice of Proposed Rulemaking, 23 FCC Rcd 1324, 1327 (2007).

<sup>3</sup> See 47 CFR §§ 11.1 *et seq.*, particularly 11.51.

<sup>4</sup> 47 U.S.C. § 309(k).

<sup>5</sup> 47 U.S.C. § 309(k)(1); see Pub. L. No. 104-104, Sec. 204(a)(1).

Section 309(k)(3) of the Act provides that if the Commission determines, after notice and opportunity for hearing, that the licensee has failed to meet the standard of Section 309(k)(1) and that no mitigating factors justify the imposition of lesser sanctions, the Commission shall issue an order denying the license renewal application for the station.

4. Section 312(g) of the Act, which Congress also added in 1996 and then amended in 2004, 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>6</sup>

5. Thus, Section 312(g) has relieved the Commission of the need to conduct license renewal or revocation proceedings, with their lengthy and resource-intensive procedural requirements, including evidentiary hearings, for stations that remain silent for extended periods of time.<sup>7</sup> However, in response to Section 312(g), some licensees of silent stations<sup>8</sup> have adopted a practice of resuming operation for a short period of time, in some cases as little as a day or less, before the one-year limit in Section 312(g) applies and the station license automatically expires. 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>9</sup>

6. These practices raise a question as to whether the licenses for such stations should be renewed pursuant to Section 309(k) of the Act. 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>10</sup> This warning in *Birach* borrowed from the

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<sup>6</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) (*Eagle*).

<sup>7</sup> See *Eagle*, 563 F.3d at 545.

<sup>8</sup> A “silent station” is a radio or television station that is authorized to broadcast but is not doing so. Any station that remains silent for more than 30 days must obtain special temporary authority (STA) to remain silent. See 47 CFR § 73.1740(a)(4). Similarly, a station that is operating with reduced power for more than 30 days must obtain an STA to do so. See 47 CFR § 73.1560(c).

<sup>9</sup> This is not intended to suggest that a particular power level or ratio is critical. We believe the most significant factor in the determination of whether operation below the station’s licensed power level served the public interest is whether the station provided coverage to its community of license. As the Commission has stated on multiple occasions, “[T]he association of a broadcast station with a community of license is a basic tenet of the Commission’s allocation scheme for broadcast stations.” *1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules In Parts 73 and 74 of the Commission’s Rules*, First Report and Order, 14 FCC Rcd 5272, 5278 n.24 (1999). See also, e.g., *1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules In Parts 73 and 74 of the Commission’s Rules*, Notice of Proposed Rulemaking and Order, 13 FCC Rcd 14849, 14876, para. 57 (1998); *Amendments of Parts 73 and 74 of the Commission’s Rules To Permit Certain Minor Changes In Broadcast Facilities Without a Construction Permit*, Report and Order, 12 FCC Rcd 12371, 12381, para. 11, n.11 (1997). Of course, if the reduction in power from the licensed power level is unauthorized, then Section 312(g) would apply. See *Eagle*, 563 F.3d at 553 (“Under the statute, unauthorized and unlicensed transmissions are no better than silence”).

<sup>10</sup> *Birach Broad. Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 5015, 5020, para. 13 (2001) (*Birach*), appeal dismissed sub nom. *New World Radio, Inc. v. FCC*, 294 F.3d 164 (D.C. Cir. 2002).

court's language in *Office of Communication of the United Church of Christ*,<sup>11</sup> where the court stated: "When past performance is in conflict with the public interest, a very heavy burden rests on the renewal applicant to show how a renewal can be reconciled with the public interest. Like public officials charged with a public trust, a renewal applicant . . . must literally 'run on his record.'"<sup>12</sup> The *UCC* decision further stated: "A broadcaster seeks and is granted the free and exclusive use of a limited and valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations . . . a broadcast license is a public trust subject to termination for breach of duty."<sup>13</sup> Although *UCC* was decided long before Section 309(k) was adopted, these principles aptly describe the public interest standard codified there.

7. In *Birach*, where the licensee was silent for all but 56 days of its initial four-year license term, the Commission acknowledged that the agency's longstanding policy before the 1996 enactment of Section 312(g) had been to encourage silent stations to resume broadcast operations rather than to terminate their operation.<sup>14</sup> However, the Commission noted that Section 309(k)(1) applies a "backwards-looking standard" that does not give any weight to post-term efforts to return a station to full-time operation.<sup>15</sup> The Commission held that denial of the renewal application of the station in question in *Birach* would have been fundamentally unfair because the Commission had not provided sufficient notice of how the Section 309(k)(1) renewal standard would be applied to silent stations.<sup>16</sup> However, after noting that, given the lack of notice, it was renewing the license in question, the Commission provided the following clear warning to all licensees: "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 . . . fell far short of the service commitment which most licensees fulfill to their communities of license on a daily basis."<sup>17</sup>

8. The policy against allowing extended periods of silence or minimal operation 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."<sup>18</sup> In addition to enforcing Section 312(g) of the Act, the Commission has stressed its interest in promoting efficient use of radio broadcast spectrum for the benefit of the listening public in several different contexts since the enactment of Section 312(g).<sup>19</sup>

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<sup>11</sup> *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966) (*UCC*).

<sup>12</sup> *Id.* at 1007.

<sup>13</sup> *Id.* at 1003.

<sup>14</sup> *Birach*, 16 FCC Rcd at 5019, para. 10.

<sup>15</sup> *Id.* at 5020, para. 12 ("[C]onsideration of post-term developments is fundamentally at odds with this backwards-looking standard"); see also note 24 *infra*.

<sup>16</sup> The *Birach* station's period of non-operation commenced prior to the enactment of Section 312(g). The Commission's policy was that, for such stations, the 12-month period for purposes of Section 312(g) would commence on that date of enactment, February 8, 1996. Thus, had *Birach* failed to resume broadcast operations by February 8, 1997, its station license would have expired the next day. *Birach*, 16 FCC Rcd at 5018 n.16.

<sup>17</sup> *Id.* at 5021, para. 13. See also *LKCM Radio Group, L.P.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 1045, 1048-50, paras. 10-16 (MB 2014); *Lazer Licenses, LLC*, Memorandum Opinion and Order, 30 FCC Rcd 6357, 6364, para. 21 (MB 2015); *Roger L. Hoppe, II*, Memorandum Opinion and Order and Notice of Apparent Liability, 31 FCC Rcd 8790, 8793, para. 11 (MB 2016).

<sup>18</sup> *Family Life Ministries, Inc.*, Letter Order, 23 FCC Rcd 15395, 15397 (MB 2008).

<sup>19</sup> See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Third Report and Order, 26 FCC Rcd 17642, 17645, para. 7 (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, 23093, para. 90 (1998), on reconsideration, 14 FCC Rcd 17525, 17539, para. 35 (1999); *Lieberman Broad. of Dallas License LLC*, Letter Order, 25 FCC Rcd 4765, 4768 (MB 2010) ("continued warehousing of this spectrum by Susquehanna

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These concerns about efficient use of spectrum are also reflected in the Commission's statutory authority to award licenses at auction.<sup>20</sup> Based on these concerns, the Commission recently approved an expedited hearing process to allow for expedited resolution of license renewal determinations involving stations with an extended history of silence.<sup>21</sup> This Order follows that expedited process.

### III. DISCUSSION

#### A. The Station's Operational History

9. We are designating the Application for hearing to determine whether the Station's license should be renewed in light of its failure to operate for most of its license term. The Station was licensed as a commercial Class C3 FM station serving Rozet, Wyoming on November 8, 2010.<sup>22</sup> However, the Station went silent after only one day of operation and has remained primarily silent since then.<sup>23</sup> Since 2010, FVC has submitted various STAs and other filings that allege periods of operation and silence. Those filings indicate that the Station's operational history is as follows:

Silent	Operating
<b>License term record</b>	
	11/8/2010 (1 day)
11/9/2010 to 10/31/2011 (357 days)	11/1/2011 to 11/6/2011 (7 days)
11/7/2011 to 11/3/2012 (363 days)	11/4/2012 to 11/18/2012 (15 days)
11/19/2012 to 10/1/2013 (317 days)	
<b>Total = 1037 days = 2.8 years</b>	<b>Total = 23 days</b>

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 in the face of Liberman's long-standing competing demand is plainly contrary to the public interest"); *Great Lakes Community Broad., Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 13487, 13489, para. 3 (MB 2009). See also *Roger L. Hoppe, II*, 31 FCC Rcd at 8793, para. 11, citing *Birach* ("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 in to the station's frequency.").

<sup>20</sup> See 47 U.S.C. §§ 309(j)(3)(D) (obligation to promote the objective of "efficient and intensive use of the electromagnetic spectrum), 309(j)(4)(B) (auction rules shall include performance requirements in part "to prevent stockpiling or warehousing of spectrum").

<sup>21</sup> See *Radioactive, LLC*, Hearing Designation Order, 32 FCC Rcd 6392 (2017) (*Radioactive*).

<sup>22</sup> See File No. BLH-20101026ABP.

<sup>23</sup> See File Nos. BLSTA-20101112AUX, BLSTA-20101112AUX, BLESTA-20110527ALE, BLSTA-20111109ANS, BLESTA-20120703AAD, BLSTA-20130109AAI, BLSTA-20131126AVZ, BLSTA-20141205APW, BLESTA-20150708ABM, BLSTA-20160218AAN, BLESTA-20160823AAX, and BLSTA-20170222AAI. The STA applications cited financial problems and staffing difficulties as reasons for the silent periods, whereas the Application only cited financial problems. See Application, Exh. 13.

Silent	Operating
<b>Section 307(c)(3) record<sup>24</sup></b>	
10/2/2013 to 11/8/2013 (38 days)	11/9/2013 to 11/22/2013 (14 days)
11/23/2013 to 11/16/2014 (359 days)	11/17/2014 to 11/22/2014 (6 days)
11/23/2014 to 11/14/2015 (357 days)	11/15/2015 to 1/29/2016 (76 days)
1/30/2016 to 1/26/2017 (363 days)	1/27/2017 to 2/18/2017 (23 days)
2/19/2017 to 8/26/2017 (189 days)	8/27/2017 to 5/7/2018 (254 days)
<b>Total = 1306 days = 3.6 years</b>	<b>Total = 373 days = 1.02 year</b>

10. FVC filed the Application to renew the Station's license on June 3, 2013. Since then, FVC's subsequent filings with the Commission indicate that the Station has generally continued its pattern of brief alleged operations followed by extended periods of silence. The Station claims to have resumed operation on August 27, 2017, shortly after the Commission released the *Radioactive* order designating a license renewal hearing for another licensee's radio stations with extensive periods of silence.

#### B. Procedures for Hearing

11. Section 309(k)(3) of the Act requires "notice and opportunity for a hearing as provided in subsection (e)."<sup>25</sup> Section 309(e) requires a "full hearing in which the applicant and all other parties in interest shall be permitted to participate."<sup>26</sup> The Commission and courts have held that the hearing need not be a trial-type evidentiary hearing meeting the standards of Sections 554 and 556 of the Administrative Procedure Act.<sup>27</sup> The Commission has repeatedly observed that trial-type hearings impose significant burdens and delays, both on applicants and the agency.<sup>28</sup> We here have found no substantial

<sup>24</sup> Section 307(c)(3) of the Act mandates that the Commission continue a broadcast license in effect while the license renewal application is pending. 47 U.S.C. § 307(c)(3); see *Fox Television Stations, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9564, 9571 n.40 (MB 2014) (in acting on a renewal application, the Commission considers the licensee's performance since the beginning of its most recent license term but gives less weight to improved performance during the pendency of the renewal application).

<sup>25</sup> 47 U.S.C. § 309(k)(3).

<sup>26</sup> *Id.* § 309(e).

<sup>27</sup> 5 U.S.C. §§ 554, 556. See *Gencom Inc. v. FCC*, 832 F.2d 171, 174 n.2 (D.C. Cir. 1987) (Section 309(e) does not "use the 'on the record' language necessary to trigger the full panoply of trial-type hearing requirements embodied in Section 554 of the APA."); see also *Cellular Mobile Sys. of Pa.*, 782 F.2d 182, 197-98 (D.C. Cir. 1985), citing *United States v. Storer Broad. Co.*, 351 U.S. 192, 202 (1956), *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327, 333 (1945), and *United States v. FCC*, 652 F.2d 72, 88-96 (D.C. Cir. 1980) (*en banc*); *U.S. v. Fla. E. Coast Ry.*, 410 U.S. 224, 237-38 (1973). Compare *Crestview Parke Care Ctr. v. Thompson*, 373 F.3d 743, 748 (6<sup>th</sup> Cir. 2003) (under the Administrative Procedure Act, 5 U.S.C. §§ 554 and 556, a formal adjudication featuring an oral evidentiary hearing is required if the statute provides for a hearing "on the record" as specified in Section 554).

<sup>28</sup> See, e.g., *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Further Notice of Proposed Rulemaking, 13 FCC Rcd 21167, 21171, para. 9 (1998) ("traditional comparative hearings can be cumbersome, costly, and delay service to the public without substantial offsetting public interest benefits");

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issues of material fact or any credibility issues regarding this renewal application. We thus believe cases such as this one can be appropriately resolved with a “paper” hearing.

12. Discovery and Hearing Procedures. The underlying purpose of the discovery rules is “to eliminate those facts which will not be disputed at the hearing or about which there is no real controversy, to relieve the parties of proving them, to expedite the hearing, and to facilitate a proper decision on the merits.”<sup>29</sup> To promote these goals, the Commission reasoned “that discovery should be used only when relevant to an issue in the hearing . . . .”<sup>30</sup> Thus, with respect to discovery as well as other matters, the Commission has “broad discretion to choose a course of action to conduct its business.”<sup>31</sup> Although Part 1, Subpart B rules<sup>32</sup> generally apply to applications designated for hearing,<sup>33</sup> this discretion includes the power “to preclude any use” of discovery procedures where the presiding officer “finds that their use will not contribute to the proper conduct of the proceeding.”<sup>34</sup>

13. We have identified no substantial issues of material fact with respect to the Application, which presents only a narrow range of issues for Commission consideration. Thus, many Subpart B rules are facially irrelevant to this proceeding. In these circumstances, we find that the use of summary procedures would expedite the resolution of this hearing while affording FVC the full hearing required by Section 309, and not placing unnecessary burdens on the licensee.<sup>35</sup> Accordingly, we find that the following rules are either inapplicable to or would serve no useful purpose in this proceeding: Sections 1.221(c) – (h); 1.241 – 1.253; 1.255 – 1.279; 1.282(a) and (b)(2); 1.297 – 1.340; and 1.352 – 1.364.<sup>36</sup>

14. Petitions to intervene. Anyone seeking status as a party in interest in this proceeding must file a petition to intervene in accordance with Section 1.223(a) of the Rules.<sup>37</sup> Anyone else seeking to participate in the hearing as a party may file a petition for leave to intervene in accordance with Section 1.223(b) of the Rules.<sup>38</sup> Any filing in this docket must be served in accordance with Section 1.211 of the Rules on all other parties, including each person or entity that has filed a petition to intervene or petition for leave to intervene, pending a ruling on each such petition.<sup>39</sup>

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*Competitive Bidding for Commercial Broadcast and ITFS Service Licenses*, Notice of Proposed Rulemaking, 12 FCC Rcd 22363, 22365, para. 3 (1997) (same).

<sup>29</sup> *Rules and Policies to Facilitate Public Participation and Reregulation of the Various Communications Industries in the Public Interest*, Memorandum Opinion and Order, 61 FCC 2d 1112, 1127, para. 61 (1976).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 1127, para. 61. See 47 U.S.C. § 154(j).

<sup>32</sup> 47 CFR §§ 1.201 – 1.364.

<sup>33</sup> See 47 CFR § 1.201(a).

<sup>34</sup> *Amendment of Part 1 of the Rules of Practice and Procedure to Provide for Discovery Procedures*, Report and Order, 11 FCC 2d 185, 186-87 (1968). *Accord, Amendment of Part 1, Rules of Practice and Procedure To Provide for Certain Changes in the Commission’s Discovery Procedures in Adjudicatory Hearings*, Memorandum Opinion and Order, 91 FCC 2d 527, 528-29, 531 (1982).

<sup>35</sup> See *Mobilemedia Corp.*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing for Forfeiture, 12 FCC Rcd 14896 (1997) (Commission takes steps to expedite hearing based on concerns about financial stability of licensee in revocation hearing).

<sup>36</sup> 47 CFR §§ 1.221 (c) – (h); 1.241 – 1.253; 1.255 – 1.279; 1.282(a) and (b)(2); 1.297 – 1.340; and 1.352 – 1.364.

<sup>37</sup> *Id.* § 1.223(a). We hereby delegate to the Media Bureau authority to address interlocutory pleadings if any are filed unless the issues are new or novel. See 47 CFR §§ 0.61(k) and 0.283.

<sup>38</sup> *Id.* § 1.223(b).

<sup>39</sup> *Id.* § 1.211.

15. Interlocutory Actions. FVC shall have the right to seek reconsideration of any interlocutory action in this proceeding. Accordingly, we waive the Section 1.106(a) restriction limiting the filing of a petition for reconsideration by FVC of this hearing designation order.<sup>40</sup>

16. Production of station records; discovery. FVC shall file in this docket, within 30 days of publication of this Order in the Federal Register, complete copies of the following records for the Station (as such records exist as of the release date of this Order): (a) all station logs<sup>41</sup> for the relevant license term;<sup>42</sup> (b) all quarterly issues and programs lists<sup>43</sup> for the relevant license term; (c) to the extent not included in the station logs, all Emergency Alert System participant records<sup>44</sup> for the relevant license term; (d) FVC's current lease for tower space for the Station's antenna and related equipment; and (e) from January 1, 2017 to the present, FVC's records of payments for utilities, tower space, personnel (redacted to protect individual privacy) and programming. FVC may not destroy or remove any of such records prior to such filing, or redact or modify any information in such records as they exist as of the release date of this Order. In the event that, on or after the release date of this Order, FVC creates or modifies any documents that it so provides, each such document should be prominently marked with the date that it was created or revised (identifying the revision(s)) and FVC should include in the sponsoring affidavit or declaration an explanation of who created or revised the document and when he or she did so.<sup>45</sup> We otherwise will conduct the hearing without discovery, although the Commission or its staff may make inquiries or conduct investigations pursuant to Part 73 of the Rules and any reports filed in this docket as a result of such inquiries or investigations will become part of the record in this hearing.

17. Presentation of evidence. We will take official notice of all publicly-available Commission records for the Station as part of the record in this docket.<sup>46</sup> FVC has the burden of proceeding with evidence and the burden of proof in this hearing.<sup>47</sup> Within 60 days of publication of this Order in the Federal Register, FVC will file a written direct case on the designated issues below, no longer than 25 pages, and supported by an affidavit or unsworn declaration pursuant to Section 1.16 of the Rules.<sup>48</sup> Within 30 days of FVC's filing, any other person granted party status pursuant to paragraph 14

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<sup>40</sup> See 47 CFR § 1.106(a) (permitting petitions for reconsideration of hearing designation orders only with respect to an adverse ruling with respect to petitioner's participation in the proceeding).

<sup>41</sup> See *id.*, § 73.1800 *et seq.*

<sup>42</sup> The phrase "relevant license term" as used herein should include records for the entire license period until the release date of this Order. See note 24 *supra*.

<sup>43</sup> 47 CFR § 73.3526(e)(12).

<sup>44</sup> See *id.*, §§ 11.35(a), 11.54(a)(3), 11.55(c)(7), 11.55(d)(4), and 11.61(b).

<sup>45</sup> This requirement regarding newly-created or reconstituted records in the licensee's document production is not intended to preclude the licensee from presenting evidence in the proceeding (per para. 17 *infra*) in the manner it deems appropriate, subject to the Commission's applicable procedural rules for hearings as applied herein.

<sup>46</sup> Section 1.203 of the Rules provides that any party to the proceeding will be afforded an opportunity to contest a material fact that was officially noticed. 47 CFR § 1.203. Any party that wishes to challenge any portion of the Commission's publicly-available records for the Station shall submit a pleading, supported by an affidavit or an unsworn declaration in accordance with 47 CFR § 1.16, stating the basis for such challenge within 30 days of publication of this Order in the Federal Register. Any other party may file a responsive pleading, supported by an affidavit or an unsworn declaration in accordance with 47 CFR § 1.16, within ten days of the filing of the original pleading. Based on any such filings, the decision herein will specify which portions of those records are part of the record of this proceeding.

<sup>47</sup> 47 U.S.C. § 309(e); 47 CFR § 1.254.

<sup>48</sup> 47 CFR § 1.16. Page limits described herein apply to the text containing arguments, attachments, appendices, supplements and supporting materials, such as testimony, data and documents, but excluding tables of contents, summaries of arguments and certificates of service.

of this Order may file a responsive submission, no longer than 25 pages and supported by an affidavit or unsworn declaration. Within 10 days of the deadline for filing such responses, FVC may file a rebuttal submission addressing all responses, no longer than 10 pages and supported by an affidavit or unsworn declaration.

#### IV. ORDERING CLAUSES

18. ACCORDINGLY, IT IS ORDERED, pursuant to Sections 309(e) and (k)(3) and 312(g) of the Communications Act of 1934, as amended,<sup>49</sup> the captioned application for renewal of license for Station KLSX(FM) IS DESIGNATED FOR A HEARING upon the following issues:

- (a) To determine whether, during the preceding license term, (i) the station has served the public interest, convenience, and necessity, (ii) there have been any serious violations by the licensee of the Communications Act of 1934, as amended, or the rules and regulations of the Commission, and (iii) there have been any other violations of the Communications Act of 1934, as amended, or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse; and
- (b) In light of the evidence adduced pursuant to issue (a) above, whether the captioned application for renewal of the license for Station KLSX(FM) should be granted on such terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted, or denied due to failure to satisfy the requirements of Section 309(k)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(k)(1).

19. IT IS FURTHER ORDERED, pursuant to Section 309(e) of the Communications Act of 1934, as amended and Section 1.254 of the Commission's Rules,<sup>50</sup> that the burden of proceeding with the introduction of evidence and the burden of proof with respect to the issues specified in Paragraph 18 of this Order shall be on the applicant, Family Voice Communications, LLC.

20. IT IS FURTHER ORDERED that Family Voice Communications, LLC IS MADE A PARTY to this proceeding.

21. IT IS FURTHER ORDERED that, to avail itself of the opportunity to be heard and the right to present evidence at a hearing in these proceedings, Family Voice Communications, LLC shall file complete and correct copies of the documents described in Paragraph 16 of this Order, on or before the date specified. If Family Voice Communications, LLC fails to file such documents for KLSX(FM) within the time specified, or a petition to accept, for good cause shown, such filing beyond the expiration of such period, its captioned license renewal application for KLSX(FM) shall be dismissed with prejudice for failure to prosecute and the license of the station shall be terminated.<sup>51</sup>

22. IT IS FURTHER ORDERED that Family Voice Communications, LLC shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended,<sup>52</sup> and Section 73.3594 of the Commission's Rules,<sup>53</sup> give notice of the hearing within the time and in the manner prescribed therein, and thereafter submit the statement described in Section 73.3594(g) of the Commission's Rules.<sup>54</sup>

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<sup>49</sup> 47 U.S.C. §§ 309(e), (k)(3).

<sup>50</sup> 47 U.S.C. § 309(e); 47 CFR § 1.254.

<sup>51</sup> See 47 CFR § 73.3568(a).

<sup>52</sup> 47 U.S.C. § 311(a)(2).

<sup>53</sup> 47 CFR § 73.3594.



23. IT IS FURTHER ORDERED that a copy of this Order shall be sent by Certified Mail, Return Receipt Requested, and by regular first-class mail to Family Voice Communications, LLC, 9004 South 8<sup>th</sup> Drive, Phoenix, AZ 85041, with a copy to its counsel of record, Lee J. Peltzman, Esq., Shainis & Peltzman Chartered, 1850 M Street, N.W., Suite 240, Washington, DC 20036.

24. IT IS FURTHER ORDERED, that the Secretary of the Commission shall cause to have this Order or a summary thereof published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>54</sup> *Id.* § 73.3594(g).