

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

In re)	
)	
W252BE, Tarrant, Alabama)	File No. 0000091616
Application for Renewal of License)	Facility Id. No. 141124
)	

To: Office of the Secretary
Attn: Audio Division, Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

Shelby Broadcast Associates, LLC (“Shelby”), licensee of FM translator W252BE, Tarrant, Alabama, opposes the “Petition for Reconsideration” (the “Petition”) filed by Marble City Media, LLC (“Marble City”) on April 16, 2020. Marble City did not participate prior to grant of the renewal application and has not shown good cause why it was unable to participate. Thus, the FCC should dismiss the Petition pursuant to Section 1.106(b)(1) of the FCC’s rules. In support hereof, Shelby states as follows:

Over the past few years, Marble City has raised in a separate proceeding issues regarding the operation of W252BE. These matters were filed in the form of interference complaints and pleadings against the W252BE license and pending license application (BLFT-20181016ABE). Shelby responded to these allegations and the W252BE license application remains pending.

Shelby filed its renewal of license application for W252BE on November 25, 2019, and the application was put on public notice on December 2, 2019.¹ The FCC granted the renewal

¹ See *Broadcast Applications Public Notice*, Report No. PN-1-191202-01 (rel. Dec. 2, 2019).

application 108 days later, on March 19, 2020.² During this 108-day period, Marble City did not file a petition to deny or any other pleading against the W252BE renewal application. Pursuant to Section 1.106(b)(1), a party that did not participate prior to grant, must show good reason why it was unable to participate earlier.³ Marble City does not make this showing. It claims, in a footnote, that because of “its knowledge of customary practice,” it did not think that the FCC would grant the renewal application before acting on the issues raised by Marble City against the license application. However, Marble City cites no statute, rule, regulation, case law or other precedent to support its claim. Nor does it state or cite any precedent that the Media Bureau’s grant of the renewal application before acting on the license application was in error. If Marble City was so concerned about the issues it raised against the W252BE license application, it could have easily filed a petition to deny the W252BE renewal application during the 108-day period that it was pending.⁴ It did not and thus its Petition for Reconsideration should be dismissed pursuant to Section 1.106(b)(1) of the Commission’s Rules.⁵

Even if the FCC were to consider Marble City arguments on the merits, it should deny

² See *Broadcast Actions Public Notice*, Report No. PN-2-200223-01 (rel. Mar. 23, 2020).

³ 47 C.F.R. § 1.106(b)(1).

⁴ As discussed briefly below, Marble City also raises an issue with Shelby’s answer to the character questions on the renewal application. This issue is wholly unrelated to the issues raised in the license application proceeding and Marble City should have raised it prior to grant of the W252BE renewal application. In other words, it cannot rely on its already tenuous argument that it was expecting the FCC to act on the license application before the renewal application to support its failure to object to Shelby’s answers to the character questions on the renewal application.

⁵ See, e.g., *KSCO, Santa Cruz, CA, File No. BR-20130809AAJ*, DA 14-1165 (Med. Bur. Aug. 11, 2014) (informal objection, treated as a petition for reconsideration of a radio renewal of license application, was dismissed because the petitioner failed to object to the renewal application during the 90-day period it was pending and did not show good reason why it failed to object). Marble City also asks for a waiver of Section 1.106(b)(1) of the FCC’s Rules but does not support its waiver request with any evidence or precedent. The FCC’s standards for waiver are high. Waiver is appropriate only if both: (1) special circumstances warrant a deviation from the general rule; and (2) such deviation better serves the public interest. See *Guam Power II*, FCC 18-153 (2018). Marble City has not met either of these standards.

the Petition. Regarding the claims made in the license application proceeding by Marble City and repeated in its Petition, Shelby has refuted those claims in its August 3, 2018 Opposition, which is hereby incorporated by reference.

Regarding Marble City's claim that Shelby improperly answered the character questions on the W252BE renewal application, it is simply not true. Marble City believes that the W243AP proceeding⁶ and the WZNN(FM) proceedings⁷ were proceedings where character issues were resolved adversely against Shelby (or a related party). Petition at pp. 7-8. Marble City does not cite any precedent to support its claim. These cases both involve the expiration of a license pursuant to Section 312(g) of the Communications Act. While character issues were discussed in those proceedings, no character issue was left unresolved or resolved adversely against Shelby.⁸ In addition, out of an abundance of caution Shelby disclosed the WZNN(FM) Letter as an attachment to the W252BE renewal application even though such disclosure was not required.⁹ Similarly, the fact that Marble City has raised character allegations in the license application proceeding, does not mean that character "issues" have been raised. Mere allegations raised in respect to character in a pending application proceeding do not rise to the level of

⁶ *Shelby Broadcast Associates, LLC (W243AP, Mooresville, AL)*, Letter Order, Ref No. 1800B3-VM (Med. Bur. November 29, 2018) (the "WZNN(FM) Letter").

⁷ *Valleydale Broadcasting, LLC (WZNN(FM), Maplesville, AL)*, Letter Order, Ref No. 1800B3-VM (Med. Bur. November 15, 2017) (the "WZNN(FM) Letter").

⁸ *See, e.g., KAXT, LLC*, 32 FCC Rcd 9638, 9645 (2017) (because allegations were not deemed to have merit and designated for a hearing, they are not issues left unresolved).

⁹ The WZNN(FM) Letter only requires disclosure in facilities applications (FCC Form 301, 302 (any version), 349 or 350) not renewal or other applications. Shelby answered "No" to the adverse findings question because that is the only way it could upload the WZNN(FM) Letter. Out of an abundance of caution, Shelby is changing the answers to the character questions on its renewal application and uploading the WZNN(FM) and W243AP letters.

“issues,” a term intended to refer to the issues raised in a hearing designation order.¹⁰

Marble City does not have standing to file a petition for reconsideration and its Petition must be dismissed pursuant to Section 1.106(b)(1). In addition, the substantive issues raised with regard to the character questions on the renewal application are meritless.

Respectfully submitted,

**SHELBY BROADCAST ASSOCIATES,
LLC**

By: _____/s/_____
Scott Woodworth
Edinger Associates PLLC
1725 I Street NW, Suite 300
Washington, DC 20006

April 29, 2020

Its Attorney

¹⁰ See Note 8; *see also*, *Coosa Valley News, Inc.*, 23 FCC Rcd 9146 9149 (Med. Bur. 2008) (“until such allegations are determined to have merit and are designated for hearing, no “unresolved” issue is pending “against” the applicant”).

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day April, 2020, I caused copies of the foregoing
“**Opposition to Petition for Reconsideration**” to be mailed via first-class postage prepaid mail
to the following:

M. Scott Johnson
Smithwick and Belendiuk, P.C.
5028 Wisconsin Ave., Suite 301
Washington, DC 20016

/s/

Scott Woodworth