



Federal Communications Commission
Washington, D.C. 20554

July 30, 2014

In Reply Refer to:
1800B3-JPC

Ms. Sharon E. Black
Black Smith Multi-Media
6608 Concord Mews
Montgomery, AL 36116

M. Scott Johnson, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, VA 22209

In re: WAPR(FM), Selma, Alabama
Facility ID No. 6125
UA-ASU-TSU Educational Radio Corp.
File Nos. BMLED-20140212ADP, BLSTA-
20140106DNM

Petition for Reconsideration

Dear Ms. Black and Mr. Johnson:

This letter refers to the March 25, 2014, Petition for Reconsideration ("Petition") filed by Black Smith Multi-Media ("BSMM"), seeking reconsideration of the staff's February 24, 2014, dismissals of: (1) the February 12, 2014, Application for Modification of License¹ BSMM filed for noncommercial education ("NCE") FM Station WAPR(FM), Selma, Alabama ("Station");² and (2) Licensee's January 6, 2014, Request for Special Temporary Authority to remain silent.³ For the reasons discussed below, we deny the Petition.⁴

Background. On January 6, 2014, Licensee filed the STA Request to go silent to replace a transmission line.⁵ The Bureau dismissed the Request on February 24, 2014, because the Station had returned to the air on February 17, 2014.⁶ On February 14, 2014, BSMM filed the Application to modify the Station's license.⁷ Licensee submitted a letter on February 24, 2014, requesting that the Application

¹ File No. BMLED-20140212ADP ("Application").

² See *Broadcast Actions*, Public Notice, Report No. 48185 (MB Feb. 27, 2014). Station is owned by UA-ASU-TSU Educational Radio Corp ("Licensee").

³ File No. BLSTA-20140106DNM ("STA Request").

⁴ Station Licensee UA-ASU-TSU Educational Radio Corp. filed an Opposition to the Petition on April 15, 2014.

⁵ Licensee Opposition at 3.

⁶ A search of CDBS indicates that the Station returned to the air on February 17, 2014.

⁷ In its Application, BSMM did not indicate what aspect of the license it would like to modify. BSMM did not certify that the Application was any of the enumerated types of modifications listed on FCC Form 302-FM and did not propose a new channel or a change to the power of the Station.

be dismissed as the “licensee did not authorize the filing.”⁸ On that same day, the Bureau dismissed the Application.⁹

Although not a model of clarity, in its Petition, BSMM appears to characterize its Application as an application for a new NCE FM station in Montgomery, Alabama with the call sign WABS.¹⁰ In keeping with this characterization, BSMM requests that the Commission dismiss an unspecified application purportedly filed by Licensee for a new NCE FM station in Tuscaloosa, Alabama; waive Section 73.3573 of the Commission Rules (“Rules”);¹¹ and accept for filing BSMM’s application for a new NCE FM station.¹² BSMM indicates that the dismissal of its Application and the dismissal of the STA Request warrant reconsideration because: (1) it would promote “diversity of local ownership”; (2) the Station was subject to a forfeiture order in December 2009, for failure to file a timely application; and (3) the Station went silent on December 19, 2013.¹³

In its Opposition, Licensee argues that BSMM’s Petition is largely “incomprehensible,” failing to adequately identify what decisions BSMM would like reconsidered and why they think these decisions merit reconsideration.¹⁴ Licensee contends that BSMM provides no explanation as to how the Commission erred in making the decisions that it rendered.¹⁵ Licensee further argues that the reasons cited by BSMM offer “no basis whatsoever for any Commission action, nor is there any basis for any action.”¹⁶ Licensee states that the BSMM Application to modify the Station’s license was an unauthorized filing that BSMM “had no right to file” and whose dismissal was “not only appropriate but necessary.”¹⁷ Licensee further states that BSMM fails to explain its connection to the dismissal of the STA Request, having not been a party to the original proceeding.¹⁸

Discussion. Under Sections 1.106(c) and (d) of the Rules, 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.¹⁹

⁸ Licensee Letter at 1.

⁹ BSMM also references the dismissal of an application to modify the license of WAIQ, a broadcast TV station licensed to the Alabama Educational Television Commission. The Video Division of the Media Bureau did receive an application, BMLED-20140212ADQ, from BSMM on February 12, 2014, to modify the license of WAIQ. Staff dismissed this Application on February 25, 2014.

¹⁰ Black Smith Multi-Media Petition at 1-2.

¹¹ 47 C.F.R. § 73.3573 (concerning the procedures for processing FM station applications). BSMM does not identify which specific component of Section 73.3573 it would like waived.

¹² Black Smith Multi-Media Petition at 2.

¹³ Black Smith Multi-Media Petition at 2.

¹⁴ Licensee Opposition at 2.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 3.

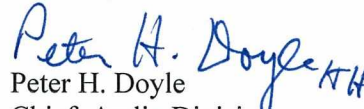
¹⁸ *Id.* at 3 n.3.

¹⁹ See 47 C.F.R. § 1.106(c)-(d). See also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff’d sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

BSMM's stated reasons offer no valid basis to find that the staff erred in dismissing BSMM's Application and Licensee's STA Request.²⁰ For its Application, BSMM has given no reason why it was authorized to file an application on behalf of a station that it did not own or why the Commission should not dismiss unauthorized applications.²¹ For the STA Request, BSMM has offered no reason why the Bureau erred in dismissing the Station's request to go silent when Station had repaired the equipment issue necessitating silence and returned to the air prior to staff action on the request. Furthermore, with respect to both the STA Request and its Application, BSMM in its Petition raises no additional facts, not known or existing at the time of the petitioner's last opportunity to present such matters, which would otherwise warrant reconsideration.

Conclusion/Actions. In light of the above discussion and pursuant to Sections 0.61 and 0.283 of the Rules,²² the March 25, 2014, Petition for Reconsideration filed by Black Smith Multi-Media is DENIED.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" followed by a stylized monogram "KH".

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: UA-ASU-TSU Educational Radio Corp.

²⁰ See 47 C.F.R. § 1.106(c)-(d).

²¹ See, e.g., *Baton Rouge Progressive Network*, Order, 25 FCC Rcd 905 (MB 2010) (Bureau overturned the granting of applications to modify a construction permit not filed by the holder of the permit, dismissed these applications, and dismissed two pending applications not filed by the construction permit holder).

²² 47 C.F.R. §§ 0.61, 0.283.