



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

September 11, 2018

In Reply Refer To:
1800B3-ATS

Ms. Shannon Southwood
Sacramento Bicycle Kitchen
1915 I Street
Sacramento, CA 95811

In re: Sacramento Bicycle Kitchen
Station KBQS-LP, Sacramento, CA
Facility ID No. 197555
File No. BPL-20180117ABJ

Petition for Reconsideration

Dear Ms. Southwood:

We have before us the Petition for Reconsideration (Petition) filed by Sacramento Bicycle Kitchen (SBK), requesting reconsideration of the dismissal¹ of its application to modify the facilities (Mod Application) of Station KBQS-LP, Sacramento, California (Station).² For the reasons set forth, we deny the Petition.

Background. SBK filed an application for a construction permit for the Station during the 2013 LPFM filing window, proposing to operate on Channel 255.³ In the Permit Application, SBK requested a second-adjacent channel waiver with regard to Station KRXQ, Sacramento, California.⁴ On October 27, 2014, the Media Bureau (Bureau) issued SBK a construction permit (Permit) for the Station with an expiration date of October 27, 2017. Three days prior to the expiration of the Permit, SBK filed an application to modify the Permit by proposing a new transmitter site.⁵ The Bureau granted this application on October 27, 2017, and on October 30, 2017, SBK filed a covering license application for the Station, which the Bureau granted on November 6, 2017.⁶ SBK submitted a request for Silent Special Temporary Authority on January 3, 2018, explaining that the Station was receiving interference from co-channel FM Translator K255CL.⁷

SBK filed the Mod Application on January 17, 2018, proposing to change Station operation to Channel 298 and move the transmitter to a new site 8.9 kilometers from its current site,⁸ and included a

¹ *Sacramento Bicycle Kitchen*, Letter Order (MB May 31, 2018) (*Dismissal Letter*).

² SBK filed the Petition on June 4, 2018, and an amendment to the Mod Application, which includes the same technical narrative provided in the Petition, on that same day.

³ See File No. BNPL-20131115AAC (Permit Application).

⁴ *Id.* at Attach. 11.

⁵ File No. BMPL-20171024ABC.

⁶ File No. BLL-20171030AAL.

⁷ File No. BLSTA-20180103AAR. SBK filed a request to extend its silent authority on August 14, 2018. File No. BLEST-20180814ABP.

⁸ Mod Application at Section VI.

the public interest because the Station would have to resume broadcasting—and thus cause interference to K255CL—in order to prevent its license from automatically expiring pursuant to Section 312(g) of the Communications Act of 1934, as amended.²²

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 additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.²³ SBK has failed to meet this burden.

As noted in the *Dismissal Letter* the Rules may be waived only for good cause shown.²⁴ The Commission must give waiver requests “a hard look,” but an applicant for waiver “faces a high hurdle even at the starting gate”²⁵ and must support its waiver request with a compelling showing.²⁶ Waiver is appropriate only if both: (1) special circumstances warrant a deviation from the general rule; and (2) such deviation better serves the public interest.²⁷

We affirm the finding in the *Dismissal Letter* that SBK has not presented special circumstances warranting a waiver. The factors SBK has identified: interference from a second-adjacent station, interference from a co-channel station, and limited tower availability within its financial means are not factors unique to SBK, but are common to many LPFM stations, particularly those located in major metropolitan areas such as Sacramento. Moreover, we note that K255CL was issued a construction permit for its current licensed facility in March of 2013, well before SBK filed the Permit Application.²⁸ Thus, SBK should have been aware that the Station could receive interference from K255CL, but nonetheless chose to file the Permit Application specifying operation on Channel 255. We note that the Commission “caution[ed] LPFM applicants against using this technical flexibility [of second adjacent channel waivers] to limit the already small service areas of LPFM stations to such an extent that, while their LPFM applications are grantable, the LPFM stations will not be viable.”²⁹ Thus, the burden was on SBK to ensure that its technical proposal was viable. Accordingly, we deny the Petition.³⁰

²² Petition at 4 (citing 47 U.S.C. 312(g)).

²³ 47 CFR § 1.106(c); *WWJZ, 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).

²⁴ 47 CFR § 1.3.

²⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (subsequent history omitted).

²⁶ *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broad. Sys., Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

²⁷ *NetworkLP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁸ See File No. BPFT-20130327AGM.

²⁹ *Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15430, para. 80 (2012).

³⁰ Although the Bureau may have granted waivers of Section 73.870(a) in the past, these unpublished actions are not binding precedent. *North Texas Media, Inc. v. FCC*, 778 F.2d 28, 33 (D.C. Cir. 1985); 47 CFR § 0.445(f). Additionally, the waivers in question involved different factual situations. Foremost, the waivers granted to KVBELP, KTAQ-LP, and WAOM-LP did not involve moves to non-adjacent channels. The waiver requests granted to KVBELP and KTAQ-LP involved applications to modify initial construction permits in order to accommodate initial licensing; here, in contrast, KBQS-LP has already been licensed at its initial site. Finally, WAOM-LP requested a waiver on the basis that it had lost its initial transmitter site due to factors beyond its control and there

Conclusion. Accordingly, for the reasons discussed above, IT IS ORDERED that the Petition for Reconsideration filed on June 4, 2018 by Sacramento Bicycle Kitchen IS DENIED.

Sincerely,

A handwritten signature in blue ink, appearing to read "Albert Shuldiner", is written over the typed name.

Albert Shuldiner
Chief, Audio Division
Media Bureau

were no Section 73.870(a) compliant sites due to the station's location next to the Stennis Space Center Buffer Zone and the Hobolochitto Creek wetland area.