



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

December 10, 2020

In Reply Refer to:
1800B3-SS

Sumarrase, Inc.
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Fort Myers Broadcasting Co.
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Re: **W239CL, Golden Gate, FL**
Fort Myers Broadcasting Company
Facility ID No. 139116
File No. 0000094268

Application for Renewal of License

Petitions for Reconsideration

Dear Counsel and Petitioner:

We have before us two Petitions for Reconsideration filed by Sumarrase, Inc. (Sumarrase) on February 24, 2020 (February Petition) and on March 23, 2020 (March Petition; collectively, Petitions), and responsive pleadings.¹ The two Petitions seek reconsideration of the January 29, 2020, grant of the

¹ Petition for Reconsideration of Sumarrase, Pleading No. 0000106515 (Feb. 24, 2020) (February Petition); Petition for Reconsideration of Sumarrase, Pleading Nos. 0000108726, 0000108741 (Mar. 23, 2020) (two identical pleadings, collectively, March Petition); Opposition to Petition for Reconsideration filed by Fort Myers Broadcasting Company (FMBC), Pleading No. 0000107360 (Mar. 9, 2020) (February Opposition); Contingent Opposition to Petition for Reconsideration filed by FMBC, Pleading No. 0000107594 (Mar. 11, 2020) (filed in response to a Sumarrase petition for reconsideration that was served on FMBC on February 28, 2020, but does not appear to have been filed with the Commission); Opposition to Petition for Reconsideration filed by FMBC, Pleading Nos. 0000111539, 0000111540 (Apr. 6, 2020) (two identical pleadings, collectively, March Opposition). On July 31, August 11, 23, and September 10, 2020, Sumarrase filed additional Petitions for Reconsideration (Pleading Nos. 0000119563, 0000120308, 0000120661, and 0000121398), which were opposed by Fort Myers on August 8, 14, 31, and November 5, 2020 (Pleading Nos. 0000120260/263, 0000120391, 0000120913, and 0000120570). Sumarrase filed replies on November 11 and 19, 2020 (Pleading Nos. 0000125686 and 0000126450). Because the July 31, August 11, 23, and September 10, 2020, Petitions for Reconsideration were not filed within 30 days of the date of public notice announcing the grant of the Application, we dismiss them as untimely. *See* 47 U.S.C. § 405(a); *infra* page 5; *see also Lee Petro, Esq.*, Letter Order, 25 FCC Rcd 2759, 2760 (D.C. Circuit discourages Commission from accepting such petitions in the absence of extremely unusual circumstances).

referenced amended license renewal application (Application) of FMBC for FM translator station W239CL, Golden Gate, Florida (Station). For the reasons discussed below, we dismiss both Petitions.

Background. FMBC timely filed an application for renewal of the Station's license on September 23, 2019.² On January 29, 2020, FMBC amended the uncontested Application, and the staff granted it that same day.³ On February 24 and March 23, 2020, Sumarrase filed its Petitions.

In the February Petition, Sumarrase asserts that grant of the Application should be rescinded.⁴ The February Petition is accompanied by a brief letter from Aston Anderson, who asserts that he is "a valued listener of . . . SUGA 95.7FM" and that he "keep[s] getting radio interference from a Spanish station on the same dial."⁵

In its February Opposition, FMBC argues that the February Petition is procedurally defective because it does not conform to the requirements of section 1.106 of the FCC's rules (Rules).⁶ Specifically, FMBC argues that Sumarrase fails to support the February Petition's claims of electrical interference with an affidavit of a qualified engineer and that the February Petition does not explain why Sumarrase waited until after grant of the Application to raise its interference allegations.⁷ FMBC also argues that Sumarrase has not provided sufficient information to consider its interference claim and that its station "operates illegally" using an unauthorized antenna operating above its authorized power.⁸

In the March Petition, Sumarrase argues that it is impossible for both its station, WSGD-LP, and FMBC's W239CL to operate on the same frequency on Channel 239.⁹ Sumarrase states that as long as FMBC is allowed to broadcast on 95.7 MHz along with its carrier station WAXA 1200 AM and sister station WNPL 1420 AM, there will be a negative impact on Sumarrase's WSGD-LP.¹⁰ Sumarrase maintains that FMBC was recently approved to move to 92.1 MHz (Channel 221), which would have enabled Sumarrase to have access to 95.7 MHz, but FMBC later cancelled its request.¹¹ Sumarrase claims that FMBC's action is an example of poor business practice and a manipulation of the process.¹² Sumarrase also claims that FMBC is attempting to use its power to take over station WSGD-LP by

File. No. 0000081892. *See also Broadcast Applications*, Public Notice, Report No. PN-1-190925-01 (rel. Sep. 25, 2019).

³ *See Broadcast Actions*, Public Notice, Report No. PN-2-200131-01 (rel. Jan. 31, 2020).

⁴ February Petition at 1.

⁵ *See* February Petition, Attachment, Letter from Aston Anderson.

⁶ February Opposition at 1; *see also* 47 CFR § 1.106.

⁷ *Id.*

⁸ *Id.* at 2 & Exhibit B.

⁹ *See* March Petition at 2, 8.

¹⁰ *See id.* at 2.

¹¹ *Id.*

¹² *Id.*

tampering with its equipment.¹³ For these reasons, Sumarrase argues that the grant of FMBC's Application should be rescinded.¹⁴

In the alternative, Sumarrase requests that the Application be designated for hearing to determine: (1) the facts and circumstances relating to the construction of the Station's facilities; (2) the facts and circumstances relating to the preparation, filing and prosecution of FMBC's license application; (3) whether the Station operated with an effective radiated power in excess of the power authorized in its license; (4) whether the Station overmodulated with Sumarrase's transmitter; and (5) whether FMBC has met the standard set out in section 309(k) of the Communications Act of 1934, as amended (Act), for license renewal.¹⁵

In its March Opposition, FMBC argues that the March Petition must be dismissed because it was not filed within 30 days of the action complained of and the allegations of electrical interference were not supported by an affidavit of a qualified engineer.¹⁶

Discussion. 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 new facts or changed circumstances not known or existing at the time of the petitioner's last opportunity to present such matters.¹⁷ In addition, section 309(k) of the Act, provides that we are to grant an application for renewal of a broadcast station license if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.¹⁸ If, however, the licensee fails to meet the standard set forth in section 309(k), the Commission may deny the renewal application after notice and opportunity for a hearing under section 309(e) of the Act, or grant the application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted."¹⁹ As discussed below, Sumarrase has not raised an issue warranting reconsideration of our grant of the Application on January 29, 2020, under the standard set forth in section 309(k) of the Act.

February Petition. We find that Sumarrase lacks standing to request reconsideration under section 1.106(b) of the Rules.²⁰ Because Sumarrase did not file a petition to deny, Sumarrase must

¹³ See *id.* at 2, 5.

¹⁴ See *id.* at 2, 8.

¹⁵ 47 U.S.C. § 309(k). See also Petition at 4, 7.

¹⁶ See March Opposition at 1.

¹⁷ 47 CFR § 1.106(c); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 397 U.S. 967 (1966); *Davis & Elkins Coll.*, Memorandum and Order, 26 FCC Rcd 15555, 15556, para. 5 (MB 2011).

¹⁸ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

¹⁹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²⁰ 47 CFR § 1.106(b).

demonstrate that its interests were adversely affected by the Commission's grant of the Application and that it was not possible for Sumarrase to participate in the earlier stages of the proceeding.²¹ Sumarrase fails on both counts. First, Sumarrase makes no effort to explain why it did not file a petition to deny prior to the grant of the Application.²² Second, Sumarrase has not demonstrated that the grant of the Application has caused it any direct injury.²³ Specifically, Sumarrase has not provided the requisite particularized showing demonstrating predicted or actual harmful interference to WSGD-LP. By failing to articulate how its interests have been adversely affected in a manner cognizable by the Commission, Sumarrase has not established any of the elements for standing under section 1.106(b)(1).²⁴

Even if Sumarrase had standing to file the February Petition, we find that the lone declaration Sumarrase submitted with the February Petition is not probative that the Station will interfere with WSGD-LP. The February Petition is not accompanied by an affidavit or declaration made under penalty of perjury from a qualified engineer, as required by section 1.106(e) of the Rules, where a petition for reconsideration is based on a claim of electrical interference.²⁵ In addition, the February Petition and the accompanying letter do not contain the information that the Commission requires for a valid and actionable interference claim. Specifically, Sumarrase has not submitted (1) the required minimum number of valid listener complaints, as determined using table 1 of section 74.1203(a)(3) and defined in section 74.1201(k) of the Rules; (2) a map plotting the specific location of the alleged interference in relation to the complaining station's 45 dBμ contour; (3) a statement that the complaining station is

²¹ See 47 U.S.C. § 405; 47 CFR § 1.106. An informal objector lacks standing as a party to file a petition for reconsideration. *Sagittarius Broad. Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 22551 (2003); *Citicasters Co.*, Memorandum Opinion and Order, 14 FCC Rcd 17900 (MB 1999); *Arizona Lotus Corp.*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 5339 (1996); *Gulfcoast Broad., Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 483 (1993); *Redwood Microwave Assoc.*, Memorandum Opinion and Order, 61 FCC 2d 442 (1976). Sumarrase filed neither a petition to deny nor an informal objection in this proceeding.

²² See 47 CFR § 1.106(b)(1) (permitting a reconsideration petition to be filed by "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..."). In order to qualify as a "party to the proceeding," a petitioner for reconsideration generally must have filed a valid petition to deny against the licensing application that is the subject of the action of which the petitioner seeks reconsideration. See, e.g., *San Luis Obispo Limited Partnership*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 9616, 9617, para. 3 (1996). A petitioner who does not qualify as "a party to the proceeding" prior to the filing of the reconsideration petition must demonstrate that 1) its interests were adversely affected by the Commission's grant of the application, and 2) there was good reason why it was not possible for it to participate in the earlier stages of the proceeding. In this instance, the Application was accepted for filing on December 30, 2019. See *Broadcast Applications*, Public Notice, Report No. PN- 1-200102-01 (rel. Jan 2, 2020) (filed under FMBC's main station, WNPL(AM)). Thus, Sumarrase had at its disposal much of the information that it would eventually use to support its petition for reconsideration during the thirty-day period for filing a petition to deny that commenced when the Application was accepted for filing.

²³ To determine if a party's interests have been adversely affected, the Commission frequently relies upon the three-pronged standing test under which a party must establish (1) a distinct and palpable injury-in-fact that is (2) traceable to the respondent's conduct and (3) redressable by the relief requested. See, e.g., *Weblink Wireless, Inc.*, Order on Reconsideration, 17 FCC Rcd 24642 (WTB 2002); *AT&T Corp. v. Business Telecom, Inc.*, Order on Reconsideration, 16 FCC Rcd 21750 (2001); *Chris C. Hudgins*, Order on Reconsideration, 16 FCC Rcd 7941 (WTB 2001).

²⁴ See, e.g., *Mr. Randy Henry*, Letter Order, 22 FCC Rcd 2305, 2306 (MB 2007).

²⁵ 47 CFR §§ 1.16, 1.106(e).

operating within its licensed parameters; (4) a statement that the complaining station licensee has used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted private resolution; and (5) U/D data demonstrating that at each listener location the undesired to desired signal strength exceeds -20dB for co-channel situations, -6 dB for first-adjacent channel situations or 40 dB for second- or third-adjacent channel situations, calculated using the Commission's standard contour prediction methodology set out in section 73.313 of the Rules.²⁶ Because the February Petition does not provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the Application is *prima facie* inconsistent with Section 309(k) of the Act, the February Petition does not raise an issue warranting reconsideration of our previous action granting the Application.

March Petition. Section 405(a) of the Act states that any party aggrieved by an order, decision, report, or action of the Commission, or of any designated authority within the Commission, may file a petition for reconsideration within thirty days from the date upon which public notice of the order, decision, report, or action is given.²⁷ Public notice of the grant of the subject Application was given on January 31, 2020,²⁸ and thus, petitions for reconsideration were due no later than March 2, 2020.²⁹ The Commission lacks authority to waive or extend the statutory 30-day filing period for petitions for reconsideration unless the petitioner shows that its failure to file in a timely manner resulted from "extraordinary circumstances."³⁰ Sumarrase did not present an explanation for the late-filing of the March Petition. Because the March Petition was not filed within thirty days of the date of public notice announcing the grant of the Application, we must dismiss it as untimely.³¹

²⁶ See 47 CFR § 74.1203(a)(3). As discussed above, Sumarrase submitted one listener complaint from Aston Anderson. See February Petition, Attachment, "Letter from Aston Anderson." One listener complaint is below the minimum that the Commission requires even for the smallest population tier specified in Table 1 to section 74.1203(a)(3). 47 CFR § 74.1204(a)(3). Moreover, Anderson's letter does not contain all of the information required for a listener complaint to be considered valid under section 74.1201(k) of the Rules, and Sumarrase makes no demonstration that the interference alleged by Anderson occurs within the 45 dBμ service contour of the Station as required by section 74.1203(a)(3). 47 CFR §§ 74.1201(k), 74.1203(a)(3).

²⁷ 47 U.S.C. § 405(a).

²⁸ See *Broadcast Actions*. The day after the release date; i.e., February 1, 2020, marked the beginning of the thirty-day period for filing a petition for reconsideration. See 47 CFR § 1.4(b).

²⁹ See 47 CFR § 1.4(e) and (j).

³⁰ See, e.g., *Gardner v. FCC*, 530 F.2d 1086, 1091-92 (D.C. Cir. 1976).

³¹ Like the February Petition, the March Petition also does not comply with the requirements for standing in section 1.106(b)(1) of the Rules, nor does it comply with section 1.106(e) of the Rules requiring that petitions for reconsideration based upon a claim of electrical interference must be accompanied by a supporting affidavit of a qualified engineer. See *supra* n.16; 47 CFR § 1.106(b)(1), (e).

Conclusion/Actions. For the reasons set forth above, the Petitions for Reconsideration filed on February 24 and March 23, 2020, by Sumarrase, Inc., ARE DISMISSED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau