

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Channel 23 Limited Partnership	)	File Nos. BPTTA-20030617AAJ and
	)	BLTTA-20040129AOW
Applications for	)	Facility ID No. 71425
a Minor Change in Facilities and a License to	)	
Cover Construction Permit for Class A Television	)	
Broadcast Station WWME-CA, Chicago, Illinois	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 10, 2014**

**Released: December 11, 2014**

By the Commission:

**I. INTRODUCTION**

1. The Commission has before it for consideration an Application for Review<sup>1</sup> filed by KM LPTV of Chicago-13, L.L.C. and KM LPTV of Chicago-28, L.L.C. (together “KM”), seeking review of a letter decision<sup>2</sup> dismissing (i) KM’s Petition for Reconsideration or Clarification (the “KM Petition”) of the grant of the above-captioned application<sup>3</sup> of Channel 23 Limited Partnership (“Channel 23”)<sup>4</sup> for a minor change in the licensed facilities of Class A television station WWME-CA, Chicago, Illinois (Facility ID No. 71425, “WWME”) and (ii) KM’s Informal Objection to the above-captioned application<sup>5</sup> of Channel 23 for a license to cover Channel 23’s construction of its authorized facility. For the reasons set forth below, we affirm the Bureau’s actions and deny the Application for Review.

**II. BACKGROUND**

2. On October 17, 2003, the Video Division (the “Bureau”) granted Channel 23’s Modification Application and associated request for a waiver of the maximum peak effective radiated power rules governing Class A television stations.<sup>6</sup> KM filed a Petition for Reconsideration on

<sup>1</sup> *KM LPTV of Chicago-13, L.L.C. and KM LPTV of Chicago-28, L.L.C. Application for Review* (May 9, 2007) (“AFR”).

<sup>2</sup> *Letter from Hossein Hashemzadeh, Associate Chief, Video Division, to Jeffrey L. Timmons, Esq. and Jerold L. Jacobs* (“KM Letter Decision”) (Apr. 5, 2007).

<sup>3</sup> File No. BPTTA-20030617AAJ (the “Modification Application”), the acceptance for filing of which was announced by Public Notice, Broadcast Applications, Report No. 25511 (Jun. 30, 2003).

<sup>4</sup> The Modification Application and waiver request were granted on October 17, 2003 to Channel 23’s predecessor-in-interest, Weigel Broadcasting Co. That action appeared on Public Notice, Broadcast Actions, Report No. 45596 (Oct. 22, 2003).

<sup>5</sup> File No. BLTTA-20040129AOW (the “License Application”), the acceptance for filing of which was announced by Public Notice, Broadcast Applications, Report No. 25665 (Feb. 4, 2004).

<sup>6</sup> 47 C.F.R. §§ 73.6007 and 74.735(a).

November 21, 2003. Channel 23 filed its License Application on January 29, 2004, and KM filed an Informal Objection to that application on June 10, 2005. In the KM Letter Decision, the Bureau dismissed the KM Petition pursuant to Section 1.106(b)<sup>7</sup> of the Commission rules, concluding that KM had not demonstrated a good reason for its failure to participate in the earlier proceeding,<sup>8</sup> and dismissed the Informal Objection as, by KM's admission, having no basis in fact.<sup>9</sup>

3. KM advances three arguments in its AFR. First, KM argues that the Bureau erred in its interpretation of Commission precedent for determining when a petition for reconsideration is procedurally proper where the petitioner has failed to earlier participate in the proceeding, maintaining that a petition for reconsideration should serve as a "safety net" for "the objections of interested parties that did not participate in a proceeding prior to the grant of a minor change application, as a matter of policy, to ensure that interested parties have an opportunity to object...."<sup>10</sup> Second, KM argues that the Bureau failed to provide appropriate justification for invoking its discretionary authority to grant a waiver of Commission rules.<sup>11</sup> Third, KM argues that Channel 23 was obligated to report any significant change in its programming format described in its Modification Application.<sup>12</sup>

### III. DISCUSSION

4. Section 1.106(b)(1) of the Commission's rules requires that a petitioner seeking reconsideration who is not a party to the proceeding "show good reason why it was not possible . . . to participate at the earlier stages of the proceeding."<sup>13</sup> We agree with the Bureau that KM had ample opportunity to file an informal objection during the four months between the Commission's Public Notice accepting the Modification Application and its grant and did not provide a good reason for failing to do so.<sup>14</sup>

5. In determining under Section 1.106(b)(1) whether to accept and consider a petition for reconsideration of the grant of an application not subject to petitions to deny filed by a petitioner who did not oppose the application, the Commission has ruled that good cause exists for such non-participation where the expeditious grant of the application in question did not allow sufficient time for potential objections to be filed.<sup>15</sup> In contrast, the Commission has generally dismissed petitions pursuant to Section 1.106(b)(1) of the Commission's rules when the grant occurred more than 30 days after the filing

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<sup>7</sup> 47 C.F.R. § 1.106(b).

<sup>8</sup> *KM Letter Decision* at 3.

<sup>9</sup> *Id.*

<sup>10</sup> AFR at 5-7.

<sup>11</sup> *Id.* at 7-9.

<sup>12</sup> *Id.* at 10-11.

<sup>13</sup> 47 C.F.R. § 1.106(b)(1); *William B. Clay*, Letter Decision, 23 FCC Rcd 18034, 18036 (Media Bur. 2008).

<sup>14</sup> KM had claimed that it was in the process of preparing an informal objection to the Modification Application and was "surprised to see such quick action by the staff." *KM Letter Decision* at 2, quoting *KM Petition* at 3, n. 4.

<sup>15</sup> See, e.g., *Ted and Jana Tucker*, Memorandum Opinion and Order, 4 FCC Rcd 2816, 2816 (1989) (good cause for non-participation found when application granted four days after public notice issued); *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17854-55 (1997) (good cause found when application granted five days after acceptance)).

of the application, concluding that the petitioner had ample time to prepare and file an objection.<sup>16</sup> We find that the staff properly exercised its discretion here in concluding that KM had failed to make the requisite Section 1.106(b)(1) showing and dismissing the Petition.<sup>17</sup>

6. We also agree with and affirm the Bureau's dismissal of KM's Informal Objection to the License Application. That filing, submitted by KM well over a year after the License Application had appeared on Public Notice, was based on KM's contention that the Bureau's grant of the waiver was premised on Channel 23's assertion in the Modification Application that the waiver would "allow greater distribution of minority and ethnic programming" and that Channel 23 "no longer offers any minority or ethnic programming over WWME."<sup>18</sup> Thus, KM maintains that Channel 23 improperly failed to amend its Modification Application to report this "significant" development.<sup>19</sup> Review of the KM Letter Decision reveals that the nature of the station's programming was not a factor in the Bureau's grant of the Modification Application and waiver request. Accordingly, Channel 23 had no obligation to so amend under Section 1.65 of the Rules.<sup>20</sup> We note that in its Reply to Channel 23's Opposition to its Informal Objection, KM admitted that its characterization of Channel 23's programming was "incorrect."<sup>21</sup>

#### IV. ORDERING CLAUSES

7. ACCORDINGLY, IT IS ORDERED That, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and section 1.115(g) of the Commission's rules, 47 C.F.R. § 1.115(g), the Application for Review filed by KM LPTV of Chicago-13, L.L.C. and KM LPTV of Chicago-28 is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

<sup>16</sup> See, e.g., *Association of Community Education*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12684 (2004) (good cause not found when petitioner had more than 30 days to object to the application and failed to do so). See also *Gabriel Aragno Jne Invesments, Inc.*, Letter, 23 FCC Rcd 1823, 1824 (Media Bur. 2008); *Last Bastion Trust, LLC*, 23 FCC Rcd 4941, 4943 (Media Bur. 2008). KM's reliance on *Vincent A. Pepper, Esq.*, 13 FCC Rcd 16551 (Media Bur. 1998), to support its contention that we are obligated to "clarify" the Bureau's grant of the waiver is without merit. In that case, the Bureau concluded that a petitioner had not demonstrated a good reason for not participating in the earlier proceeding and dismissed its petition. It took the opportunity to clarify the rule in question but was under no obligation to do so.

<sup>17</sup> Our affirmation of the Bureau's dismissal of the KM Petition moots the need to consider the substantive arguments made therein and repeated in the AFR, including the propriety of the Bureau's waiver grant.

<sup>18</sup> *KM Informal Objection* at 4.

<sup>19</sup> AFR at 10-11.

<sup>20</sup> 47 C.F.R. § 1.65.

<sup>21</sup> KM LPTV of Chicago-13, L.L.C. and KM LPTV of Chicago-28, L.L.C. Reply (Aug. 4, 2005) at 5-7.