



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

**November 29, 2018**

*In Reply Refer to:*  
**1800B3-HOD**

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**In re: Sun Mountain, Inc.**

KYLW(AM), Lockwood, Montana  
Facility ID No. 129384  
File Nos. BR-20121226AAB

KBSR(AM), Laurel, Montana  
Facility ID No. 5297  
File No. BR-20121226AAD

**Petition for Reconsideration**

Dear Counsel:

We have before us a Petition for Reconsideration (Petition) filed by Connoisseur Media Licenses, LLC (Connoisseur) on August 25, 2017. Connoisseur challenges our grant of the above-captioned applications (Renewal Applications) filed by Sun Mountain, Inc. (Sun Mountain) to renew its licenses for KYLW(AM), Lockwood, Montana, and KBSR(AM), Laurel, Montana (together, Stations). Connoisseur alleges the Stations' licenses expired by operation of law and urges us to update the Commission's records to reflect cancellation of the Stations' licenses.

**Background.** Sun Mountain filed the Renewal Applications on December 26, 2012. We granted them on July 21, 2017.<sup>1</sup> Connoisseur—which did not file petitions to deny or informal objections against the Renewal Applications—then filed the Petition.

In the Petition, Connoisseur argues that KYLW(AM)'s license expired on March 7, 2017. In support of this claim, Connoisseur alleges there has not been a tower at the transmitter site specified in KYLW(AM)'s license since March 7, 2016.<sup>2</sup> It also asserts that KYLW(AM) did not have authority to

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<sup>1</sup> Broadcast Actions, Public Notice, Report No. 49035 (MB July 26, 2017).

<sup>2</sup> Petition at 4, 5.

broadcast from any other location between January 20, 2010, and June 14, 2017,<sup>3</sup> and that the station was not transmitting an audible signal in January 2017.<sup>4</sup> Finally, Connoisseur notes that Sun Mountain has not indicated it had any rights to use its licensed site at any time between 2007 and 2016.

Connoisseur further claims that there has not been an antenna at the transmitter site specified in KBSR(AM)'s license since October 25, 2013. It also states that the station was not transmitting an audible signal in January 2017.<sup>5</sup> Connoisseur submits pictures of KBSR(AM)'s licensed location from October 25, 2013, and January 2017. In these pictures, there is no tower visible. It also alleges that KBSR(AM) did not have authority to broadcast from any other location between October 25, 2013, and June 19, 2017.

Sun Mountain filed an Opposition to Petition for Reconsideration (Opposition) on July 14, 2017. Therein, Sun Mountain does not rebut any of Connoisseur's allegations. Instead, it argues the Petition is procedurally defective and should be dismissed.<sup>6</sup> Specifically, it argues that Connoisseur lacked standing to file the Petition<sup>7</sup> because the Petition did not rely on (i) new facts or arguments or (ii) facts or arguments that were unknown to Connoisseur prior to Commission action on the Renewal Applications and that could not have been discovered through the exercise of ordinary diligence prior to that action.<sup>8</sup>

Connoisseur filed a Reply to Opposition (Reply) on July 26, 2017. It contends that "Sun Mountain ... fails to deny (or even address) each Station's failure to broadcast for more than twelve months prior to grant of the Renewal Applications." Connoisseur also states that Sun Mountain did not build the temporary facilities described in a request for special temporary authority submitted on April 6, 2017, and granted on June 14, 2017. According to Connoisseur, KYLW(AM) remains off the air.<sup>9</sup> It submits a declaration from one of its consulting engineers, who visited on September 22, 2017 the site specified in the STA request. Connoisseur's engineer was unable to receive anything but static on the station's frequency while at the site on September 22, 2017. Connoisseur argues that, even if KYLW(AM) went off the air on June 22, 2016, as Sun Mountain claims, KYLW(AM)'s license expired by operation of law on June 23, 2017. Finally, Connoisseur argues that it demonstrated standing in the Petition

After reviewing the Petition and related pleadings, we sent an operational status inquiry to Sun Mountain.<sup>10</sup> Therein, we noted that the Stations appeared to have been silent (or operating without authorization) for more than twelve consecutive months. We reminded Sun Mountain that, pursuant to Section 312(g) of the Communications Act, as amended, if a broadcast station fails to transmit broadcast signals with its authorized facilities for any consecutive twelve-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, unless extended or reinstated by Commission action. We requested that Sun Mountain provide evidence documenting KYLW(AM)'s operational status from June 15, 2017, to the present, and evidence documenting KBSR(AM)'s operational status between October 25, 2013 and June 19, 2017. While Sun Mountain requested an extension of time until October 8, 2018, to respond to the letter, it has not filed a response.

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<sup>3</sup> *Id.* at 3, 4

<sup>4</sup> *Id.* at Exh. A, Decl. of Richard Jones.

<sup>5</sup> *Id.*

<sup>6</sup> Opposition at 2-4.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at 2-4.

<sup>9</sup> Reply at 4.

<sup>10</sup> Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, to Sun Mountain, Inc. (dated Aug. 16, 2018).

**Discussion. Procedural Issues. Standing.** We conclude that Connoisseur lacks standing to seek reconsideration.<sup>11</sup> Section 1.106(b)(1) of the Commission's rules permits any party to a proceeding or "any other person whose interests are adversely affected" to file a petition for reconsideration. If a petition for reconsideration is filed by a non-party, however, the non-party must "state with particularity the manner in which the [petitioner's] interests are adversely affected" and "show good reason why it was not possible ... to participate in the earlier stages of the proceeding." Connoisseur is not a party to the proceeding.<sup>12</sup> Further, while it has demonstrated that its interests are adversely affected,<sup>13</sup> it has not explained why it did not participate in the proceeding prior to grant of the Renewal Applications.<sup>14</sup>

In reaching this conclusion, we reject Connoisseur's argument that "pleadings filed in other matters were sufficient to claim standing."<sup>15</sup> Connoisseur states that it "submitted multiple filings in various proceedings raising issues substantially identical to those raised" in the Petition and argues that these submissions amount to adequate participation because they raised issues that substantially overlap those raised on reconsideration. It cites two cases—*Metro Radio, Inc. (Metro Radio)* and *Clear Channel Communications, Inc. (Clear Channel)*—in support of its argument. However, we find these cases inapposite. *Metro Radio* establishes the proposition that the Commission will treat an informal complaint related to the application at issue like an informal objection for purposes of standing and satisfaction of the "prior participation" requirement. *Clear Channel*—which is relied upon in *Metro Radio*—treated an informal complaint about the applications at issue as an informal objection. Here, Connoisseur did not file an informal complaint or any other pleading related to the Renewal Applications. Accordingly, it cannot rely on these cases to support its claim that it did participate earlier.

Having determined that Connoisseur lacks standing to file the Petition, we dismiss it as procedurally defective.<sup>16</sup> However, given the nature of the allegations made, on our own motion, we will consider the substantive arguments made in the Petition.<sup>17</sup>

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<sup>11</sup> Opposition at 1-2, citing 47 U.S.C. § 405 and 47 CFR § 1.1106(b)(1).

<sup>12</sup> Connoisseur did not comment on or participate in the Commission's initial consideration of the Renewal Applications.

<sup>13</sup> As a competitor in the Stations' market, Connoisseur's interests have been adversely affected. See *CMP Houston-KC, LLC*, Memorandum Opinion and Order, 23 FCC Rcd 10656, 10660 n. 31 (2008) (*CMP Houston-KC*). Connoisseur is the licensee of four FM and two AM radio stations serving the Billings, Montana radio market: KPLN(FM), Lockwood, Montana; KWMY(FM), Joliet, Montana; KRKX(FM), and KRZN(FM), KYA(A) and KBLG(AM), Billings, Montana. Petition, Attach. At 1. KYLW(AM) serves the same community of license as KPLN(FM) and both it and KBSR(AM) operate in the same market as Connoisseur's stations. Indeed, Sun Mountain itself acknowledges that Connoisseur is an "area competitor." Opposition at 3.

<sup>14</sup> We acknowledge that the facts asserted by Connoisseur arose after the deadline for filing petitions to deny the renewal applications. However, as Sun Mountain notes, Connoisseur could have filed a motion to accept a late-filed pleading rather than waiting until the Renewal Applications were granted and then filing a petition for reconsideration. Had Connoisseur done so, it would have participated in the earlier stages of these proceedings to the fullest extent of the law and, under Commission precedent, would have satisfied the "good cause" standard of Section 1.106(b)(1).

<sup>15</sup> Petition at 8 and n.12, citing *Metro Radio, Inc.*, Letter Order, 25 FCC Rcd 2588, 2590 (MB 2010) and *Clear Channel Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 1421, 1434, paras. 29-30, 1436, para. 38 (2008).

<sup>16</sup> Because we dismiss the Petition under Section 1.106(b)(1), we need not consider Sun Mountain's arguments that the Petition should be dismissed pursuant to Section 1.106(c)(1) because it relies on new facts that Connoisseur could have discovered through the exercise of ordinary diligence and submitted to the Commission prior to its action on the Renewal Applications. Opposition at 2.

<sup>17</sup> See, e.g., *New NCE-FM, Bishop, California*, 26 FCC Rcd 15135, 15137 (MB 2011) (finding that, due to the nature of the issue involved, consideration of the evidence submitted was in the public interest); *Morton Jerome Victorson, Bankruptcy Trustee*, Memorandum Opinion and Order, 10 FCC Rcd 9499, 9500 (1995) (affirming staff's

**Substantive Issues.** The Commission's records indicate that, since June 15, 2017, KYLW(AM) has been operating from a location different from that specified in its license pursuant to special temporary authority.<sup>18</sup> However, before us is evidence that Sun Mountain did not construct or operate the facilities authorized in the STA. Specifically, we have a declaration made by Connoisseur's consulting engineer, which states that, on September 22, 2017, he visited the site specified in the STA but found no temporary facilities and heard no signal on the station's frequency.<sup>19</sup> In addition, we have a photograph of the site specified in the STA, taken by the consulting engineer on September 22, 2017. There are no broadcast facilities visible in the photograph. Despite our letter notifying Sun Mountain that we believed KYLW(AM) may have been silent (or failed to operate with authorized facilities) for more than twelve consecutive months and our request that Sun Mountain provide evidence documenting KYLW(AM)'s operational status from June 15, 2017, to the present, Sun Mountain has not proffered any evidence rebutting that already before us. Accordingly, we conclude that KYLW(AM) has been silent for more than twelve consecutive months and that its license expired pursuant to Section 312(g) of the Act.<sup>20</sup>

We reach the same conclusion with respect to KBSR(AM). According to Commission records, KBSR(AM) did not have authority to broadcast from a location other than that specified in its license between October 25, 2013, and June 19, 2017. Before us is evidence that there has not been an antenna at the transmitter site specified in KBSR(AM)'s license since October 25, 2013.<sup>21</sup> Specifically, we have a satellite photograph of KBSR(AM)'s licensed location that was taken on that date.<sup>22</sup> There are no broadcast facilities visible in the image. In addition, we have a declaration made under penalty of perjury on March 3, 2017, by Connoisseur's consulting engineer,<sup>23</sup> which states that he has not seen "an antenna at the KBSR(AM) site for many years."<sup>24</sup> Despite our letter notifying Sun Mountain that we believed KBSR(AM) may have been silent (or failed to operate with authorized facilities) for more than twelve consecutive months and our request that Sun Mountain provide evidence documenting KBSR(AM)'s operational status from October 25, 2013, to June 19, 2017, Sun Mountain has not proffered any evidence rebutting that already before us. Accordingly, we conclude that KBSR(AM) has been silent for more than twelve consecutive months and that its license expired pursuant to Section 312(g) of the Act.

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finding that petition for reconsideration was procedurally defective but, on Commission's own motion, electing to consider the substantive arguments made); *Preston Trucking Co., Inc.*, Memorandum Opinion and Order, Notice of Inquiry, and Notice of Proposed Rulemaking, 31 FCC 2d 366, 368 (1971) (finding petitions for reconsideration procedurally defective but considering merits of petitioners' major arguments because "there are circumstances present which justify" such action).

<sup>18</sup> File No. BSTA-20170406AAA; *Sun Mountain, Inc.*, Letter Order (MB June 14, 2017); File No. BESTA-20171214ABU; *Sun Mountain, Inc.*, Letter Order (MB Jan. 9, 2018); File No. BESTA-20180717ABM; *Sun Mountain, Inc.*, Letter Order (MB Aug. 1, 2018).

<sup>19</sup> Reply at 4 and Exh. B.

<sup>20</sup> 47 U.S.C. § 312(g) (providing 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. . . .").

<sup>21</sup> Petition at 5-6.

<sup>22</sup> Petition at Exh. A.

<sup>23</sup> Petition at Exh. A.

<sup>24</sup> *Id.*

**Conclusion/Ordering Clauses.** Accordingly, for the reasons set forth above, IT IS ORDERED that the Petition for Reconsideration filed by Connoisseur Media Licenses, LLC, on March 7, 2017, IS DISMISSED. IT IS FURTHER ORDERED that the grants of Sun Mountain Inc.'s applications to renew the licenses for stations KYLW(AM), Lockwood, Montana (File No. BR-20121226AAB), and KBSR(AM), Laurel, Montana (File No. BR-20121226AAD), ARE RESCINDED, all authority to operate the stations IS TERMINATED, the licenses for these stations (File Nos. BL-20041008ADI and BL-19790827AH) ARE HEREBY CANCELLED, the stations' call letters ARE DELETED and all pending applications relating to the stations ARE DISMISSED.

Sincerely,



Albert Shuldiner  
Chief, Audio Division  
Media Bureau