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SEP 25 2008

Mark N. Lipp
Scott Woodworth
Wiley Rein LLP
1776 K Street NW
Washington, DC 20036

In re: WYAB (FM); Flora, MS
SSR Communications, Inc.
Facility ID No. 77646
Application BPH-20070222ABD
Petition for reconsideration

Dear Mr. Lipp and Mr. Woodworth:

On March 7, 2008 you filed a petition for reconsideration on behalf of Central Mississippi Development Group ("CMDG") against the grant of application BPH-20070222ABD to SSR Communications, Inc. ("SSR"), licensee of WYAB (FM), Flora, MS. This construction permit, granted February 1, 2008, allowed WYAB to change community of license from Benton, MS to Flora, MS.

Procedural considerations. In opposition to the petition for reconsideration, SSI argues that the pleadings of CMDG should be summarily dismissed for failure to comply with Section 1.106 of the Commission's rules. SSI points out that CMDG failed to raise any objection prior to grant of the construction permit, which occurred 11 months after the application was filed. SSI contends that adequate notice was given of the application's filing, including a public notice issued by the Commission and subsequent publication in the *Federal Register*. SSI faults CMDG for failing to state "with particularity" how its interests are adversely affected by the construction permit, and for not providing any good reason CMDG why could not have participated in the review process before grant of the application. SSI points out that the petition was filed by an "unnamed entity" and fails to identify any party of interest.

CMDG's pleadings state that it is a "newly formed entity ... which is assisting in the presentation of a proposal to the Commission which is now precluded by grant of the instant application." CMDG did not participate earlier, it says, because it "only recently became involved in this project and did not know until recently" that the WYAB application would adversely affect CMDG's proposal. CMDG states that if the grant is allowed to stand, it would create a "bad precedent that would eviscerate the allotment stage for the new [FM] procedures."

Analysis. This matter may be decided on procedural aspects alone. Where a petition for reconsideration is filed by a party who had not participated earlier in the proceeding, Section 1.106 requires the petitioner to state with particularity the manner in which his interests are adversely affected, and demonstrate why that petitioner was not able to participate earlier in the proceeding. CMDG has done neither. CMDG's pleadings do not provide any details of the proposal which it alleges it was considering, and even less information as to how the WYAB construction permit could impact that alleged proposal. Nor does CMDG provide any good reason why it could not have objected prior to grant. Indeed, CMDG's pleadings amply illustrate the petitioner's own lack of diligence. SSI's proposal was properly placed on public notice and published in the *Federal Register* as required by the Commission's rules and policies, and was also entered into the Commission's databases which are available to the public. Thus, CMDG could have easily discovered the WYAB application had it taken any pains to do so. We see no reason why an acceptable application should be delayed or dismissed on the basis of an unknown proposal that *might* be filed with the Commission at some future date.

Moreover, CMDG pleadings prove that the first come / first served processing system for FM minor change applications and allotment proposals worked properly. Assuming that had CMDG filed a detailed proposal subsequent to the filing (and prior to the grant) of the WYAB application, that later filing would have been held in queue pending the outcome of the earlier filed WYAB application. As WYAB's application has been found acceptable for filing, the WYAB construction permit would have been granted and any filings in queue (CMDG's proposal) would have been dismissed. Thus, the same result would obtain: CMDG's proposal would be shut out.

Accordingly, SSI's opposition will be granted, and CMDG's petition for reconsideration will be dismissed on procedural grounds for failing to comply with Section 1.106 of the Commission's rules.

Allotment site. CMDG also alleges a procedural error in the acceptance and grant of the WYAB construction permit application. CMDG claims that the allotment site proposed in the application fails under Section 1.420(i) of the Commission's rules, in that the proposed fully spaced allotment site was not mutually exclusive with the original WYAB allotment site. CMDG bases this determination based on rules and procedures adopted for allotment proceedings in 1989.¹ CMDG believes that the allotment procedures adopted in 1989 remain in effect, even with the additional rule changes adopted in 2006 to permit allotment and facility changes in the same application.² Applying these longstanding rules, as CMDG sees them, the new allotment site for WYAB must be within the minimum distance separations in Section 73.207 to the former allotment site. Since the actual separation exceeded the minimum, the application was unacceptable for filing and therefore subject to dismissal, according to CMDG. SSI counters that CMDG's interpretation is incorrect, that the 2006 order specifically referred to mutual exclusivity between *facilities* and not *allotments*, and observes that its proposal met the rule as promulgated in 2006.³

Analysis. SSI has characterized the matter correctly, CMDG has not. In the 2006 order, the Commission explicitly referred to mutual exclusivity between *facilities*, not *allotments*. See also Section 73.3573(g). While this may represent a departure from the allotment procedures as CMDG (incorrectly) sees them, there is no evidence the change was not intentional.⁴ SSI's application was duly considered under the revised procedures and found acceptable for filing. Accordingly, even had CMDG's petition for reconsideration been procedurally acceptable, it would still be denied.

Conclusion. In light of the foregoing, the petition for reconsideration filed by Central Mississippi Development Group is DISMISSED on procedural grounds. This action is taken pursuant to delegated authority under Section 0.283 of the Commission's rules.

Sincerely,



Dale E. Bickel
Senior Engineer
Audio Division
Media Bureau

cc: Wood, Maines & Nolan, P.C.

¹ *Modification of FM and TV Authorizations to Specify a New Community of License*, FCC 89-128, 4 FCC Rcd 4870 (1989).

² *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes in Community of License in the Radio Broadcast Services*, Report and Order, FCC 06-163, 21 FCC Rcd 12412 (2006).

³ *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes in Community of License in the Radio Broadcast Services*, Report and Order, FCC 06-163, 21 FCC Rcd 12412 (2006) at paragraph 9.

⁴ *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes in Community of License in the Radio Broadcast Services*, Notice of Proposed Rulemaking, FCC 05-120, 20 FCC Rcd 11169 (2005) at paragraphs 21 and 27, wherein the Commission proposed to accept community change applications where the new *facility* would be mutually exclusive with the existing *facility*.