



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

**August 24, 2020**

*In Reply Refer to:*  
1800B3-SS

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Re: **W295CG, Lake Bluff, IL**  
**MB Capital Management, LLC**  
Facility ID No. 141545  
File No. BPFT-20190801AAI

**Application for Minor Change to Licensed Facility**

**Petition for Reconsideration**

Dear Counsel:

We have before us a Petition for Reconsideration (Petition) filed by Polnet Communications, Ltd. (Polnet)<sup>1</sup> on September 23, 2019, and a responsive pleading.<sup>2</sup> The Petition seeks reconsideration of the August 20, 2019, grant of the referenced application for a minor change to the licensed facility (Modification Application) of MBCM's FM translator station W295CG (Channel 296; 107.1 MHz), Lake Bluff, Illinois (Station). For the reasons discussed below, we dismiss the Petition.

**Background.** MBCM filed the Modification Application on August 1, 2019, which the staff accepted for filing.<sup>3</sup> The Modification Application was filed in order to eliminate any potential interference to Polnet's W296DA or any other co-channel facilities when operating as proposed on Channel 296D.<sup>4</sup> On August 20, 2019, the staff granted the uncontested Modification Application.<sup>5</sup> On September 23, 2019, Polnet filed the Petition.

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<sup>1</sup> Polnet is licensee of FM translator station W296DA on Channel 296 (107.1 MHz), Vernon Hills, Illinois.

<sup>2</sup> On October 10, 2019, MB Capital Management, LLC (MBCM) filed an Opposition to Petition for Reconsideration (Opposition).

<sup>3</sup> See *Broadcast Applications*, Public Notice, Report No. 29544 (MB Aug. 6, 2019) (*Acceptance PN*).

<sup>4</sup> See Modification Application, Attach. 13, Engineering Study of Goldman Engineering Management, LLC.

In the Petition, Polnet requests that grant of the Modification Application should be rescinded.<sup>6</sup> Polnet asserts that on June 17, 2019, the staff ordered MBCM to “cease operation of the Station immediately” for failure to resolve any of the 33 listener interference complaints submitted by Polnet.<sup>7</sup> Polnet claims that the minor changes authorized by the grant of the Modification Application will continue to cause “impermissible interference” to seven of Polnet’s W296DA listeners.<sup>8</sup> Specifically, Polnet argues that the Modification Application’s grant should be rescinded because the proposal in the granted Modification Application does not comply with the interference protections in section 74.1204 of the FCC’s rules (Rules).<sup>9</sup> As evidence, Polnet attaches complaints from seven listeners who claim to regularly listen to W296DA within the Station’s 25 dBu contour. Six of the listeners claim to listen at locations that are (1) within W296DA’s 45 dBu contour and (2) where the undesired to desired (U/D) signal strength between the Station, as proposed in the Modification Application, and W296DA, exceeds -20 dB. Also attached to the Petition is a map plotting the specific locations at which the listeners regularly listen to W296DA and U/D data demonstrating the undesired to desired signal strength at each location. In addition, Polnet attaches a declaration by Kent Gustafson, Operations Consultant to Polnet, stating that W296DA is operating within its licensed parameters, has used commercially reasonable efforts to inform MBCM of the claimed interference, and attempted a private resolution.<sup>10</sup>

Polnet claims that it was unable to participate in the proceeding prior to the grant of the Modification Application because neither the Communications Act of 1934, as amended (Act), nor the Rules provides for the filing of a petition to deny a license application.<sup>11</sup> Polnet further asserts that the Commission granted the Modification Application just 20 days after it was filed and, to the best of Polnet’s knowledge, without placing the Modification Application on Public Notice.<sup>12</sup>

In its Opposition, MBCM argues that Polnet’s Petition is procedurally defective because it does not conform to the requirements of section 1.106 of the Rules<sup>13</sup> and must be dismissed.<sup>14</sup> Specifically, regarding Polnet’s claim that neither the Act nor the Rules provides for the filing of a petition to deny a license application, MBCM states that the Modification Application is not a license application and that Polnet could have filed a petition to deny or an informal objection pursuant to the Rules.<sup>15</sup> Next, MBCM

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<sup>5</sup> See *Broadcast Actions*, Public Notice, Report No. 49557 (MB Aug. 23, 2019).

<sup>6</sup> Petition at 1.

<sup>7</sup> See *Letter from James D. Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau, to MB Capital Management, LLC*, 1800B3-KV (MB Jun. 27, 2019).

<sup>8</sup> Petition at 2-3.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.* at 3-4. See also Exhs. 1-3.

<sup>11</sup> *Id.* at 1, n.1, citing 47 U.S.C. § 309(c); 47 CFR §§ 73.3580(a)(3), 73.3584(a) and *Clear Channel Broadcasting Licenses, Inc.*, Letter Order, 21 FCC Rcd 8677 n.1 (MB 2006).

<sup>12</sup> *Id.*

<sup>13</sup> 47 CFR § 1.106. Section 1.106 requires a party that did not participate in the earlier stages of a proceeding must show good cause why it did not participate.

<sup>14</sup> Opposition at 1.

<sup>15</sup> *Id.* MBCM also notes that Polnet filed its Petition here against a “license application” captioned as, “File No. BLPFT-20190801AAI.” MBCM states that no such license application has been filed. MBCM asserts that the

asserts that Polnet is incorrect in its claim that the Modification Application was never placed on public notice as accepted for filing.<sup>16</sup> Finally, MBCM argues that although Polnet claims that 20 days was not enough time for it to file a petition to deny prior to the grant of the Modification Application, Polnet cites no precedent to support its claim.<sup>17</sup>

**Discussion.** Section 1.106(b)(1) of the Rules allows a petition for reconsideration to be filed by any party to the original proceeding or any party whose interests will be adversely affected by the action taken by the Commission.<sup>18</sup> If a petitioner was not a party to the original proceeding, it must show good reason for why it was unable to participate in the earlier proceeding.<sup>19</sup> However, the Commission has accepted petitions for reconsideration when the grant of an application occurred shortly after the application was placed on public notice, finding that such expedient grant effectively precluded participation during the initial consideration of an application.<sup>20</sup>

Here, the staff granted the Modification Application on August 20, 2019, two weeks after public notice of acceptance for filing. Not only did the *Acceptance PN* serve as constructive notice of the acceptance for filing of the Modification Application, but Polnet was already actively involved with concurrent proceedings involving the same issue and Station.<sup>21</sup> We therefore find that Polnet was not effectively precluded from filing a petition to deny or an informal objection to the Modification Application prior to its grant. Because Polnet had adequate opportunity to participate earlier in the proceeding, but failed to do so, the Petition is not acceptable under section 1.106(b). Moreover, we find that reconsideration of the grant of the Modification Application is not required in the public interest under section 1.106(c)(2).<sup>22</sup> In this respect, we emphasize that MBCM will continue to be subject to the provisions of section 74.1203<sup>23</sup> with the facilities authorized in the granted Modification Application. Any *bona fide* interference complaints received due to MBCM's operation of the Station with these

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Modification Application, File No. BPFT-20190801AAI, is a construction permit application, which may be challenged by filing either a petition to deny or an informal objection, and that Polnet filed neither. *Id.* at n.1.

<sup>16</sup> *Id.* MBCM attaches a copy of the *Acceptance PN*. *Id.*, Exh. A.

<sup>17</sup> *Id.* at 1-2.

<sup>18</sup> 47 CFR § 1.106(b)(1).

<sup>19</sup> *Id.*

<sup>20</sup> See *Ted and Jana Tucker*, Memorandum Opinion and Order, 4 FCC Rcd 2816, 2816 (1989) (standing to file a petition for reconsideration found when application granted four days after public notice issued); *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17854-55 (1997) (standing to file a petition for reconsideration found when application granted five days after acceptance).

<sup>21</sup> See *supra* note 7.

<sup>22</sup> 47 CFR § 1.106(c)(2). Further, we note that although section 1.106(c)(2) permits facts not previously raised to be considered when “consideration of the facts relied on is required in the public interest,” this does not in any way affect or provide relief from the requirement in section 1.106(b)(1) that a person seeking reconsideration of Commission action must either already be a party to the proceeding or explain why earlier participation was not possible. See *Regionet Wireless License, LLC*, Memorandum Opinion and Order, 17 FCC Rcd 21269, 21272, para. 10 (2002). See also *Telecinco, Inc.*, Letter Order, 22 FCC Rcd 21526, 21527 (MB 2007) (Section 1.106(b)(1) “is an absolute requirement for non-parties, and is wholly separate from Section 1.106(c)(2).”).

<sup>23</sup> 47 CFR § 74.1203.

facilities may, if not *immediately* resolved, result in prompt suspension of operating authority, including, as appropriate, suspension of program test authority for the Station.<sup>24</sup>

**Conclusion/Actions.** For the reasons set forth above, the Petition for Reconsideration filed on September 23, 2019, by Polnet Communications, Ltd., IS DISMISSED.

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>24</sup> See *Marissa G. Repp, Esq., Donald E. Martin, Esq.*, Letter Order, 32 FCC Rcd 7538, 7541 (MB 2017) (petition for reconsideration dismissed as procedurally defective where petitioner had 10 days to prepare and file a challenge earlier in the proceeding and did not).