

Before the
Federal Communications Commission
Washington, DC 20554

In re Application of

OBIDIA PORRAS

*Digital Flash-Cut for LPTV Station
KCIO-LD, Victorville, CA*

)
)
) **LMS File No. 0000150743**
) **Facility No. 11529**

Filed with: **Office of the Secretary**
Directed to: **Video Division, Media Bureau**

OPPOSITION TO PETITION FOR RECONSIDERATION

Obidia Porras (“Porras”), by her attorney, hereby submits her Opposition to the “Petition for Reconsideration” (“Petition”) filed by Venture Technologies Group, LLC (“Venture Technologies”) with respect to the Commission’s grant of a digital flash cut application for Channel 6, Victorville, California.¹ With respect thereto, the following is stated:

KCIO-LP is an analog low-power television station. In 2014, Obidia Porras filed for a digital companion channel for KCIO-LP (File No. BDCCDTL-20140220ACM) on Channel 30, which was granted on August 11, 2014. An application for license to cover the facility was granted on January 12, 2015. File No. BLDLTL-20150106ABH. However, pursuant to the final “Technical Parameters for Post-Auction Table of Allotments,” full-service TV station KXLA, Rancho Palos Verdes, California, was required to move from Channel 51 to Channel 30. KCIO-LD and KXLA cannot both operate on Channel 30. Therefore, continued long-term operation of KCIO-LD on Channel 30 became impossible.

¹ This response is being filed at the request of Commission Staff. To the extent a waiver of the Commission’s Rules is necessary, such request is hereby made.

Due to frequency congestion, the only available Channel upon which KCIO could continue to operate is Channel 6. Upon filing the application for Flash-Cut on digital Channel 6, Commission Staff specifically required cancellation of the KCIO-LD license. The application for Flash-Cut was filed on June 22, 2021. No opposition to the grant of the application was timely filed by any party (including Venture Technologies), and the application was duly granted on over two weeks later, on July 9, 2021. Thereafter, on July 14, 2021, Venture Technologies filed its Petition, claiming that the Flash-Cut application should not have been granted.

The Petition is procedurally deficient, and must be dismissed. The Petition was not timely filed. Under Section 1.106(b)(1) of the Commission's Rules, as a person who was not a "party" to the KCIO-LP application process, Venture Technologies was not permitted to seek "reconsideration" of the Bureau's action. 47 C.F.R. § 1.106(b)(1). As the Commission's Rule states:

Subject to the limitations set forth in paragraph (b)(2) of this section, any party to the proceeding, or any other person whose interests are adversely affected by any action taken by the Commission or by the designated authority, may file a petition requesting reconsideration of the action taken. If the petition is filed by a person who is not a party to the proceeding, it shall state with particularity the manner in which the person's interests are adversely affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding.

47 C.F.R. § 1.106(b)(1). Although Venture Technologies attempts to lay claim to a rare exception to the rule under Commission precedent that allows a non-party to file in cases where a prompt grant on the part of the Commission "effectively precluded participation during the initial consideration of an application" (Petition at 1, n.2), that rare exception has only been applied where the period between public notice of the application and the grant was less than one week.²

² *Chinese Voice of Golden City*, File No. BLFT-20190415ABG (MB June 29, 2020) at 8 ([Attachment 1](#), hereto) ("petition for reconsideration" denied; standing denied where period of 20 days between public notice of the application and its grant was 20 days; "although the Commission has allowed petitions for reconsideration in situations where prompt Commission grant effectively precluded participation during the initial consideration of an application,

As Venture Technologies concedes, in this case the grant of the application occurred “17 days after it was filed.” Petition at 1, n 2. Therefore, under the Commission’s rules and Commission precedent, the Petition must be dismissed.

As to the substance of the Petition, the majority of the Petition attacks KCIO-LP’s previous analog operation on ASR 1015985, claiming that Ms. Porras did not have permission from the tower owner to operate on the tower, implying that it was improper for the Commission to have granted a license to cover for the site in 2009. BLTVL-20090428AAP. Petition at 2 and 5. Venture Technologies does not contend that KCIO-LP has not, in fact, been operating, since 2009, from ASR 1015985. In fact, Station KCIO-LP has operated continuously from that site since 2009, and Station KCIO-LP at no time has been told to vacate the tower, and no communications from the tower owner prohibiting such use has been issued since, *i.e.*, since 2009.

It is well established that the FCC will not ordinarily reopen license applications after the grant of those applications have become final. *E-String Wireless, Ltd.*, 31 FCC Rcd 133, 136 ¶ 9 (MB 2016). Similarly, what arrangements have been made for use of that tower are private civil matters not within the Commission’s jurisdiction and in any event, would not dictate denial of the present Flash Cut Application.

As to current use of the site, that matter raised in the Petition is moot. Although Porras is currently in touch with the owner of the tower for use of the tower, as the Commission’s records

in each case the period between the public notice and grant was less than one week”); *Polnet Communications, Ltd.*, File No. BPFT-20190801AAI (Aug. 24, 2020) at 3 (Attachment 2, hereto), (application granted 14 days after public notice of the application and “reconsideration” denied; “we therefore find that Polnet was not effectively precluded from filing a petition to deny or informal objection...prior to its grant”); *Carolina Radio Group, Inc.*, File No. BNPFT-20180723AAW (May 2, 2019) at 2 (Attachment 3, hereto) (“petition for reconsideration” denied; [w]e reject Triangle’s argument that it was effectively precluded from participation earlier in this proceeding [when] ten days elapsed between public notice...and grant of the Application. To date, the Commission has found that effective preclusion to exist only where the period between the filing of the application and its grant was less than a week”). *Cf. Ted and Jana Tucker*, 4 FCC Rcd 2816 (1989) (standing found to exist where application granted after only four days after public notice issues); *Aspen FM, Inc.*, 12 FCC Rcd 17852, 17854-55 (1997) (standing found to exist to file a petition for reconsideration where application granted only five days after acceptance).

show, an amendment was filed on January 7, 2022 specifying a different site (ASR 122067) than that specified previously.

For all these reasons, the Petition should be denied.

WHEREFORE, it is requested that the Petition for Reconsideration filed by Venture Technologies Group, LLC, be denied.

Respectfully submitted,

OBIDIA PORRAS

By: ____/Dan J. Alpert/_____
Dan J. Alpert

Her Attorney

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April 1, 2022

CERTIFICATE OF SERVICE

I, Dan J. Alpert, hereby certify that a copy of the foregoing “Opposition to Petition for Reconsideration” is being provided by First Class Mail to the following:

Joan Stewart
Wiley Rein LLP
1776 K St. N.W.
Washington, DC 20005

_____/Dan J. Alpert_____
Dan J. Alpert

Attachment 1



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

June 29, 2020

In Reply Refer to:
1800B3-KV

Chinese Voice of Golden City
c/o James L. Winston, Esq.
Rubin, Winston, Diercks, Harris & Cooke, LLP
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Silver State Broadcasting, LLC
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Summit American, Inc.
c/o Shelley Sadowsky, Esq.
Shelley Sadowsky, LLC
5938 Dorchester Way
Rockville, MD 20852

In re: K284CW, Winchester, NV
Silver State Broadcasting, LLC
Facility ID No. 203222
File Nos. BLFT-20190415ABG (License),
BPFT-20190520AAZ (2019 Permit), and
93597 (2020 Permit or 2020 Permit Application)

**Petitions for Reconsideration/Petition for
Declaratory Ruling**

Dear Counsel:

We have before us two petitions for reconsideration filed by Summit American, Inc. (Summit) alleging harmful interference to KJUL(FM), Moapa Valley, Nevada (Complaining Station),¹ from FM Translator K284CW, Winchester, Nevada (K284CW or Translator).² The first is a "Petition for Expedited Reconsideration" (Summit License Petition), filed by Summit on June 3, 2019, seeking

¹ Summit is the licensee of KJUL(FM).

² K284CW is licensed to Silver State Broadcasting, LLC (Silver State or Licensee).

reconsideration of the Media Bureau's (Bureau) grant of the Translator's covering license (License).³ The second is a "Petition for Expedited Reconsideration" (Summit 2019 Permit Petition), filed by Summit on June 13, 2019, seeking reconsideration of the Bureau's grant of a construction permit (2019 Permit) for the Translator.⁴ Also before us is a "Petition for Declaratory Ruling, or in the alternative, Petition for Reconsideration, and to Reinstate Construction Permit" filed by Silver State on April 15, 2020 (Silver State 2020 Permit Petition),⁵ contesting the Bureau's action rescinding a construction permit (2020 Permit) for the Translator and returning the 2020 Permit Application to pending status.⁶ For the reasons stated below, we dismiss the Summit 2019 Permit Petition, the Silver State 2020 Permit Petition, the 2020 Permit Application, and the Summit License Petition to the extent it seeks reconsideration of the grant of the License. In addition, we grant Summit's interference claim against the Translator as licensed and order the Translator to immediately cease operations.

Background. License. On April 15, 2019, Silver State filed the License application to cover a modified construction permit for a new translator station operating on Channel 284 with 1 watt effective radiated power (ERP) at Winchester, Nevada.⁷ On April 19, 2019, the Bureau announced the License application as accepted for filing.⁸ On April 29, 2019, the Bureau granted the Translator's License application, which was uncontested.⁹

On June 3, 2019, Summit filed the Summit License Petition, arguing that grant of the License should be rescinded because the Translator is interfering with the reception of KJUL(FM). In support,

³ On June 18, 2019, Silver State filed an "Opposition to Petition for Expedited Reconsideration" (Opposition to Summit License Petition) and on June 28, 2019, Summit filed a "Reply to Opposition Petition for Expedited Reconsideration" (Summit License Petition Reply).

⁴ On July 5, 2019, Silver State filed a "Motion for Leave to File An Opposition Pleading Out of Time" (Silver State 2019 Permit Motion) and an "Opposition to Petition for Expedited Reconsideration" (Opposition to Summit 2019 Permit Petition), and on July 15, 2019, Summit filed a "Reply to Late-Filed Opposition to Petition for Expedited Reconsideration" (Summit 2019 Permit Petition Reply).

⁵ On April 29, 2020, Chinese Voice of Golden City (Chinese Voice) filed an "Opposition to Petition for Declaratory Ruling, or, in the Alternative, Petition for Reconsideration, and to Reinstate Construction Permit" (Opposition to Silver State 2020 Permit Petition). On May 4, 2020, Silver State filed a "Reply to Opposition to Petition for Declaratory Ruling, or, in the Alternative, Petition for Reconsideration, and to Reinstate Construction Permit" (Silver State 2020 Permit Petition Reply).

⁶ As discussed below, in the 2020 Permit Application (File No. 93597), Silver State seeks to relocate the Translator from channel 284, Winchester, Nevada, to channel 276, Las Vegas Nevada. Silver State filed the 2020 Permit Application on December 17, 2019, and the Bureau accepted it for filing on December 19, 2019. *See Broadcast Actions*, Public Notice, Report No. PN-1-191219-01 (MB Dec. 19, 2019). On March 11, 2020, the Bureau granted the 2020 Permit Application and issued the 2020 Permit. *See Broadcast Actions*, Public Notice, Report No. PN-2-200313-01 (MB Mar. 13, 2020). On March 17, 2020, the Bureau rescinded the 2020 Permit and returned the 2020 Permit Application to pending status. *See Broadcast Actions*, Public Notice, Report No. PN-2-200319-01 (MB Mar. 19, 2020).

⁷ The License application covered the modified construction permit (File Nos. BNPFT-20180131AHV and BNPFT-20180502ACM).

⁸ *See Broadcast Applications*, Public Notice, Report No. 29469 (MB Apr. 19, 2019).

⁹ *See Broadcast Actions*, Public Notice, Report No. 49478 (MB May 2, 2019).

Summit submitted 18 listener complaints¹⁰ along with engineering showings.¹¹ Summit claims that it was unable to challenge the License while pending due to the Bureau's "processing efficiency" in granting the license application ten days after announcing its acceptance for filing.¹² Citing *Anthony T. Lepore, Esq. (Lepore)*,¹³ Summit contends that in similar circumstances, the Bureau "has accepted petitions for reconsideration when the grant of an application occurred shortly after the application was placed on public notice, finding that such expedient grant effectively precluded participation during the initial consideration of an application."¹⁴

In opposition, Silver State argues that the Summit License Petition is procedurally defective because Summit did not oppose the License application while it was pending.¹⁵ Citing *Robert P. Sanborn, III, Esq. (Sanborn)*,¹⁶ Silver State argues that consideration of petitions for reconsideration filed by non-parties is usually limited to situations "[w]here the period of time between the filing of an application and its grant was generally less than one week."¹⁷ Silver State also asserts that Summit's listener complaints, and the engineering statement relying on those complaints, are defective because said complaints are unsworn and unverified.¹⁸

In reply, Summit reiterates that the Bureau's "prompt processing" of the License precluded it from filing its petition while the license application was pending.¹⁹ Summit argues that consideration of its petition is in the public interest because it is based on interference complaints from listeners.²⁰ In response to Silver State's assertions about the validity of the listener complaints, Summit submitted sworn declarations from the listener complainants.²¹

2019 Permit. On May 20, 2019, Silver State filed the 2019 Permit application proposing to increase the Translator's ERP from 1 to 2 watts at the same location authorized in the License.²² Silver State subsequently amended the 2019 Permit application to increase the Translator's ERP to 10 watts.²³

¹⁰ Specifically, the following listeners: Bonnie Perelman; Joleen Classens; David Turner; Kristine Turner; Caroline Meiers; Paul B. Jacobs; Patricia Jacobs; Michelle Nakama; Loralee Lago; Richard E. Cannon; Lisa Pugh; Delores Herron; Douglas K. Johanson; Gloria DeMassi; Tracey S. Hattes; Sharon O'Diam; Robert J. Pettit; and Michael Squitieri. Collectively, these listeners will be referred to as the Original Complainants. Attachment C, Summit License Petition.

¹¹ See "Technical Statement of Gene Wisniewski" (dated Jun. 1, 2019) (Technical Statement), Summit License Petition. In the Technical Statement, Summit states that the population within KJUL(FM)'s 60 dbu contour is 29,181. *Id.* at 2.

¹² Summit License Petition at 2.

¹³ *Lepore*, Letter Order, 31 FCC Rcd 2217 (MB 2016).

¹⁴ Summit License Petition at 2.

¹⁵ As discussed above, the License application was accepted for filing on April 19, 2019, and granted on April 29, 2019. See *supra* notes 8-9.

¹⁶ *Sanborn*, Letter Order, 30 FCC Rcd 38 (MB 2015).

¹⁷ Opposition to Summit License Petition at 3.

¹⁸ *Id.*

¹⁹ Summit License Petition Reply at 3.

²⁰ *Id.*

²¹ *Id.* at 4.

²² On May 23, 2019, the Bureau announced the application as accepted for filing. See *Broadcast Applications*, Public Notice, Report No. 29493 (MB May 23, 2019).

²³ See *Broadcast Applications*, Public Notice, Report No. 29501 (MB Jun. 5, 2019).

On June 5, 2019, the Bureau granted the 2019 Permit to operate the Translator at 10 watts ERP, and Silver State promptly filed a license to cover the 2019 Permit.²⁴

On June 13, 2019, Summit filed the Summit 2019 Permit Petition arguing that grant of the 2019 Permit should be rescinded because the 2019 Permit exacerbated the Translator's interference to KJUL(FM). In support of its interference claim, Summit submitted the Original Complainants interference complaints along with 17 new listener complaints²⁵ and engineering showings.²⁶ Summit asserts that it was unable to oppose the 2019 Permit while it was pending, because of the Bureau's "speedy action" granting the application 13 days after its acceptance for filing.²⁷

In opposition, Silver State argues that the Summit 2019 Permit Petition²⁸ is defective, because Summit did not protest the 2019 Permit while it was pending. Silver State also asserts that the listener complaints and engineering statement are also unacceptable because they rely on unsworn statements.²⁹ In reply, Summit reiterates that it was unable to object to the 2019 Permit during its pendency, and it also attached sworn declarations for some of the listener complaints.³⁰

Complaint Deficiency Letter and Remediation Required Letter. On September 17, 2019,³¹ the Bureau notified Summit that additional information was needed to continue processing its interference allegations, set forth in its petitions, under the revised translator interference rules.³² Specifically, the Bureau cited Summit's failure to demonstrate that it had attempted private resolution of the alleged interference.³³

²⁴ See File No. BLFT-20190605ACH (June 2019 License Application).

²⁵ Specifically, the following listeners: Maxine Miller; Rita L. Krutz; Jeanette D. Zaloom; Melanie Kenney; Akisha Mayo; Laura McGuinness; Blaine M. Horodesky; Laura Post; George Smejkal; Susan Hemmes; Michelle Oberson; Laura Ortiz; Rae Dickstein; James Lang; Donna Jean Strosnider; Jeff W. Davis; and Natalie Butcher. Attachment C, Summit 2019 Permit Petition.

²⁶ *Id.* at Attachments A-B, and Technical Statement of Gene Wisniewski" (dated Jun. 10, 2019).

²⁷ Summit cites footnote 5 in the Summit License Petition expressing its intention to object to the 2019 Permit application. *Id.* at 3.

²⁸ Silver State also filed the 2019 Permit Motion for acceptance of its untimely opposition because it "overlooked" the deadline. For the reasons discussed below, we dismiss the Summit 2019 Permit Petition as moot. Accordingly, we need not address Silver State's 2019 Permit Motion.

²⁹ Opposition to Summit 2019 Permit Petition at 1.

³⁰ Summit 2019 Permit Petition Reply at 3-4.

³¹ See *Letter from James D. Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau to Summit American, Inc.* (dated Sep. 17, 2019) (*Complaint Deficiency Letter*).

³² In May 2019, the Commission adopted certain changes to the FCC's rules relating to the FM translator interference complaint resolution process (Translator Interference Rules). See *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Report and Order, 34 FCC Rcd 3457 (2019) (*Translator Interference Order*). In the *Translator Interference Order*, the Commission stated that all then remaining adjudicated complaints would be decided under the revised Translator Interference Rules once they became effective, and if necessary, parties would be given an opportunity to submit supplemental materials to address the new rules. *Id.* at 3482, para 49. On August 13, 2019, the revised Translator Interference Rules became effective. See *Effective Date of Amended Rules for FM Translator Interference*, Public Notice, 34 FCC Rcd 7004 (MB Aug. 5, 2019).

³³ *Complaint Deficiency Letter* at 3.

On October 16, 2019, Summit filed a “Supplement-Declaration of Scott Gentry, President of Summit American, Inc.” (Supplement) detailing its efforts to reach a private resolution with Silver State.³⁴

The Bureau reviewed the Supplement and found that Summit had submitted a valid and complete interference claim package.³⁵ Therefore, on December 9, 2019, the Bureau ordered Silver State to submit within 30 days a plan to resolve the interference, or alternatively, information demonstrating that Summit has not submitted a valid and complete interference claim package.³⁶

2020 Permit. On January 8, 2020, in response to the Bureau’s *Remediation Required Letter*, Silver State stated that it planned to resolve the interference by relocating the Translator to channel 276, Las Vegas, Nevada, as proposed in the 2020 Permit Application filed on December 17, 2019.³⁷ This frequency was previously licensed to Chinese Voice for station KQLS-LP. However, on November 19, 2019, the Bureau informed Chinese Voice that its license had expired.³⁸ Chinese Voice filed a petition for reconsideration and a motion to stay the Bureau’s decision on December 5, 2019.³⁹ On January 15, 2020, the Bureau denied Chinese Voice’s petition for reconsideration.⁴⁰ Thereafter, Chinese Voice filed an “Application for Review” on February 14, 2020, and a “Motion to Stay” on February 17, 2020. The Application for Review and Motion to Stay are currently pending.⁴¹

Notwithstanding Chinese Voice’s pending Application for Review and Motion to Stay, Silver State claims that channel 276 is available because Chinese Voice has not requested special temporary authorization (STA) to operate on the frequency. Silver State also notes that on January 7, 2020, it filed an STA request (First STA Request)⁴² to operate on channel 276.⁴³ The Bureau dismissed the First STA

³⁴ See “Supplement-Declaration of Scott Gentry, President of Summit American, Inc.” filed by Summit on October 16, 2019.

³⁵ See *Letter from James D. Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau, to Silver State Broadcasting, LLC* (dated Dec. 9, 2019) (*Remediation Required Letter*).

³⁶ *Id.*

³⁷ See *Letter from Dennis J. Kelly, Esq.* (dated Jan. 8, 2020).

³⁸ Specifically, on November 19, 2019, the Bureau declared that Chinese Voice’s license had expired on December 13, 2018, and deleted the callsign (now referenced as DKQLS-LP). See *Chinese Voice of Golden City*, File Nos. BLL-20171120AAB, and BMLL-20190809AAL, Letter Order (dated Nov. 19, 2019).

³⁹ See “Petition for Reconsideration,” filed on December 5, 2019, by Chinese Voice; and a “Motion for Stay,” filed on December 5, 2019, by Chinese Voice. Thereafter, the parties filed a series of pleadings: an “Emergency Stay Request—Addendum,” filed on December 17, 2019, by Chinese Voice; an “Opposition to Petition for Reconsideration and Motion for Leave to File Out of Time,” filed on January 2, 2020, by Silver State; an “Opposition to Motion for Stay” filed on January 2, 2020, by Silver State; and a “Petition for Expedited Action,” filed on January 2, 2020, by Silver State.

⁴⁰ See *Chinese Voice of Golden City*, Memorandum Opinion and Order, 35 FCC Rcd 567 (MB 2020).

⁴¹ See “Application for Review,” filed on February 14, 2020, by Chinese Voice. Thereafter, the parties filed a series of pleadings: a “Motion for Stay,” filed on February 17, 2020, by Chinese Voice; an “Opposition to Application for Review,” filed on February 28, 2020, by Silver State; an “Opposition to Motion for Stay,” filed on February 28, 2020, by Silver State; a “Reply Opposition to Application for Review,” filed on March 6, 2020, by Chinese Voice; and a “Reply to Opposition to Motion for Stay” filed on March 6, 2020, by Chinese Voice. These pleadings remain pending.

⁴² See File No. BSTA-20200107AAL.

⁴³ On April 21, 2020, Silver State filed a second STA request (Second STA Request) again seeking temporary authority to operate on channel 276 at Las Vegas. See File No. BSTA-20200421AAK. On April 22, 2020, the Bureau dismissed the Second STA Request. See *Letter from Dale Bickel, Senior Engineer, Audio Division, Media Bureau to Silver State Broadcasting, LLC* (dated Apr. 22, 2020) (dismissing Silver State’s Second STA request because of the policy not to grant channel changes via an STA and because of Chinese Voice’s pending appeal). Subsequently, Silver State appealed the denial of its Second STA Request. See “Petition for Reconsideration” filed

Request on January 8, 2020;⁴⁴ Silver State did not appeal this dismissal.⁴⁵

On March 11, 2020, without acting on Chinese Voice's Application for Review and Motion to Stay, the Bureau granted Silver State's 2020 Permit Application and issued the 2020 Permit.⁴⁶ On March 17, 2020, the Bureau rescinded the 2020 Permit and returned the 2020 Permit Application to pending status.⁴⁷

In the Silver State 2020 Permit Petition, Silver State argues that the Bureau's rescission of the 2020 Permit and return of the 2020 Permit application to pending status was arbitrary and capricious, and violated the Administrative Procedure Act (APA),⁴⁸ because the Bureau failed to provide "reasoned explanation" for its actions.⁴⁹ Silver State notes that it had constructed the 2020 Permit and was preparing to file an application to cover the 2020 Permit.⁵⁰ Silver State declares that although Chinese Voice has appealed the Bureau's decision that its license expired, Chinese Voice has no right to "warehouse" channel 276.⁵¹ Silver State claims that the "practical result" of the Bureau's rescission of its 2020 Permit is to grant Chinese Voice's Motion to Stay the Bureau's decision, but that Chinese Voice is not entitled to said stay because it is unlikely to prevail on the merits.⁵²

In opposition, Chinese Voice asserts that the Bureau properly rescinded Silver State's 2020 Permit because the Bureau's decision that the license for DKQLS-LP expired is not yet final due to Chinese Voice's pending appeal.⁵³ Chinese Voice declares "[t]he APA requires that the KQLS-LP frequency be preserved until the CVGC Bureau Decision [cancelling Chinese Voice's license] is final and no longer subject to review."⁵⁴ Chinese Voice also claims that "because the KQLS-LP frequency must be preserved, the Bureau cannot accept any application that attempts to make use of that frequency . . . [and Silver State's 2020 Permit Application] was, therefore, not only improperly granted, but was improperly accepted for filing also."⁵⁵

on May 4, 2020, by Silver State. *See also* "Opposition to Petition for Reconsideration" filed on May 12, 2020, by Chinese Voice; and "Reply Opposition to Petition for Reconsideration" filed on May 19, 2020, by Silver State. The Second STA Request pleadings are currently pending and will be addressed separately.

⁴⁴ *See Letter from Dale Bickel, Senior Engineer, Audio Division, Media Bureau to Silver State Broadcasting, LLC* (dated Jan. 8, 2020).

⁴⁵ Similarly, Silver State did not appeal the Bureau's December 19, 2019, dismissal of Silver State's June 2019 License Application to cover the 2019 Permit; the Bureau dismissed the June 2019 License Application due to the Translator's proposed channel and transmitter relocation contained in the 2020 Permit Application. *See Broadcast Actions*, Public Notice, Report No. 49641 (MB Dec. 26, 2019).

⁴⁶ *See supra* note 6.

⁴⁷ *Id.*

⁴⁸ Silver State cites 5 U.S.C. § 706(2)(A) of the APA. *See* Silver State 2020 Permit Petition at 3.

⁴⁹ *Id.*

⁵⁰ *Id.* at 2.

⁵¹ *Id.* at 4.

⁵² *Id.* at 4-5.

⁵³ Opposition to Silver State 2020 Permit Petition at 2.

⁵⁴ *Id.* at 4.

⁵⁵ *Id.* Chinese Voice also argues that the 2020 Permit Application is an improper attempt to circumvent the Bureau's January 8, 2020, denial, *see supra* note 44, of Silver State's First STA Request to operate on channel 276; Chinese Voice notes that a petition for reconsideration of the First STA Request denial was due within 30 days of the Bureau's decision. Silver State, however, filed the 2020 Permit Application on December 17, 2019, prior to the Bureau's denial of the First STA Request. We, therefore, will not further consider this argument.

In reply, Silver State argues that the Bureau should reinstate the 2020 Permit and allow the Translator to operate on channel 276 while Chinese Voice “exhausts its administrative and judicial remedies [which] is consistent with the Commission’s policy on permitting parties to close license assignment transactions prior to Commission consent having become final and unappealable.”⁵⁶ Silver State notes that such operation would be at Silver State’s own risk. Silver State also contends that recent precedent “makes it clear that LPFM stations that lose operating authority by any order other than denial of license renewal are obligated to cease operations immediately.”⁵⁷

Discussion. *Procedural Issues. Silver State 2020 Permit Petition.* In the Silver State 2020 Permit Petition, Silver State requests that the Bureau either: (1) issue a declaratory ruling concerning the Bureau’s action rescinding Silver State’s 2020 Permit and returning the Permit Application to pending status; or (2) grant reconsideration of said Bureau action and reinstate the 2020 Permit.⁵⁸

Section 1.2 of the Commission’s rules (Rules) provides that the Commission may “issue a declaratory ruling terminating a controversy or removing uncertainty.”⁵⁹ Here, no controversy or uncertainty exists. Pursuant to section 1.113(a) of the Rules, the Bureau may, on its own motion, set aside any action taken by it within 30 days from the date of public notice.⁶⁰ The Bureau announced grant of the 2020 Permit Application in a March 13, 2020, public notice and the Bureau rescinded said grant on March 17, 2020, four days later.⁶¹ Thus, the Bureau acted within 30 days from the date of public notice of its grant. We, therefore, decline to issue a declaratory ruling.⁶²

In addition, section 1.106(a)(1)⁶³ of the Rules prohibits petitions for reconsideration of interlocutory actions. An interlocutory action is an interim determination on a matter involving an application; it does not grant or deny the application.⁶⁴ Here, the Bureau’s action rescinding the 2020 Permit and returning the Permit Application to pending status is an interlocutory action.⁶⁵ Therefore, we dismiss the Silver State 2020 Permit Petition.

Summit License Petition. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission’s original order or raises additional facts not known or existing at the time of the petitioner’s last opportunity to present such matters.⁶⁶ In

⁵⁶ Silver State Reply at 3.

⁵⁷ *Id.* at 2. In support, Silver State cites a Bureau letter to DKQK-LP, Cupertino, California (*DKQLK-LP Letter*) ordering an expired LPFM station to cease operations immediately. See *DKQLK-LP, Cupertino, CA*, File Nos. BLL-20171120AAB, and BMPL-20180705AAQ, Letter Order (MB Apr. 16, 2020).

⁵⁸ Silver State 2020 Permit Petition at 1.

⁵⁹ 47 CFR § 1.2(a).

⁶⁰ 47 CFR § 1.113(a).

⁶¹ See *supra* note 6. As discussed *infra*, the Bureau rescinded the 2020 Permit due to Chinese Voice’s pending appeal and motion to stay the expiration of the license it formerly held for channel 276.

⁶² See *Shaw Communications, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 5852, 5855 (2009) (“The Commission has broad discretion whether to issue such a ruling.”)

⁶³ 47 CFR § 1.106(a)(1).

⁶⁴ See *e.g. KNCA(FM), Burney, CA*, File No. BPED-19960417MD, Letter Order, 23 FCC Rcd 11576 (MB 2008).

⁶⁵ As an aside, we reject Chinese Voice’s assertion that Bureau’s acceptance for filing of the 2020 Permit Application was “improper.” See *supra* note 55. Section 73.3564(b) of the Rules provides that “[a]cceptance of an application for filing merely means that it has been the subject of a preliminary review by the FCC’s administrative staff as to completeness. Such acceptance will not preclude the subsequent dismissal of the application if it is found to be patently not in accordance with the FCC’s rules.”

⁶⁶ See 47 CFR § 1.106(c),(d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

addition, section 1.106(e)⁶⁷ of the Rules stipulates that any petition based on a claim of electrical interference must be accompanied by an affidavit of a qualified engineer.

A petition for reconsideration may be filed by any party to the original proceeding or any party whose interests will be adversely affected by the action taken by the Commission.⁶⁸ If the petitioner was not a party to the original proceeding, it must show good reason why it was not possible to participate in the earlier stages of the proceeding and state with particularity the manner in which its interests are adversely affected by the action taken.⁶⁹

Although the Commission has allowed petitions for reconsideration in situations where prompt grant effectively precluded participation during the initial consideration of an application,⁷⁰ in each case the period between public notice of the application and grant was less than a week.⁷¹ Here, the time period between the April 19, 2019, public notice of the License application's acceptance for filing,⁷² and the April 29, 2019,⁷³ grant of the License exceeds what the Commission has found to be insufficient in previous cases.⁷⁴ We note that a number of Commission rules allow fewer than ten days to prepare and file a pleading.⁷⁵ While we have accepted petitions for reconsideration from non-parties in certain situations where special equitable considerations were at issue, no such considerations exist here.⁷⁶ The public notice announcing the License application as accepted for filing served as constructive notice to Summit. It appears that Summit made a deliberate choice to delay filing the Summit License Petition in order to gather listener complaints and prepare the petition.⁷⁷ For these reasons, we conclude that Summit was not "effectively precluded" from filing a timely petition or objection. Because Summit had an adequate opportunity to participate earlier in the proceeding but failed to do so, the Summit License Petition is not acceptable under section 1.106(b) of the Rules. Therefore, we dismiss the Summit License Petition to the extent it seeks reconsideration of the grant of the License. Although we dismiss Summit's request for reconsideration of the License grant, we find that it is appropriate to consider Summit's interference claim because the *Translator Interference Order* explicitly preserved the right of a full-

⁶⁷ 47 CFR § 1.106(e).

⁶⁸ *Id.* § 1.106(b)(1).

⁶⁹ *Id.*

⁷⁰ See *Gabriel Arango JNE Investments, Inc.* Letter Order, 23 FCC Rcd 1823, 1823 (MB 2008); See also, e.g., *Ted and Jana Tucker*, Memorandum Opinion and Order, 4 FCC Rcd 2816, 2816 (1989); *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17854-55 (1997).

⁷¹ See e.g. *Ted and Jana Tucker*, Memorandum Opinion and Order, 4 FCC Rcd 2816, 2816 (1989) (standing to file a petition for reconsideration found when application granted four days after public notice issued); *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17854-55 (1997) (standing to file a petition for reconsideration found when application granted five days after acceptance).

⁷² See *supra* note 8.

⁷³ See *supra* note 9.

⁷⁴ See *supra* note 71.

⁷⁵ See, e.g., 47 CFR § 1.45(c) (providing that a reply to an opposition to any motion, petition, or request must be filed within five days after the time for filing oppositions has expired); 47 CFR § 1.106(h) (providing that a reply to an opposition to a petition for reconsideration must be filed within seven days after the opposition is filed); 47 CFR § 1.301(c)(2) (providing that interlocutory appeals must be filed with the Commission's Office of the Secretary within five days after the relevant order is released).

⁷⁶ See, e.g., *Frank Jazzo, Esq.*, Letter, 32 FCC Rcd 5692, 5695 (MB 2017) (accepting a petition for reconsideration where petitioner had failed to timely object to a 250-mile FM translator move).

⁷⁷ See e.g., Summit License Petition Reply at 3 ("Six business days simply did not allow sufficient time for Summit to gather and analyze listener complaints to determine whether they were actionable, and then prepare and file an informal objection.").

service station to challenge a translator's operation on the basis of interference at any time, if the complaining station otherwise meets the heightened requirements set out therein.⁷⁸ Accordingly, we consider Summit's interference claim below.

Interference Claim. Pursuant to section 74.1203(a) of the Rules, an FM translator station "will not be permitted to continue to operate if it causes any actual interference to . . . the direct reception by the public of off-the-air signals of any authorized broadcast station."⁷⁹ The Commission has interpreted "direct reception by the public" to limit actionable complaints to those that are made by *bona fide* listeners.⁸⁰ When the Commission concludes that a *bona fide* listener has made an actionable complaint of uncorrected interference from an FM translator, it will notify the translator station that "interference is being caused" and direct the station to discontinue operations.⁸¹

As discussed above, in the *Remediation Required Letter*, we found that Summit submitted a valid and complete interference claim package. We, therefore, ordered Silver State to file either a plan to resolve the interference or information demonstrating that Summit has not submitted a valid and complete interference claim package.⁸²

We have reviewed Silver State's proposal to move the Translator to channel 276 at Las Vegas, proposed in the 2020 Permit Application, and find that the proposal does not resolve the interference to KJUL(FM). In the *Translator Interference Order*, the Commission declared that acceptable interference remediation plans include "relocating to an *available* same-band FM channel."⁸³ Currently, Chinese Voice, who was previously licensed to operate on channel 276 at Las Vegas, has a pending application for review and motion to stay the Bureau's finding that its license expired.⁸⁴ Until the Commission acts on these filings, channel 276 is not available to Silver State for its proposed relocation of the Translator. Because Silver State proposed to relocate the Translator to an unavailable channel, it failed to file an acceptable plan to remediate the interference to KJUL(FM) as required.⁸⁵ Therefore, we dismiss the 2020 Permit Application. Because Silver State has not provided any information demonstrating that Summit has not submitted a valid and complete interference claim package, we affirm the *Remediation Required Letter*'s finding in this regard, grant Summit's interference claim against the Translator as licensed, and order the Translator to cease operations.

In light of the Bureau's earlier dismissal of the June 2019 License Application covering the 2019 Permit,⁸⁶ and our decision herein to order the Translator to cease operations at the transmitter location

⁷⁸ *Translator Interference Order*, 34 FCC Rcd at 3470, para. 26.

⁷⁹ 47 CFR § 74.1203(a).

⁸⁰ See *Ass'n for Cmty Educ., Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12688, para. 16 (2004) (*Association*).

⁸¹ See 47 CFR §§ 74.1203(a)(3)(i) and 74.1203(b); see also *Translator Interference Order*, 34 FCC Rcd at 3471, para. 27; *Association*, 19 FCC Rcd at 12688, para. 15. Listener complaints must be signed and dated by the listener and contain the following information: (1) the complainant's full name, address, and phone number; (2) a clear, concise, and accurate description of the location where interference is alleged or predicted to occur; (3) a statement that the complainant listens over-the-air to the desired station at least twice a month; and (4) a statement that the complainant has no legal, financial, employment, or familial affiliation or relationship with the desired station.

⁸² See *Remediation Required Letter*.

⁸³ *Translator Interference Order*, 34 FCC Rcd at 34760, para. 5. (emphasis added).

⁸⁴ See *supra* note 41.

⁸⁵ *Translator Interference Order*, 34 FCC Rcd at 3471-75, paras. 27-35; *Remediation Required Letter*.

⁸⁶ See *supra* note 45.

proposed in the 2019 Permit, Summit has received the relief sought in the Summit 2019 Permit Petition. Therefore, we dismiss the Summit 2019 Permit Petition as moot.⁸⁷

Conclusion/Actions. For the reasons discussed above, IT IS ORDERED that the Petition for Reconsideration filed by Summit American, Inc., on June 13, 2019, IS DISMISSED.

IT IS FURTHER ORDERED that Petition for Declaratory Ruling, or in the alternative, Petition for Reconsideration, and to Reinstate Construction Permit filed by Silver State Broadcasting, LLC, on April 15, 2020, IS DISMISSED.

IT IS FURTHER ORDERED that the pending application for a minor modification of license (File No. 93597) filed by Silver State Broadcasting, LLC IS DISMISSED.

IT IS FURTHER ORDERED, that the Petition for Reconsideration filed by Summit American, Inc. on June 3, 2019, IS DISMISSED to the extent it seeks reconsideration of the grant of the license (File No. BLFT-20190415ABG) for Translator Station K284CW but the interference claim set forth in the petition, as supplemented by the “Supplement-Declaration of Scott Gentry, President of Summit American, Inc.,” filed on October 16, 2019, IS GRANTED.

IT IS FURTHER ORDERED that, pursuant to sections 74.1203 and 0.283 of the Rules,⁸⁸ Silver State Broadcasting, LLC IS HEREBY ORDERED TO CEASE OPERATION OF TRANSLATOR STATION K284CW, Winchester, Nevada, IMMEDIATELY.⁸⁹

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁸⁷ See e.g. *K292HC, Woodlake, California*, File Nos. BLFT-20160412ADB, BPFT-20160729ANI, and BLFT-20170824AAAL. (dated Mar. 8, 2019) (dismissing petition as moot due to Bureau’s rescission of license grant).

⁸⁸ 47 CFR §§ 74.1203 and 0.283.

⁸⁹ Any request by Silver State to operate with reduced/temporary facilities on this same channel will only be granted upon a demonstration, as set forth in the *Translator Interference Order*, that said facilities will not cause interference at all listening locations cited by the Original Complainants. See *Remediation Required Letter* at note 13.

Attachment 2



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

August 24, 2020

In Reply Refer to:
1800B3-SS

Polnet Communications, Ltd.
c/o Ari Meltzer, Esq.
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006

MB Capital Management, LLC
c/o Scott Woodworth, Esq.
Edinger Associates, PLLC
1725 I St., N.W., Suite 300
Washington, DC 20006

Re: **W295CG, Lake Bluff, IL**
MB Capital Management, LLC
Facility ID No. 141545
File No. BPFT-20190801AAI

Application for Minor Change to Licensed Facility

Petition for Reconsideration

Dear Counsel:

We have before us a Petition for Reconsideration (Petition) filed by Polnet Communications, Ltd. (Polnet)¹ on September 23, 2019, and a responsive pleading.² The Petition seeks reconsideration of the August 20, 2019, grant of the referenced application for a minor change to the licensed facility (Modification Application) of MBCM's FM translator station W295CG (Channel 296; 107.1 MHz), Lake Bluff, Illinois (Station). For the reasons discussed below, we dismiss the Petition.

Background. MBCM filed the Modification Application on August 1, 2019, which the staff accepted for filing.³ The Modification Application was filed in order to eliminate any potential interference to Polnet's W296DA or any other co-channel facilities when operating as proposed on Channel 296D.⁴ On August 20, 2019, the staff granted the uncontested Modification Application.⁵ On September 23, 2019, Polnet filed the Petition.

¹ Polnet is licensee of FM translator station W296DA on Channel 296 (107.1 MHz), Vernon Hills, Illinois.

² On October 10, 2019, MB Capital Management, LLC (MBCM) filed an Opposition to Petition for Reconsideration (Opposition).

³ See *Broadcast Applications*, Public Notice, Report No. 29544 (MB Aug. 6, 2019) (*Acceptance PN*).

⁴ See Modification Application, Attach. 13, Engineering Study of Goldman Engineering Management, LLC.

In the Petition, Polnet requests that grant of the Modification Application should be rescinded.⁶ Polnet asserts that on June 17, 2019, the staff ordered MBCM to “cease operation of the Station immediately” for failure to resolve any of the 33 listener interference complaints submitted by Polnet.⁷ Polnet claims that the minor changes authorized by the grant of the Modification Application will continue to cause “impermissible interference” to seven of Polnet’s W296DA listeners.⁸ Specifically, Polnet argues that the Modification Application’s grant should be rescinded because the proposal in the granted Modification Application does not comply with the interference protections in section 74.1204 of the FCC’s rules (Rules).⁹ As evidence, Polnet attaches complaints from seven listeners who claim to regularly listen to W296DA within the Station’s 25 dBu contour. Six of the listeners claim to listen at locations that are (1) within W296DA’s 45 dBu contour and (2) where the undesired to desired (U/D) signal strength between the Station, as proposed in the Modification Application, and W296DA, exceeds -20 dB. Also attached to the Petition is a map plotting the specific locations at which the listeners regularly listen to W296DA and U/D data demonstrating the undesired to desired signal strength at each location. In addition, Polnet attaches a declaration by Kent Gustafson, Operations Consultant to Polnet, stating that W296DA is operating within its licensed parameters, has used commercially reasonable efforts to inform MBCM of the claimed interference, and attempted a private resolution.¹⁰

Polnet claims that it was unable to participate in the proceeding prior to the grant of the Modification Application because neither the Communications Act of 1934, as amended (Act), nor the Rules provides for the filing of a petition to deny a license application.¹¹ Polnet further asserts that the Commission granted the Modification Application just 20 days after it was filed and, to the best of Polnet’s knowledge, without placing the Modification Application on Public Notice.¹²

In its Opposition, MBCM argues that Polnet’s Petition is procedurally defective because it does not conform to the requirements of section 1.106 of the Rules¹³ and must be dismissed.¹⁴ Specifically, regarding Polnet’s claim that neither the Act nor the Rules provides for the filing of a petition to deny a license application, MBCM states that the Modification Application is not a license application and that Polnet could have filed a petition to deny or an informal objection pursuant to the Rules.¹⁵ Next, MBCM

⁵ See *Broadcast Actions*, Public Notice, Report No. 49557 (MB Aug. 23, 2019).

⁶ Petition at 1.

⁷ See *Letter from James D. Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau, to MB Capital Management, LLC*, 1800B3-KV (MB Jun. 27, 2019).

⁸ Petition at 2-3.

⁹ *Id.* at 3.

¹⁰ *Id.* at 3-4. See also Exhs. 1-3.

¹¹ *Id.* at 1, n.1, citing 47 U.S.C. § 309(c); 47 CFR §§ 73.3580(a)(3), 73.3584(a) and *Clear Channel Broadcasting Licenses, Inc.*, Letter Order, 21 FCC Rcd 8677 n.1 (MB 2006).

¹² *Id.*

¹³ 47 CFR § 1.106. Section 1.106 requires a party that did not participate in the earlier stages of a proceeding must show good cause why it did not participate.

¹⁴ Opposition at 1.

¹⁵ *Id.* MBCM also notes that Polnet filed its Petition here against a “license application” captioned as, “File No. BLPFT-20190801AAI.” MBCM states that no such license application has been filed. MBCM asserts that the

asserts that Polnet is incorrect in its claim that the Modification Application was never placed on public notice as accepted for filing.¹⁶ Finally, MBCM argues that although Polnet claims that 20 days was not enough time for it to file a petition to deny prior to the grant of the Modification Application, Polnet cites no precedent to support its claim.¹⁷

Discussion. Section 1.106(b)(1) of the Rules allows a petition for reconsideration to be filed by any party to the original proceeding or any party whose interests will be adversely affected by the action taken by the Commission.¹⁸ If a petitioner was not a party to the original proceeding, it must show good reason for why it was unable to participate in the earlier proceeding.¹⁹ However, the Commission has accepted petitions for reconsideration when the grant of an application occurred shortly after the application was placed on public notice, finding that such expedient grant effectively precluded participation during the initial consideration of an application.²⁰

Here, the staff granted the Modification Application on August 20, 2019, two weeks after public notice of acceptance for filing. Not only did the *Acceptance PN* serve as constructive notice of the acceptance for filing of the Modification Application, but Polnet was already actively involved with concurrent proceedings involving the same issue and Station.²¹ We therefore find that Polnet was not effectively precluded from filing a petition to deny or an informal objection to the Modification Application prior to its grant. Because Polnet had adequate opportunity to participate earlier in the proceeding, but failed to do so, the Petition is not acceptable under section 1.106(b). Moreover, we find that reconsideration of the grant of the Modification Application is not required in the public interest under section 1.106(c)(2).²² In this respect, we emphasize that MBCM will continue to be subject to the provisions of section 74.1203²³ with the facilities authorized in the granted Modification Application. Any *bona fide* interference complaints received due to MBCM's operation of the Station with these

Modification Application, File No. BPFT-20190801AAI, is a construction permit application, which may be challenged by filing either a petition to deny or an informal objection, and that Polnet filed neither. *Id.* at n.1.

¹⁶ *Id.* MBCM attaches a copy of the *Acceptance PN*. *Id.*, Exh. A.

¹⁷ *Id.* at 1-2.

¹⁸ 47 CFR § 1.106(b)(1).

¹⁹ *Id.*

²⁰ See *Ted and Jana Tucker*, Memorandum Opinion and Order, 4 FCC Rcd 2816, 2816 (1989) (standing to file a petition for reconsideration found when application granted four days after public notice issued); *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17854-55 (1997) (standing to file a petition for reconsideration found when application granted five days after acceptance).

²¹ See *supra* note 7.

²² 47 CFR § 1.106(c)(2). Further, we note that although section 1.106(c)(2) permits facts not previously raised to be considered when “consideration of the facts relied on is required in the public interest,” this does not in any way affect or provide relief from the requirement in section 1.106(b)(1) that a person seeking reconsideration of Commission action must either already be a party to the proceeding or explain why earlier participation was not possible. See *Regionet Wireless License, LLC*, Memorandum Opinion and Order, 17 FCC Rcd 21269, 21272, para. 10 (2002). See also *Telecinco, Inc.*, Letter Order, 22 FCC Rcd 21526, 21527 (MB 2007) (Section 1.106(b)(1) “is an absolute requirement for non-parties, and is wholly separate from Section 1.106(c)(2).”).

²³ 47 CFR § 74.1203.

facilities may, if not *immediately* resolved, result in prompt suspension of operating authority, including, as appropriate, suspension of program test authority for the Station.²⁴

Conclusion/Actions. For the reasons set forth above, the Petition for Reconsideration filed on September 23, 2019, by Polnet Communications, Ltd., IS DISMISSED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

²⁴ See *Marissa G. Repp, Esq., Donald E. Martin, Esq.*, Letter Order, 32 FCC Rcd 7538, 7541 (MB 2017) (petition for reconsideration dismissed as procedurally defective where petitioner had 10 days to prepare and file a challenge earlier in the proceeding and did not).

Attachment 3



Federal Communications Commission
Washington, D.C. 20554

May 2, 2019

In Reply Refer to:
1800B3-HOD

Coe W. Ramsey, Esq.
Brooks, Pierce, McLendon, Humphrey &
Leonard, L.L.P.
PO Box 1800
Raleigh, NC 27602

Steven L. White, Director
Triangle Access Broadcasting, Inc.
7813 Highlandview Cir.
Raleigh, NC 27613

In re: Carolina Radio Group, Inc.
W225DF, Raleigh, NC
Facility ID No. 143608
File No. BNPFT-20180723AAW

Petition for Reconsideration

Dear Mr. Ramsey and Mr. White:

We have before us a Petition for Reconsideration (Petition) filed by Triangle Access Broadcasting, Inc. (Triangle) on August 30, 2018. Triangle challenges our grant of an application (Application) for a construction permit for W225DF, Raleigh, North Carolina (Translator), filed by Carolina Radio Group, Inc. (CRG). For the reasons discussed below, we dismiss the Petition.

Background. CRG initially filed the Application on July 23, 2018. At that time, the Application specified WBBB(FM), Raleigh, North Carolina, as the Translator's primary station. On August 7, 2018, CRG amended the Application, changing the Translator's primary station to the HD3 signal of WQDR-FM, Raleigh, North Carolina. Public notice of the amendment was issued on August 10, 2018.¹ We granted the Application on August 20, 2018.²

Triangle then filed the Petition. Therein, Triangle acknowledges that it is not a party to the application proceeding and thus must show good cause why it could not participate earlier. Triangle argues that it was effectively precluded from participating earlier because we granted the Application "only 10 days after public notice was given" that it had been amended.³

¹ *Broadcast Applications*, Public Notice, Report No. 29297 (MB Aug. 10, 2018) (*Public Notice*).

² *Broadcast Actions*, Public Notice, Report No. 49306 (MB Aug. 23, 2018).

³ Petition at 3. Triangle also argues that CRG must demonstrate a "technical need" for the Translator. *Id.* at 1-3. However, given our finding that Triangle's petition is not acceptable under Section 1.1106(b), we do not consider this argument.

In response to the Petition, CRG filed an Opposition to Petition for Reconsideration (Opposition) on September 10, 2018, which asserts that Triangle cannot show “good cause” why it did not participate earlier in this proceeding.⁴ Triangle filed a Reply to Opposition (Reply) on September 14, 2018, which restates its argument that there was good cause for its failure to participate earlier.⁵

Discussion. 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.⁶ If a petitioner was not a party to the original proceeding, it must show good reason why it was not possible to participate earlier in the proceeding.⁷ The Commission has found such good reason to exist and has accepted petitions for reconsideration filed by non-parties when grant of an application occurred shortly after the application was placed on public notice.⁸ In these cases, the Commission has concluded that expedient grant of an application effectively precluded participation during the initial consideration of the application.⁹

We reject Triangle’s argument that it was effectively precluded from participating earlier in this proceeding. Here, ten days elapsed between public notice that CRG had amended the Application and grant of the Application. To date, the Commission has found effective preclusion to exist only where the period between the filing of an application and its grant was less than a week.¹⁰ This is consistent with the Commission’s determination, in other contexts, that ten days is a reasonable period of time for preparing and filing of a pleading.¹¹ Finally, we note that Triangle had both constructive and actual notice of the acceptance for filing of the amended Application.¹² For these reasons, we conclude Triangle had adequate opportunity to participate earlier in the proceeding. Because it failed to do so, the Petition is not acceptable under Section 1.106(b). We also find that reconsideration of the grant of the Application is not required in the public interest under Section 1.106(c)(2). Accordingly, we will dismiss the Petition.

⁴ Opposition at 6-7.

⁵ Reply at 2. Triangle also reprises its “technical need” argument. *Id.* at 2-4.

⁶ 47 CFR § 1.106(b)(1).

⁷ *Id.*

⁸ See *Ted and Jana Tucker*, Memorandum Opinion and Order, 4 FCC Rcd 2816, 2816, para. 3 (1989) (standing to file a petition for reconsideration found when application granted four days after public notice issued); *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17854-55, para. 9 (MMB 1997) (standing to file a petition for reconsideration found when application granted five days after acceptance); *Castle Holdings, LLC*, Letter Order, 31 FCC Rcd 2217, 2219 (MB 2016) (standing to file a petition for reconsideration found when application granted two days after public notice issued).

⁹ *Id.*

¹⁰ *Id.*

¹¹ See, e.g., 47 CFR § 1.45(c) (providing that a reply to an opposition to any to any motion, petition, or request must be filed within five days after the time for filing oppositions has expired); 47 CFR § 1.106(h) (providing that a reply to an opposition for a petition for reconsideration must be filed within seven days after the opposition is filed); 47 CFR § 1.301(c)(2) (providing that interlocutory appeals must be filed with the Commission’s Secretary within five days after the relevant order is released).

¹² Petition at 3 (noting that Triangle took certain steps “when it learned of the updated primary station, and before the grant”).

Conclusion/Ordering Clauses. For the reasons set forth above, **IT IS ORDERED** that the Petition for Reconsideration filed by Triangle Access Broadcasting, Inc., on August 30, 2018, **IS DISMISSED.**

Sincerely,

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

Albert Shuldiner
Chief, Audio Division
Media Bureau