

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Accepted / Filed

APR 10 2015

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Application of the Los Angeles Social Justice)
Radio Project for New Low Power FM Station)
in Los Angeles, CA)

File No. BNPL-20131114BHE
Facility ID No. 196949

2015 APR 14 A 9:36

0000000000

To: The Commission

OPPOSITION TO APPLICATION FOR REVIEW

Pursuant to Section 1.115 of the Commission's rules,¹ KLVE-FM License Corp. ("Licensee"), licensee of KLVE-FM, Los Angeles, CA ("KLVE"), respectfully requests that the Commission deny the Application for Review filed by the Los Angeles Social Justice Radio Project ("SJR"). The Media Bureau's decision to deny SJR's Petition for Reconsideration was correct, and Commission action is therefore unnecessary. Moreover, SJR's attempts to recast the record on the issue of reasonable assurance were not made before the Bureau, and the Commission may not grant an application for review based on arguments that the Bureau was not given the opportunity to consider.

I. The Media Bureau Correctly Denied SJR's Petition for Reconsideration.

The facts and arguments raised in SJR's Petition for Reconsideration were known to SJR at the time of its prior submissions and therefore did not meet the standard set forth in the Commission's rules for petitions for reconsideration. The Media Bureau was therefore correct to deny the Petition for Reconsideration, and the Commission should not disturb that decision.

The Commission's rules state that a petition for reconsideration may only be granted if it is based on facts or arguments that "relate to events which have occurred or circumstances which

¹ 47 C.F.R. § 1.115(d).

have changed since the last opportunity to present such matters to the Commission” or that were “unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity.”²

The substance of SJRP’s Petition for Reconsideration was contained in a one-paragraph section titled “Provision of Evidence.” This section consisted of a quote from an earlier filing by SJRP; a statement concerning the owner of the “Revised Site,” whom SJRP claimed to have contacted in September 2014; references to two exhibits submitted by SJRP in support of the Petition (discussed below); and an argument that “the peculiarities of this small, ‘Goldilocks’ parcel are such that it is *more* difficult to presume that SJRP *did not* make a mistake in reporting the tower coordinates.”³ The exhibits submitted in support of the Petition consisted of a screenshot taken from the publicly available website of the Los Angeles County Office of the Assessor showing a map of the area surrounding the Revised Site, as well as a statement from the owner of the Revised Site stating that he had been “favorably disposed from September 2014 to using [his] private property to host a radio transmitter.”⁴

These facts and arguments set forth in the Petition for Reconsideration were primarily restatements of the facts and arguments set forth in SJRP’s prior submissions. The only new information appeared to be the identity of and statement from the Revised Site’s owner, Mr.

² *Id.* § 1.106(b)(2); *see also* Letter to John Crigler, Esq., 29 FCC Rcd 9601, 9603 (MB Audio Div. Aug. 11, 2014) (“The Commission will grant reconsideration only when the petitioner shows either a material error in the Commission’s original order or raises changed circumstances or unknown additional facts not known or existing at the time of petitioner’s last opportunity to present such matters.”).

³ Petition for Reconsideration at 2 (emphasis in original).

⁴ *Id.* at Exhibit A, Exhibit B.

Richard Hill. However, SJRP claimed that Mr. Hill was contacted in September 2014, and thus his identity (and presumably, his statement) would have been available to SJRP at the time of its prior submissions. Because none of the facts or arguments set forth in the Petition and recounted above were unknown or unavailable to SJRP at the time of its prior submissions,⁵ the Petition failed to meet the Commission’s standard for petitions for reconsideration and was therefore properly denied.

II. SJRP’s Application for Review Relies on Arguments the Bureau Was Not Afforded the Opportunity to Consider.

The primary argument set forth in SJRP’s Application for Review is that the Bureau erred by focusing on the date of SJRP’s initial application in determining whether SJRP had provided sufficient evidence of reasonable assurance. SJRP could have raised this argument in its Petition for Reconsideration, but failed to do so. In addition, the Application for Review argues for the first time that the statements of SJRP’s consulting engineer provided evidence of reasonable assurance. Because the Bureau was not able to consider these arguments, the Commission must deny the Application for Review.

The Commission’s rules make it clear that “[n]o application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass.”⁶ Consistent with this directive, the Commission has consistently denied applications for review that rely on matters not raised before the designated authority.⁷

⁵ For example, on November 24, 2014, SJRP filed a Consolidated Opposition to Petitions to Deny filed by KLVE and by Calvary Chapel of Costa Mesa, Inc.

⁶ 47 C.F.R. § 1.115(c).

⁷ See, e.g., *Susquehanna Radio Corp. and Whitley Media, LLC*, Memorandum Opinion and Order, 29 FCC Rcd 13276, 13277 (2014) (“To the extent that the Application for Review also relies upon matters not raised before the Bureau, it is also dismissed.”); *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief*, Order on (continued...)

SJRP argues in its Application for Review that the Bureau incorrectly focused on the date of SJRP's initial application in concluding that reasonable assurance of site availability had not been obtained. In the Bureau's initial decision denying SJRP's application, the Bureau stated that its conclusion was based in part on the fact that "SJRP does not actually indicate that it had reasonable assurance at the Revised Site at the time it filed the Application."⁸ SJRP now claims that this premise was erroneous, that SJRP was not required to have reasonable assurance at the Revised Site until it filed the October 2014 amendment to its application.⁹ This argument was available to SJRP and could have been raised before the Bureau in SJRP's Petition for Reconsideration. However, SJRP did not raise this argument in its Petition, and as a result the Bureau was not afforded the opportunity to evaluate it.

The Application for Review further asserts that SJRP's previous filings contained additional evidence of reasonable assurance for both the site specified in its initial application and the site specified in its "November 2014 Corrective Amendment." Specifically, SJRP points to statements made by its consulting engineer in attachments to each of these filings.¹⁰ SJRP did

Review, 19 FCC Rcd 9993, 10011 (2004) ("We find that Globe's argument was not raised before the Bureau and, consequently, cannot be raised here and is accordingly dismissed on procedural grounds.").

⁸ See Letter to William Berle, Decision No. 1800B3-ATS, at 4 (MB Audio Div. Jan. 13, 2015); Application for Review at 4 (acknowledging that "[t]he Bureau noted that SJRP had not provided documentation to show that the site listed in its November 2014 Corrective Amendment was its intended site when SJRP filed its Application and that SJRP had not demonstrated that it had reasonable assurance at that site").

⁹ See Application for Review at 6 (arguing that "[t]he Bureau . . . mistakenly assumed that the erroneous coordinates were for a site proposed in the initial application and incorrectly concluded that the applicant did not have reasonable assurance for that site when it originally filed its application"); *id.* at 9 (arguing that the Commission should grant SJRP's application in part because "SJRP had reasonable assurance to use the Richard Hill site before filing its first Amendment in October 2014").

¹⁰ See *id.* (arguing that "SJRP had reasonable assurance of the availability of both of these sites, which was explained in the Engineering Study of Michelle Bradley, attached to the Application, (continued...)

not raise this argument—that the statements of its consulting engineer provide sufficient evidence of reasonable assurance—in any of its submissions before the Bureau, even though the existence of reasonable assurance has been the primary point of contention at every stage of this proceeding. The argument was not raised in SJRP’s Consolidated Opposition, nor was it raised in SJRP’s Petition for Reconsideration. As such, the Bureau has not had the opportunity to consider whether these statements support SJRP’s claim that it obtained reasonable assurance of site availability.

* * *

For the reasons set forth above, the Commission should deny SJRP’s Application for Review.

Respectfully submitted,

KLVE-FM LICENSE CORP.

By:



Eve R. Pogoriler
Paul Swain
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000

Counsel for KLVE-FM License Corp.

April 10, 2015

as initially filed . . . and the Evaluation of the Property by Michelle Bradley, attached to the November 2014 Corrective Amendment.”).

Certificate of Service

I, Paul Swain, hereby certify that on this 10th day of April, 2015, I caused copies of the foregoing Opposition to be delivered via first-class prepaid mail to the following:

Tom Wheeler*
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Peter Doyle, Chief*
Audio Division, Media Bureau
Federal Communications Commission
445 12th Street SW, Room 2-C866
Washington, DC 20554

Mignon Clyburn*
Commissioner
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

William Berle
Director of Outreach
The Los Angeles Social Justice Radio Project
9210 Langdon Avenue, Suite 1
North Hills, CA 91343

Jessica Rosenworcel*
Commissioner
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Lee J. Peltzman
Shainis & Peltzman, Chartered
1850 M Street NW, Suite 240
Washington, DC 20036
*Counsel for the Los Angeles Social Justice
Radio Project*

Ajit Pai*
Commissioner
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Mark A. Balkin
Hardy, Carey, Chautin & Balkin, LLP
1080 West Causeway Approach
Mandeville, LA 70471
*Counsel for Calvary Chapel of Costa Mesa,
Inc.*

Michael O'Rielly*
Commissioner
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

* Via electronic mail only


