



Federal Communications Commission
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In Reply Refer to:
1800B3-HOD

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In re: **Great Scott Broadcasting and Adams
Radio of Delmarva Peninsula, LLC**
Application for Assignment of License
WJWL(AM), Georgetown, Delaware
Facility ID No. 25007
File No. BAL-20140926ADL

Petition for Reconsideration

Dear Counsel:

We have before us a Petition for Reconsideration ("Petition") filed by Hola Media Network, L.L.C. ("Hola") on December 18, 2014.¹ Hola seeks reconsideration of our grant of the referenced application ("Application") to assign the license for WJWL(AM), Georgetown, Delaware ("Station"), from Great Scott Broadcasting ("Great Scott") to Adams Radio of Delmarva Peninsula, LLC ("Adams").² For the reasons discussed below, we dismiss the Petition.

Background. On September 26, 2014, Great Scott and Adams filed the Application.³ We granted the Application – which was unopposed – on November 26, 2014. On December 18, 2014, Hola timely filed the Petition. Therein, Hola argues that it holds a right of first refusal to acquire the Station from Great Scott.⁴ Hola claims that Great Scott breached this agreement and thus we should rescind our grant of the Application.⁵ Hola acknowledges and seeks to excuse its failure to participate in this proceeding prior to our grant of the Application by alleging that it sought – but was denied – access to the

¹ Hola filed a supporting affidavit ("Affidavit") on December 19, 2014. Great Scott filed an Opposition to Petition for Reconsideration ("Opposition") on December 31, 2014. Hola replied on January 12, 2015.

² *Broadcast Actions*, Public Notice, Report No. 48377 (MB Dec. 2, 2014).

³ The assignment of the Station's license to Adams was part of a larger transaction involving the assignment to Adams of six station licenses held by Great Scott. The other five stations involved in the transaction were WJWK(AM) and WGBG(FM), Seaford, Delaware, WZBH(FM), Georgetown, Delaware, WKHI(FM), Fruitland, Maryland, and WOCQ(FM), Berlin, Maryland. Also included in the transaction were the licenses of two FM translators – W242AV, Seaford, Delaware, and W262BF, Georgetown, Delaware.

⁴ Petition at 1.

⁵ *Id.* at 1-2.

Station's public file in October 2014.⁶ In response, Great Scott explains that the signatory on the right of first refusal passed away in March 2013.⁷ Great Scott indicates that its ownership and management were unaware of the agreement's existence.⁸ Great Scott states that it, in consultation with Adams, has decided to honor the right of first refusal and has sent Hola a letter offering to sell the Station to it.⁹

Discussion. Procedural Issue. Section 1.106(b)(1) of the Rules allows both parties to an original proceeding and non-parties, whose interests were adversely affected, to file a petition for reconsideration of an action taken by the Commission or by the designated authority.¹⁰ Non-parties to the original proceeding must, among other things, show "show good reason why it was not possible for [them] to participate in the earlier stages of the proceeding."¹¹

Hola acknowledges that it did not participate in this proceeding prior to our grant of the Application and seeks to excuse this failure.¹² Hola asserts that it became aware of the possible filing of the Application in October 2014.¹³ It states that its principal then visited the Station's main studio and requested to see the public file – which should have included a copy of the application.¹⁴ According to Hola, its principal "was not permitted to view the public file."¹⁵ Hola claims that its inability to object to the application prior to its grant was the direct result of its failure to obtain access to the Station's public file.¹⁶

While the Commission has accorded standing to petitioners for reconsideration who failed to file pre-grant objections when prompt staff action "effectively precludes participation during the initial consideration of an application,"¹⁷ that is not the case here. Hola had almost two months to object to the Application prior to its grant, but failed to do so. In addition, Hola admits it became aware of the possibility that the Application had been filed in October 2014. It could easily have confirmed this and obtained a copy of the filing simply by searching the Commission's Consolidated Database System.

In any event, we note that the Bureau gave public notice of its acceptance of the Application.¹⁸ It is well-established that a "would-be petitioner's lack of actual notice of the pendency of a proceeding

⁶ *Id.* at 3-4; Affidavit at 2.

⁷ Opposition at 1-2.

⁸ *Id.* at 2.

⁹ *Id.* at 2.

¹⁰ 47 C.F.R. § 1.106(b)(1).

¹¹ *Id.*

¹² Petition at 3-4.

¹³ Petition at 3.

¹⁴ Petition at 3; Affidavit at 2. *See also*, 47 C.F.R. § 73.3526(e)(2).

¹⁵ Petition at 3; Affidavit at 2.

¹⁶ Petition at 3-4.

¹⁷ *See, e.g., Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17854 (1997) (standing awarded to file petition for reconsideration without pre-grant objection when application granted five days after Public Notice of its acceptance); *Ted and Jana Tucker*, Memorandum Opinion and Order, 4 FCC Rcd 2816 (1989) (standing to file petition for reconsideration awarded without pre-grant objection when application granted four days after Public Notice of its acceptance).

¹⁸ *Broadcast Applications*, Public Notice, Report No. 28336 (MB rel. Oct. 1, 2014).

does not establish good cause for its failure to participate.”¹⁹ Accordingly, we find Hola has not demonstrated good cause for its failure to object to the Application prior to its grant and we dismiss the Petition on procedural grounds.

Breach of Contract. We note that even were we to address Hola’s allegations that Great Scott breached the right of first refusal agreement, we would merely remind Hola that the Commission has long held that it is not the proper forum for the resolution of private contractual disputes, and that claims for redress stemming from such disputes should be sought in a court of competent jurisdiction.²⁰ We would further note that Hola appears to have recognized this, indicating in its Petition that it would be “filing for appropriate relief in the Delaware courts.”²¹

Access to Public File. Likewise, even if we addressed Hola’s assertion that Great Scott violated Section 73.3526(c) of the Rules,²² we would find that Hola had not raised a substantial and material question of fact regarding Great Scott’s compliance with that provision. We would note that Hola makes a general allegation that Great Scott denied its principal access to the Station’s public file in October 2014 but does not offer any specific details such as the time(s) and date(s) of its principal’s attempts to access the public file or the Great Scott employee with whom Hola’s principal spoke.²³

Conclusion/Actions. IT IS ORDERED that the Petition for Reconsideration filed by Hola Media Network, L.L.C. on December 18, 2014, IS DISMISSED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁹ See *Pamplin Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 649, 654 ¶ 12 (2008). See also *Northwest Broadcasting, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 3289, 3291 ¶ 6 (1997) (noting that staff action on the applications at issue was “preceded by public notice” and finding therefore that staff “was correct to dismiss procedurally a request for reconsideration from a non-participant”).

²⁰ See, e.g., *Nameloc, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 14295, 14297 n. 13 (2008); *PCS 2000, L.P.*, Memorandum Opinion and Order, 12 FCC Rcd 1681, 1691 ¶ 23 (1997); *John F. Runner, Receiver (KBIF)*, Memorandum Opinion and Order, 36 Rad. Reg. 2d (P & F) 773, 778 (1976).

²¹ Petition at 4.

²² 47 C.F.R. § 73.3526(c) (requiring licensees to offer the public access to a station’s public inspection file during regular business hours).

²³ Petition at 3; Affidavit at 2.