



Federal Communications Commission
Washington, D.C. 20554
March 20, 2017

In Reply Refer To:
1800B3-JM

Lee G. Petro, Esq.
Drinker Biddle & Reath LP
1500 K Street N.W., Suite 1100
Washington, D.C. 20005-1209

Peggy Bartholomew
Huckleberry Hill Music Society, Inc.
11 Pheasant Hill Rd.
Collinsville, CT 06019

In re: **WMMM-LP, Collinsville, CT**
Facility ID No. 194718
File No. BLL-20160407ABC

Petition for Reconsideration

Dear Mr. Petro and Ms. Bartholomew:

The Media Bureau (Bureau) has before it a Petition for Reconsideration (Petition) filed May 18, 2016, by Trignition Media, LLC (Trignition) and related pleadings.¹ The Petition seeks reconsideration of a Bureau action granting the above-referenced application for license to cover construction permit facilities (License Application) filed on April 7, 2016, by Huckleberry Hill Music Society, licensee of station WMMM-LP, Collinsville, Connecticut (Station). For the reasons set forth below, we dismiss the Petition.

Background. HHMS filed an application for a construction permit (CP) to build a low power FM (LPFM) station on November 12, 2013.² The Commission designated HHMS as tentative selectee of LPFM MX Group #74, after crediting HHMS with five points.³ The Commission subsequently granted HHMS's application and issued the CP on October 15, 2014.⁴ HHMS then filed the License Application, which declared the Station was currently operating pursuant to program test authority, was constructed as

¹ Huckleberry Hill Music Society (HHMS) filed an Opposition to the Petition for Reconsideration (Opposition) on May 27, 2016. In response, Trignition filed a "Reply to HHMS Response" (Reply) on June 8, 2016. HHMS then filed an Opposition to the Reply on June 15, 2016 (Opposition II). On June 23, 2016, Trignition filed a Motion to Strike the Opposition II. In light of our action below, we dismiss the Opposition II and Motion to Strike as untimely and unauthorized pleadings, and do not consider them further. See 47 CFR § 1.45.

² See BNPL-20131112AIA.

³ *Commission Identifies Tentative Selectees in 111 Groups of Mutually Exclusive Applications Filed in the LPFM Window*; *Announces a 30-Day Petition to Deny Period and a 90-Day Period to File Voluntary Time-Share Proposals and Major Change Amendments*, Public Notice, FCC 14-132 (MB Sept. 5, 2014).

⁴ See *Broadcast Actions*, Public Notice, Report No. 48348 (rel. Oct. 20, 2014).

authorized in the underlying CP, and that the information as presented in the License Application was “true, complete and correct.”⁵ The Commission granted the License Application on April 13, 2016.⁶

In its Petition, Trignition claims to have standing to contest the License Application as a competitor in the Hartford-New Britain Nielsen Audio market because it “recently acquired” an FM translator station in that market.⁷ Trignition states that the Commission should rescind the grant of the License Application and cancel the underlying CP because HHMS never constructed the Station.⁸ Trignition argues HHMS: 1) was not operating pursuant to automatic program test authority in April 2016, and “most certainly was not operating at all in May 2016”;⁹ 2) did not construct the Station at the transmitter site specified in its CP authorization; 3) does not maintain a local main studio at the location specified in the CP; and 4) is not operating a radio broadcast facility, low power or otherwise from the site authorized in its CP.¹⁰ The Petition further alleges that HHMS principal, Peggy Bartholomew, falsely certified completion of the Station’s facilities, and encourages the Commission to take enforcement actions against the Station.¹¹ Trignition purports to have confirmed these allegations via “field test” at the Station’s official mailing address, a residence at 11 Pheasant Hill Road, Collinsville, Connecticut, and a visit to the proposed main studio address in the CP Application¹² on April 26, 2016, conducted by David Webster, President of Trignition Media.¹³ Under Mr. Webster’s direction, Trignition also commissioned a drone flyover of the residence on May 8, 2016, as a result of which Mr. Webster determined “a 36-foot tower was not constructed at the residence and that he “could not find any evidence [of] a Low Power FM radio station operating with 100 watt ERP” on the premises.¹⁴

In its Opposition, HHMS contests Trignition’s claims, arguing that the station’s transmitter site was at the true FCC-authorized location, “a forested area some distance away from the [Pheasant Hill residence],” and that construction was completed and the Station was fully operational by April 2, 2016.¹⁵ The Opposition also asserts that: (1) on the day Webster traveled to the transmitter site, the CD changer it used as the source of music programming had malfunctioned but the station has since switched to a computer automated system;¹⁶ and (2) it maintains a fully compliant local studio at the transmitter site, reachable by phone and staffed at least 20 hours per week between 7 a.m. and 10 p.m. in compliance with the Commission’s rules (Rules).¹⁷ Finally, HHMS argues that Trignition lacks standing as a competitor in

⁵ See License Application at Section 1, Item 4, and Section 2.

⁶ *Broadcast Actions*, Public Notice, Report No. 48715 (rel. Apr. 18, 2016).

⁷ Petition at 4-5.

⁸ Petition at 1.

⁹ *Id.*

¹⁰ *Id.* at 5.

¹¹ Petition at 5-10.

¹² BNPL-20131112A1A, Section III, Item 3 (CP Application).

¹³ Petition at 6.

¹⁴ *Id.* at 6, Exhibit 3, para. 5.

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 3 (stating “in mid-April, the changer developed an intermittency where it would quit without warning, requiring it to be rebooted,” and that “during the time in question, a local volunteer was repeatedly repairing the malfunctioning changer”).

¹⁷ HHMS further states that the proposed local studio location in the Station’s CP Application exceeded HHMS’s budget, but that HHMS would like to relocate there sometime in the future. *Id.* at 4.

the market because there is absolutely no overlap between the 60-dBμ service areas of WWMJ-LP and Trignition's authorized translator permit.¹⁸

In its Reply, Trignition argues HHMS has failed to explain why the Station was not operating prior to April 26, 2016, or any time between April 26, 2016, and the date of the Petition, May 18, 2016¹⁹ and failed to demonstrate that the Station's tower and antenna was constructed prior to April 15. Trignition also argues that, by virtue of its Opposition, HHMS admits to falsely certifying its main studio would be located at 85 River Road, and has not complied with local programming origination certification²⁰ because it did not have a 'disk jockey present on site' between the time HHMS filed the [License Application] and when Trignition filed the Petition.²¹

Discussion. The Application was granted one day after filing. Accordingly, we find that Trignition's failure to participate in this proceeding prior to the grant of the License Application does not bar consideration of the Petition.²² However, we otherwise find Trignition's Petition procedurally defective here because Trignition lacks standing to file the Petition as a party in interest. The Commission accords party in interest status to a petitioner if grant of the application would result in, or be reasonably likely to result in, some injury of a direct, tangible or substantial nature.²³ It is well established that a competitor of an applicant qualifies as a party in interest.²⁴ Trignition claims standing to file the Petition as a competitor in the Hartford-New Britain Nielsen Audio Market under *FCC v. Sanders Brothers Radio Station (Sanders)*²⁵ because it recently acquired an FM translator station in that market. In reality, the situation is not so simple. In April of 2016, Trignition acquired FM translator

¹⁸ *Id.* at 5.

¹⁹ Reply, Attachment 1, at 2. Webster notes that between April 9 - May 18, 2016, he routinely listened to 107.5 MHz within 75 meters of the Station's authorized transmitter site to determine if the Station commenced operations, including on April 9, 2016, April 14, 2016, April 26, 2016, May 5, 2016, May 11, 2016, and May 17, 2016. Reply, Appendix 2, at para. 3.

²⁰ *Id.* 3-5.

²¹ *Id.* 6-7.

²² Section 1.106(b)(1) of the Commission's 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. 47 CFR § 1.106(b)(1). 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. *Id.* 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. *See Ted and Jana Trucker*, Memorandum Opinion and Order, 4 FCC Rcd 2816, 2816, para. 3 (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, para. 9 (1997) (standing to file a petition for reconsideration found when application granted five days after acceptance). Here, the Bureau granted the Application on April 13, 2016, one day after public notice of acceptance for filing. *See* Public Notice, Report No. 27546 "Broadcast Applications" (Apr. 12, 2016). We find that this brief interval effectively precluded Trignition's participation in the earlier proceeding. Therefore, we will not dismiss the Petition due to Trignition's failure to file an informal objection to the License Application.

²³ *See, e.g., Pinelands, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6058, 6063, para. 18 (1992); *Telesis Corp.*, Memorandum Opinion and Order, 68 FCC 2d 696, 698-99, para. 8 (1978).

²⁴ *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470, 476-477 (1940) (*Sanders*); *Office of Communications of the United Church of Christ v. FCC*, 359 F.2d 994 (1966).

²⁵ *Sanders*, 309 U.S. at 475 (1940).

Station W239AG, Long Lake, New York.²⁶ In connection with its acquisition of Station W239AG, it applied in the FM Translator 250-mile relocation window (implemented in the Commission's *AM Revitalization Order*)²⁷ to move that station to New Britain, Connecticut to operate as a fill-in translator for Station WRYM(AM), New Britain, Connecticut,²⁸ which Trignition also subsequently received Commission consent to acquire.²⁹ Trignition's claim of standing rests on the anticipation that it will consummate the acquisition of Station WRYM(AM) and receive a Commission license to cover relocated translator Station W239AG. The Commission has clearly stated that "*Sanders* standing assumes an actual state of competition, not the future prospect thereof,"³⁰ and therefore such prospective competition as that intimated by Trignition does not create party in interest standing.

Conclusion/Actions. For the reasons discussed above, we find that Trignition lacks standing to file the Petition. Accordingly, IT IS ORDERED that the Petition for Reconsideration filed May 18, 2016, by Trignition Media, LLC, IS DISMISSED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁶ See BALFT-20160219AAO, granted on April 6, 2016, and consummated on April 14, 2016.

²⁷ See *Revitalization of the AM Radio Service*, First Report and Order, 30 FCC Rcd 12145 (2015) (*AM Revitalization Order*).

²⁸ See BPFT-20160129AVN (translator modification application), granted February 24, 2016, as modified by BMPFT-20160823AAS, granted September 12, 2016, and BMPFT-20170130AAY, granted February 17, 2017. NO covering license application has yet been filed for the modified facilities.

²⁹ See BAL-20161103AAC (assignment of license for Station WRYM(AM) to Trignition), granted on December 30, 2016, but not yet consummated.

³⁰ *William L. Fox, et. al*, Memorandum Opinion and Order, 17 FCC 2d 876, 877, para. 3 (1969).