

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In re)	
)	
Silver State Broadcasting, LLC)	File No. 0000093597
K276GW, Winchester, Nevada)	Facility ID No. 203222
)	
For Construction Permit)	

To: Secretary
Attn.: Chief, Audio Division,
Media Bureau

**OPPOSITION TO
PETITION FOR DECLARATORY RULING,
OR, IN THE ALTERNATIVE, PETITION FOR RECONSIDERATION,
AND TO REINSTATE CONSTRUCTION PERMIT**

I. INTRODUCTION

Chinese Voice of Golden City (“CVGC”), licensee of low power FM radio station DKQLS-LP, licensed to Las Vegas, Nevada (the “Station”), by its attorneys, pursuant to Sections 1.45(b) and 1.106(g), of the Commission’s Rules, 47 CFR §§ 1.45(b) and 1.106(g), hereby opposes the Petition for Declaratory Ruling, or, in the Alternative, Petition for Reconsideration, and to Reinstate Construction Permit (“Petition”) filed April 15, 2020, by Silver State Broadcasting, LLC (“SSB”). The SSB Petition seeks to reinstate the above-captioned construction permit application (“CP Application”) that was improperly granted by the Bureau and subsequently returned to pending status. CVGC shall demonstrate below that the application should not be reinstated and should be dismissed.

II. THE SSB CONSTRUCTION PERMIT APPLICATION COULD NOT BE ACCEPTED PURSUANT TO THE BUREAU'S JANUARY 8, 2020 LETTER, WAS, THEREFORE, IMPROPERLY GRANTED, AND WAS PROPERLY RESCINDED

SSB asserts that it had the right to file its CP Application for frequency 103.1 MHz, because the license of KQLS-LP was declared expired and the call sign was deleted.¹ CVGC has an Application for Review² of that decision pending, and, therefore, the Bureau action is not final.³ The effort by SSB to obtain use of the CVGC frequency began shortly after the *CVGC Bureau Decision*. On January 8, 2020, SSB filed a request to move its translator K284CW to Channel 276, the KQEK-LP channel. On January 8, 2020, the Bureau sent a letter to SSB dismissing its request. (“*Bureau Letter*”) In the letter, the Bureau stated that the deletion of KQLS-LP is on appeal and consequently not final. The Bureau added, “ we will not issue conflicting authorizations for other facilities that might impair, or appear to impair, a fair and impartial review. Any application for Silver State’s use of Channel 276 that does not fully protect DKQLS-LP – including STA requests – will not be considered until the matters surrounding DKQLS-LP are disposed of and final.”

SSB attempted to circumvent the *Bureau Letter* by filing the CP Application. As such, the CP Application is an attempt to obtain reconsideration or review of the *Bureau Letter*. However, a request for reconsideration or review of the *Bureau Letter* was due within 30 days

¹ Letter to CVGC from albert Shuldiner, Chief, Audio Division, Media Bureau, November 19, 2019, *affirmed*, *Chinese Voice of Golden City*, DA 20-75, released January 15, 2020 (“*CVGC Bureau Decision*”).

² CVGC Application for Review, File No. BLL-20171120AAB, filed February 14, 2020.

³ SSB submits arguments regarding the merits of the CVGC Application for Review. Petition at 3-6. CVGC submits that its Application for Review will be successful. However, as CVGC’s Application for Review is not at issue in this proceeding, and as the time for SSB to argue with respect to CVGC’s Application for Review has passed, CVGC will not respond to SSB’s arguments regarding CVGC’s Application for Review.

after it was released. As SSB did not file for such reconsideration or review, the *Bureau Letter* is now a final Commission determination. SSB cannot obtain reconsideration or review through its attempted circumvention.

Thus, when SSB filed its CP Application, it could not be accepted or granted. The Bureau properly rescinded the CP Application for the reasons spelled out in the *Bureau Letter*. SSB argues that the Bureau improperly rescinded the grant of the CP Application. Surprisingly, SSB relies on the Administrative Procedure Act as the basis for arguing that its CP was improperly rescinded. However, it was SSB's attempt to violate the APA that required that its CP to be rescinded.

III. THE ADMINISTRATIVE PROCEDURE ACT REQUIRES THAT THE CP APPLICATION BE RESCINDED AND DISMISSED

The Administrative Procedure Act, 5 U.S.C. § 550 *et. seq.*, ("APA") details the procedures by which the Commission is held accountable to the public and to review by the courts. *Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992). Specifically, the APA provides that a person suffering legal wrong because of agency action is entitled to judicial review thereof. 5 U.S.C. § 701, *et seq.* In a challenge to Commission action brought pursuant to the APA, the statute provides that "[t]he reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be," among other things, "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D); See, *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 413-14 (1971) ("*Overton Park*") The APA requires that an agency action is not final until it is no longer subject to judicial review. *Bennett v. Spear*, 520 U.S. 154 (1997).

The APA requires that the KQLS-LP frequency be preserved until the *CVGC Bureau Decision* is final and no longer subject to review. The *Bureau Letter* therefore did exactly what the Commission is obligated to do under the APA. Until the *CVGC Bureau Decision* is final, the Commission must preserve CVGC's right to use its frequency. In addition, because the KQLS-LP frequency must be preserved, the Bureau cannot accept any application that attempts to make use of that frequency in a manner that conflicts with the use by KQLS-LP. The CP Application was, therefore, not only improperly granted, but it was improperly accepted for filing also. There is no available Channel 276 in Las Vegas for which SSB can apply.

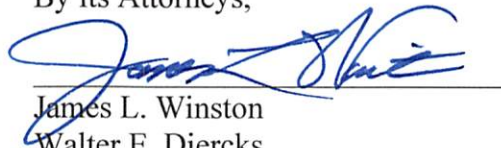
IV. CONCLUSION

The Bureau properly rescinded the SSB CP Application. In addition, the Bureau improperly accepted it for filing. Therefore, the SSB Petition should be dismissed or denied, and the CP Application should be dismissed as improperly accepted for filing.

Respectfully submitted,

CHINESE VOICE OF GOLDEN CITY

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April 29, 2020

CERTIFICATE OF SERVICE

I, James Winston, do hereby certify that I sent via electronic mail and U.S. mail (except where indicated), on this 29th day of April, 2020, copies of the foregoing OPPOSITION TO PETITION FOR DECLARATORY RULING to the following:

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