



Federal Communications Commission  
Washington, D.C. 20554

December 10, 2020

*In Reply Refer To:*  
1800B3-DB

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In re: Station WSGD-LP, Lehigh Acres, FL  
Sumarrase, Inc.  
Facility ID No. 194387  
File No. 0000081972

**Petition for Reconsideration**

Gentlemen,

We have before us a Petition for Reconsideration (Petition)<sup>1</sup> filed by Fort Myers Broadcasting Company (FMBC).<sup>2</sup> The Petition seeks reconsideration of the Media Bureau's (Bureau) grant of Sumarrase, Inc.'s (Sumarrase) license renewal application (Application) for low power FM station WSGD-LP (Station), at Lehigh Acres, Florida.<sup>3</sup> Also before us is an Opposition to Petition for

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<sup>1</sup> Fort Myers Broadcasting Company, Petition for Reconsideration, Pleading No. 0000105766 (Feb. 11, 2020).

<sup>2</sup> FMBC is the licensee of stations WINK-FM (96.9 MHz) and WTLQ-FM (97.7 MHz), Fort Myers, Florida. These stations and low power FM station WSGD-LP are located in the Fort Myers- Naples market. See BIA Advisory Services, BIA Kelsey, [media.biakelsey.com/MAPro/](http://media.biakelsey.com/MAPro/).

<sup>3</sup> See *Broadcast Actions*, Public Notice, Report No. PN-2-200117-01 (rel. Jan 17, 2020) (*Broadcast Actions*).

Reconsideration (Opposition) filed by Sumarrase and related responsive pleadings.<sup>4</sup> For the reasons discussed below, we dismiss the Petition.

**Background.** Sumarrase filed the Application on September 23, 2019, for a renewal license term ending on February 1, 2028.<sup>5</sup> No petitions to deny or informal objections were filed against the Application. On January 15, 2020, the Bureau granted the Application.<sup>6</sup> FMBC filed a petition for reconsideration of this grant on February 11, 2020.<sup>7</sup>

In its Petition, FMBC states that the facts and circumstances justifying the relief sought are set out in a complaint filed with the Enforcement Bureau (EB) on May 10, 2019.<sup>8</sup> FMBC asks that the complaint be incorporated by reference and states that it proves, by declarations of persons with actual knowledge of the facts and by materials purportedly subject to official notice, that the Station was neither constructed nor operated in the manner set out in its FCC authorizations.<sup>9</sup> FMBC summarizes the 2019 Complaint in its Petition, arguing that the Application should be rescinded because: 1) Sumarrase failed to construct the facilities specified in its modified construction permit within the prescribed time period; (2) the Station has not operated in a manner authorized in its license for over a year; (3) the Station's license was either issued in error for facilities that were never constructed or automatically forfeited for its failure to broadcast as authorized for a period in excess of one year; and (4) Sumarrase does not operate the Station in a non-commercial manner.<sup>10</sup>

In the alternative, FMBC requests that the Application be designated for hearing to determine: (1) the facts and circumstances relating to the construction of the Station's transmitting facilities; (2) the facts and circumstances relating to the preparation, filing and prosecution of Sumarrase's license application, BNPL-20131113AAH; (3) whether the Station was operated with an effective radiated power in excess of the power authorized in its license; (4) whether the Station provided a non-commercial

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<sup>4</sup> Opposition to Petition for Reconsideration filed by Sumarrase, Inc., Pleading No. 0000106512 (Feb. 24, 2020); Reply to Opposition filed by Fort Myers Broadcasting Company, Pleading No. 0000107162 (Mar. 5, 2020) (Reply); Response to Reply to Opposition to Petition for Reconsideration filed by Sumarrase, Inc., Pleading Nos. 0000107697 and 0000107840 (Mar. 12, 2020) (Sumarrase Reply); Motion for Leave to File Supplemental Pleading filed by Fort Myers Broadcasting Company, Pleading No. 0000125580 (Nov. 5, 2020); Consolidated Motion to Dismiss filed by Fort Myers Broadcasting Company, Pleading No. 0000125582 (Nov. 5, 2020); Opposition to Consolidated Motion to Dismiss filed by Sumarrase, Inc., Pleading No. 0000125685 (Nov. 9, 2020); Reply to Opposition to Consolidated Motion to Dismiss filed by Fort Myers Broadcasting Company, Pleading No. 0000125980 (Nov. 13, 2020); and Final Reply to Any Fort Myers Broadcasting Company to FCC Motions filed by Sumarrase, Inc., Pleading No. 0000126445 (Nov. 19, 2020). Note that Sumarrase Pleading Nos. 0000107697 and 0000107840 are identical.

<sup>5</sup> The Application was accepted for filing on September 25, 2019. *Broadcast Applications*, Report No. PN-1-190925-01 (Sep. 25, 2019).

<sup>6</sup> See *Broadcast Actions*.

<sup>7</sup> See Petition.

<sup>8</sup> See Petition at 3, referencing Fort Myers Broadcasting Company, Complaint, File No. BLL-20180104AAH (May 10, 2019) (2019 Complaint).

<sup>9</sup> See Petition at 3.

<sup>10</sup> See Petition 1. See also 2019 Complaint at 1-4. FMBC included a copy of the complaint as an attachment to the Petition. Petition, Attach., 2019 Complaint.

educational service to its community of license; and (5) whether Sumarrase has met the standard set out in Section 309(k) of the Communications Act (the Act), as amended, for license renewal.<sup>11</sup>

In its Opposition, Sumarrase states that the Station is operating with an approved non-directional antenna and is otherwise in compliance with all Commission rules and regulations.<sup>12</sup> It also states that it is in the process of taking legal action against FMBC for allegedly tampering with the Station's transmitter.<sup>13</sup>

In its Reply, FMBC reiterates the arguments raised in its Petition<sup>14</sup> and states that the Opposition is unsupported by evidentiary facts.<sup>15</sup> Additionally, FMBC states that the transmitter tampering arguments raised in Sumarrase's police report must be rejected as inherently improbable and as irreconcilable with physical facts, common observation, and experience.<sup>16</sup> FMBC further states that the facts alleged and proven in its 2019 Complaint, Petition, and Reply<sup>17</sup> demonstrate that the Commission cannot make the findings required by Section 309(k) of the Act to support renewal of the Station's license, and therefore the action granting the renewal license should be set aside.<sup>18</sup>

In response to FMBC's Reply, Sumarrase alleges that FMBC is "tampering with WSGD equipment in an effort to gain WSGD-LP 95.7 radio station" or force it off the air.<sup>19</sup> Sumarrase asks the Commission to direct FMBC to explain why it visited the WSGD-LP transmitter tower site on numerous occasions without Sumarrase's knowledge or permission and to identify who provided FMBC with authorization to access the facility, take pictures, and allegedly make changes to the transmitter.<sup>20</sup>

**Discussion.** Before we assess the merits of a reconsideration petition, we must determine if the Commission's procedural requirements for filing a petition for reconsideration have been satisfied.<sup>21</sup> A reconsideration petition may 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."<sup>22</sup> In order

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<sup>11</sup> 47 U.S.C. § 309(k). *See also* Petition at 2-3.

<sup>12</sup> *See* Opposition at 1 (citing File No. BNPL-20131113AHH).

<sup>13</sup> *See* Opposition at 1.

<sup>14</sup> *See* Reply at 1-3.

<sup>15</sup> *See* Reply at 1.

<sup>16</sup> *See* Reply at 3-4. According to FMBC, in May 2019, the Station was operating at 150 Watts TPO with a Warner RF FMT transmitter. FMBC states that Sumarrase later replaced this transmitter with an FMT 5.0 series transmitter operating at 549 Watts TPO. FMBC argues that if Sumarrase's tampering assertions are to be credited, WSGD-LP is the victim of transmitter replacement, not transmitter tampering. FMBC states that there is no incentive for it to replace the WSGD-LP transmitter with a more powerful operation. FMBC also denies that any person acting on its behalf changed any setting on either of the two transmitters WSGD-LP has used at the WSGD-LP transmitter site. *Id.*

<sup>17</sup> *See* Reply at 2-4.

<sup>18</sup> *See* Reply at 4.

<sup>19</sup> Sumarrase Reply at 2.

<sup>20</sup> Sumarrase Reply at 2.

<sup>21</sup> *See* 47 CFR § 1.106.

<sup>22</sup> 47 CFR § 1.106(b).

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.<sup>23</sup> In this instance, neither FMBC nor any other entity filed a petition to deny the Application while it was pending. For that reason, we conclude that FMBC did not become a party to this proceeding prior to the Bureau's grant of the Application.

Because FMBC was not a party to the proceeding prior to the filing of the reconsideration petition under the Commission's rules, it 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 FMBC to participate in the earlier stages of the proceeding.<sup>24</sup> Based on our review of the record, FMBC has not provided a reason why it was unable to participate in the earlier stages of the proceeding.<sup>25</sup>

If FMBC believed that the Application should not have been granted for the reasons set forth in its Petition, then the appropriate course of action under such circumstances would have been to file a timely petition to deny<sup>26</sup> rather than waiting until after the grant of the Application to challenge it by filing the Petition. The 2019 Complaint, which FMBC attempts to incorporate in its Petition by reference, was filed with EB several months before Sumarrase filed the Application. Thus, FMBC already had at its disposal all of the information that it now asserts is a basis for rescinding the grant of the Application.

Because it is in the public interest that all interested parties raise their arguments concerning an application in the earliest stages of a proceeding, when seeking reconsideration, parties who did not raise their arguments until after final action has been taken must explain why they could not have participated earlier in the proceeding.<sup>27</sup> As discussed above, FMBC has not provided any explanation as to why it was not possible for FMBC to participate earlier in the proceeding by filing a timely petition to deny. In light of this procedural defect in the Petition, we find that FMBC lacks standing to challenge the grant of the Application.<sup>28</sup> We therefore conclude that the Petition must be dismissed because it does not meet the requirements of section 1.106(b)(1) of the Commission's rules.<sup>29</sup>

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<sup>23</sup> See, e.g., *San Luis Obispo Limited Partnership*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 9616, 9617, para. 3 (1996) (stating that a petitioner for reconsideration must have filed a valid petition to deny against the application whose grant the petitioner now seeks to have reconsidered).

<sup>24</sup> 47 CFR § 1.106(b)(1).

<sup>25</sup> See Opposition at 1-2.

<sup>26</sup> 47 CFR §§ 73.3516(e), 73.3584(a) (A petition to deny an application for renewal of license will be considered timely filed if it is tendered for filing by the end of the first day of the last full calendar month of the expiring license term).

<sup>27</sup> See, e.g., *Sagir, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 8159 (2001) ("Interested persons seeking to participate in FCC proceedings are required to join the proceedings at the earliest opportunity.").

<sup>28</sup> See, e.g., *Bravo Cellular*, Order, 15 FCC Rcd 4517 (WTB 2000) (dismissing a petition for reconsideration after finding that petitioners were not parties to the proceeding, and that they failed to show why it was not possible for them to participate in the earlier stages of the proceeding).

<sup>29</sup> 47 CFR § 1.106(b)(1).

Even if FMBC had standing to file the Petition, we find that the Petition would not warrant reconsideration, because as discussed above, the Petition does not rely on new facts or changed circumstances.<sup>30</sup> Moreover, we find that FMBC has not demonstrated that we erred in granting the Application under the standard set forth in section 309(k) of the Act.<sup>31</sup>

**Conclusion.** For the reasons discussed above, IT IS ORDERED, that the Petition for Reconsideration filed by Fort Myers Broadcasting Company, LLC on February 11, 2020, IS DISMISSED.

Sincerely,

Albert Shuldiner  
Chief  
Audio Division  
Media Bureau

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<sup>30</sup> 47 CFR § 1.106(c). We note that FMBC also seeks dismissal of Sumarrase Pleading Nos. 0000106512, 0000107697, and 0000125685, because they are not supported by a signed affidavit or a declaration under penalty of perjury. In relevant part, section 1.52 of the Rules states that “[t]he original of all petitions, motions, pleadings, briefs and other documents filed by any party represented by counsel shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign and verify the document and state his address.” 47 CFR § 1.52. “A party’s signature verifies that such party has read the document; that to the best of his or her knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.” *RJM Communications, Inc.*, File Nos. BR-20030911AAH and File No. BR-20030911AAF, Letter Order, 21 FCC Rcd 7980 (2006). The Commission’s database indicates that Dwayne Williams is the owner of Sumarrase, Inc. and the Application certifier. Mr. Williams also signed and verified Pleading Nos. 0000106512, 0000107697, and 0000125685 and stated his address on each pleading. Thus, Sumarrase did not violate section 1.52 of the Rules and there is no reason to dismiss or otherwise disregard these pleadings. Even if we were to dismiss these pleadings on procedural grounds, our determination that FMBC lacks standing to challenge the instant Application would remain the same for the reasons discussed herein.

<sup>31</sup> 47 U.S.C. § 309(k). While we do not rule on the merits of the allegations made in the 2019 Complaint, we note that the 2019 Complaint relies primarily on declarations and photos provided by employees and consultants of FMBC, rather than disinterested persons. Given the nature of the allegations made in the 2019 Complaint, FMBC’s assertion that it filed the 2019 Complaint with EB, and the fact that FMBC did not properly raise the allegations in this renewal proceeding prior to the grant of the Application, we believe that the 2019 Complaint is more appropriately addressed in an enforcement proceeding and not the instant renewal proceeding.