

*Before the
Federal Communications Commission
Washington, DC 20554*

In re Applications of)
)
SILVER STATE BROADCASTING, LLC) **LMS File No. 0000128471**
) **LMS File No. 0000129963**
) **Facility No. 203222**

*For Construction Permit for Modification and
For License to Cover of K276GX, Las Vegas, Nevada*

Filed with: **Office of the Secretary**
Directed to: **Audio Division, Media Bureau**

REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION

Silver State Broadcasting, LLC (“Silver State”), by its attorney, hereby submits its response to the “Opposition to Petition for Reconsideration” (“Opposition”) filed on behalf of Chinese Voice of Golden City (“Chinese Voice”) with respect to the above-referenced applications. The Petition requested reconsideration of the Bureau’s action of December 23, 2020, rescinding the Bureau’s grant of construction permit for modification of Station K276GX and the dismissal of the application for license to cover the construction permit. With respect thereto, the following is stated:

As stated previously, the station currently known as K276GX was previously ordered off the air due to alleged interference with Station KJUL-FM, Moapa Valley, Nevada, and on November 19, 2019, the Bureau cancelled the license for LPFM Station DKQLS-LP, owned by Chinese Voice of Golden City (“Chinese Voice”), which operated on Channel 276 in Las Vegas. In light of that cancellation, in 2019, Silver State initially attempted to have granted an application to allow it to change channel and to resume operations on Channel 276.¹ Because

¹ LMS File No. 0000093597.

that Silver State application was mutually-exclusive with DKQLS-LP's prior operation, a January 2020 letter ruling by a Media Staff engineer pertaining to an STA request stated "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 matters surrounding DKQLS-LP are disposed of and final."² Subsequent to that letter ruling, however, the Bureau adopted a ruling issued by Albert Shuldiner, Chief, Audio Division, on June 29, 2020, which more precisely reflected Commission policy and regulations, which stated:

Currently, Chinese Voice, who was previously licensed to operate on channel 276 at Las Vegas, has a pending application for review and motion to stay the Bureau's finding that its license expired. Until the Commission acts on these filings, channel 276 is not available to Silver State for its proposed relocation of the Translator.

Chinese Voice of Golden City, Letter Decision, File No. BLFT-20190415ABG (June 29, 2020) at 9 (emphasis added; footnote omitted).

Chinese Voice argues that Silver State has "refused to comply with the terms of the Commission's previously rulings and its latest effort should be ruled an abuse of the Commission's processes." Opposition at 1-2.

Chinese Voice totally avoids the pertinent law of this case and more importantly, ignores the Commission's rules.

As to the former, by *Memorandum Opinion and Order* released on November 25, 2020, the full Commission dismissed and denied the Chinese Voice Application for Review, and dismissed its Motion for Stay. *Chinese Voice of Golden City, Memorandum Opinion and Order*, FCC 20-169, 35 FCC Rcd 13638 (Nov. 25, 2020). Therefore, the fact of the matter is that on November 30, 2020 (the day the latest Silver State Modification Application was filed), the very

² Letter to Silver State Broadcasting, LLC from Dale Bickel, Senior Engineer, Audio Division, Media Bureau, January 8, 2020) ("January 8, 2020 Bureau Letter").

action that the Bureau was requiring Silver State to wait for -- the issuance of a decision on the then-pending Application for Review – had already occurred. Under the terms of the June 29, 2020 Letter, which was issued by the Chief of the Audio Division, the filing of the Modification Application by Silver State therefore was entirely appropriate. Therefore, contrary to Chinese Voice email which precipitated the chain of events, there was nothing premature about Silver State’s filing.

Most importantly, that ruling by the Chief of the Audio Division was entirely consistent with Commission rules and precedent, and the subsequent grant of the Modification Application was entirely appropriate. As stated previously, this matter is governed by Section 1.103(a) of the Commission’s rules, which states:

Unless otherwise specified by law or Commission rule (e.g. §§1.102 and 1.427), the effective date of any Commission action shall be the date of public notice of such action as that latter date is defined in §1.4(b) of these rules: *Provided*, That the Commission may, on its own motion or on motion by any party, designate an effective date that is either earlier or later in time than the date of public notice of such action. The designation of an earlier or later effective date shall have no effect on any pleading periods.

47 C.F.R. § 1.103(a) (emphasis added). At no point in its Opposition does Chinese Voice explain why Section 1.103(a) of the Commission’s rules does not control in this case.

Under Commission precedent, “Commission actions are effective unless stayed. 47 U.S.C. Section 402, 405; 47 CFR Section 1.103.” *CNCA Acquisition Corp.*, 3 FCC Rcd 6088, 6096 n.11 (1988). As explained previously, in a remarkably similar case from six months ago, a deleted LPFM licensee sought to prevent an FM translator from filing a modification application upon its frequency arguing, as here, that an appeal was pending of the cancellation of the LPFM license. The Bureau rejected that argument, stating:

Positive Hope also argues that the Translator Amendment was unacceptable at the time it was filed because the specified facility conflicted with co-channel station DKRSA-LP, El Cajon, California (DKRSA-LP). The DKRSA-LP license was cancelled at the licensee’s request prior to the filing of the Translator Amendment; however, a petition for

reconsideration of this cancellation was pending. The Bureau denied this petition for reconsideration on September 10, 2019.

* * * *

We... find unavailing Positive Hope’s argument that the Translator Application should have been dismissed for failure to protect DKRSA-LP. Although a petition for reconsideration was pending at the time the Translator Application was filed, the DKRSA-LP license had been cancelled at the licensee’s request. The filing of a petition for reconsideration does not automatically stay the decision for which reconsideration is sought. Rather, a Bureau action remains in full force and effect despite any pending appeals, such as a petition for reconsideration. Therefore, there is no basis for reconsidering the staff’s decision not to dismiss the Translator Application due to the status of the cancelled DKRSA-LP facility.

Letter Decision, Matthew H. McCormick, Esq., File No. BNPFT-20190731AAZ (June 24, 2020) at 2, 4 (footnotes omitted) (Attachment 8).

In this case, Chinese Voice’s request for “stay” has already been dismissed by the Commission.³ No “stay” of the Commission’s action deleting the DKQLS-LP license has subsequently been requested or issued. Therefore, the full Commission’s decision affirming the deletion of the DKQLS-LP license is also “effective” under Section 1.103(a) of the Commission’s Rules, and the Bureau was fully justified in granting the Modification Application.

Finally, Chinese Voice’s claim that there were no “procedural irregularities” in this case (Opposition at 4) is absurd. Commission actions should not be based on “emails” to Commission personnel. Chinese Voice had over three weeks to object to the pending Modification Application, and it sat on its rights. It is well established that a petitioner (such as Chinese Voice) is not legally permitted to “sit back” and hope that a decision will be in its favor and, when it isn’t, to parry with an offer of more evidence.⁴ But that is precisely what it did in the

³ *Chinese Voice of Golden City*, FCC 20-169, 35 FCC Rcd 13638, 13647 (Nov. 25, 2020) (“**IT IS FURTHER ORDERED** that the Motion for Stay filed by Chinese Voice of Golden City on February 17, 2020, **IS DISMISSED**”) (emphasis in original).

⁴ Accord, *Canyon Area Residents for the Environment*, 14 FCC Rcd 8152, 8154 (1999) (“We cannot allow a party to sit back and hope that a decision will be in its favor and, when it isn’t, to parry with an offer of more

present case – it sat back, filed nothing, and then when things did not go initially in its favor (insofar as it obviously does not want Silver State to commence service on Chinese Voice’s vacated frequency), Chinese Voice’s counsel contacted the FCC staff personnel through informal e-mail processes. The result of these highly unusual maneuvers on the part of Chinese Voice has been a deprivation of service to the Las Vegas area.

Once again, Silver State is fully cognizant that due to the fact that Chinese Voice is appealing the Commission decision to the U.S. Court of Appeals,⁵ any operation that Silver State engages in that does not fully protect the earlier DKQLS-LP facility is at Silver State’s own risk. With that in mind, the appropriate action for the Commission to take at this time is to reinstate the permit, and attach a condition to the permit so that it is subject to “whatever action, if any, the U.S. Court of Appeals takes in United States Court of Appeals for the District of Columbia Circuit Case No. 20-1514.”⁶ Such a condition, will fully protect Chinese Voice and its rights (to the extent any such rights still exist), while also allowing Silver State the ability to more fully provide FM service to the service area of its primary Station, namely AM Station KBET(AM), thereby allowing the KBET(AM) voice to be supplemented and provide important service to the Las Vegas area.

There is nothing gained by allowing the 103.1 MHz frequency in the Las Vegas area to be essentially silent and less than fully utilized. The full Commission has already determined that Chinese Voice’s license has expired as a matter of law. *Chinese Voice of Golden City*, FCC 20-169, 35 FCC Rcd 13638, 13643-44 ¶ 13. There is no stay that has been issued with regard to

evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed.”) (quoting *Colorado Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941)

⁵ The appeal was filed by Chinese Voice on December 23, 2020, and has been assigned Case No. 20-1514.

⁶ Accord, *RKO General, Inc.*, 17 R.R.2d 412(1969) (grant of permit conditioned on outcome of civil case); *National Broadcasting Company, Inc.*, 62 F.C.C.2d 582 (grant conditioned on outcome of civil case).

