



Federal Communications Commission
Washington, D.C. 20554

August 1, 2007

DA 07-3493

In Reply Refer to:

1800B3-TSN

Released: August 1, 2007

Sun Mountain, Inc.
P.O. Box 230
Hardin, MT 59034-0230

Mr. Ed Thurner
301 1st Avenue
Laurel, MT 59044

In re: **Sun Mountain, Inc.**
KBSR(AM), Laurel, Montana
Facility ID No. 5297
File No. BR-20041202AGC

**Application for Renewal of AM
Radio Station License**

Informal Objection

Dear Applicant and Objector:

We have before us the above-referenced application ("Application") filed by Sun Mountain, Inc. ("Sun Mountain") for renewal of the license of station KBSR(AM), Laurel, Montana. We also have before us an informal objection to the Application filed March 1, 2005, by Mr. Ed Thurner ("Thurner"). For the reasons set forth below, we deny the informal objection and grant the Application.

Background. Sun Mountain filed the Application on December 2, 2004. On March 1, 2005, Thurner filed a letter objecting to grant of the Application ("Objection"), alleging that Sun Mountain's President and sole shareholder, Richard Solberg ("Solberg") made a misrepresentation in the Application. Specifically, Thurner alleges that Solberg certified that he was not the subject of any adverse findings or adverse final actions regarding his character qualifications, when in fact Solberg had been convicted in June 1986 of a Class B felony for theft, and was further disbarred from the practice of law by the Washington State Supreme Court in September 1985. Because Thurner's letter was not timely filed as a petition to deny, we consider it as an informal objection. Sun Mountain filed an Opposition to Informal Objection on April 13, 2005 ("Opposition").

Discussion. A petition to deny a renewal application (as well as an informal objection) must, pursuant to Section 309(d) of the Communications Act of 1934, as amended (the "Act"),¹ provide properly

¹ 47 U.S.C. § 309(d).

supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with Section 309(k) of the Act,² which governs our evaluation of an application for license renewal. Specifically, Section 309(k)(1) provides that we are to grant the renewal application if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations that, taken together, constitute a pattern of abuse.³ If, however, the licensee fails to meet that standard, the Commission may deny the application, after notice and opportunity for a hearing under Section 309(d) of the Act, or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”⁴

Turner attaches to his Objection a copy of Supplemental Findings of Fact and Conclusions of Law, prepared by the Disciplinary Board of the Washington State Bar Association, summarizing findings that Solberg had committed various acts and omissions in connection with his representation of legal clients while practicing law in Washington, including failing to set up client trust accounts, failing promptly to return client funds, and fraud, deceit, and dishonesty.⁵ As a result of these findings, Solberg was disbarred from the practice of law in the State of Washington on September 16, 1985.⁶ Turner also attaches a printout titled, “Statewide Criminal Conviction History,” indicating that Solberg was convicted of theft, a Class B felony, in Spokane, Washington on June 5, 1986.

Solberg does not contest the facts of either the disbarment or the conviction. As to the latter, however, he presents an Order of Judgment of Dismissal, issued October 13, 1993, by the Superior Court, State of Washington, County of Spokane.⁷ The Dismissal Order states that Solberg, having completed the deferred sentence in the Order of Probation in his criminal case, was permitted to withdraw his plea of guilty to the crime of first degree theft, and that the charge was dismissed with prejudice. As to the disbarment, Solberg argues first that the misconduct determined in that proceeding was not the type of misconduct that the Commission, in its various policy statements on character qualifications, has considered to be disqualifying.⁸ Second, Solberg contends that even if the Commission were to consider that misconduct, it

² *Id.*, § 309(k). See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *reh’g denied* (D.C. Cir. Sept. 10, 1993).

³ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described in the text by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

⁴ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁵ *Richard P. Solberg*, Supplemental Findings of Fact and Conclusions of Law (Wash. State Bar Ass’n May 31, 1985) (“Supplemental Findings”), attached to Objection.

⁶ *Richard P. Solberg*, Order of Disbarment (Wash. Sept. 16, 1985), attached to Objection.

⁷ *State v. Richard Paul Solberg*, Order of Judgment of Dismissal (Spokane Superior Court Oct. 13, 1993) (“Dismissal Order”), attached to Opposition.

⁸ Opposition at 2-3. See *Policy Regarding Character Qualifications In Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees*, Report, Order, and Policy Statement, 102 FCC2d 1179 (1985), *recon. denied*, 1 FCC Rcd 421 (1986) (“1985 Policy Statement”). See also *Policy Regarding Character Qualifications in Broadcast Licensing*, Policy Statement and Order, 5 FCC Rcd 3252 (1990), *modified*, 6 FCC Rcd 3448 (1991), *further modified*, 7 FCC Rcd 6564 (1992) (“1990 Policy Statement”).

occurred more than ten years before Sun Mountain filed the Application, and thus according to the *1985 Policy Statement* and the instructions to the renewal application (FCC Form 303-S), need not have been reported by the applicant. Finally, Solberg argues that he has met the factors outlined by the Commission for rehabilitation of his character qualifications.

The Commission, in its *1990 Policy Statement*, broadened the extent of its inquiry into character qualifications to include any felony conviction.⁹ Further, while the Commission generally only considers fraudulent representations made to a governmental unit, some of the findings in Solberg's disbarment proceeding relate to misrepresentations made to courts.¹⁰ However, Solberg is correct that the Commission also directed that a ten-year limit generally applies to our consideration of an applicant's past conduct.¹¹ Solberg's disbarment proceeding was closed 19 years before he filed the Application, and his felony conviction not only occurred 18 years prior to filing the Application, but Solberg served out his probation and the charges were dismissed 11 years before he filed the Application. Finally, none of the conduct alleged occurred during the most recent KBSR(AM) license term. As such, we do not consider the past conduct raised by Thurner, and further find that Solberg was not required to report said conduct in the Application. Neither Thurner nor any other party has raised any other issues regarding Solberg, Sun Mountain, or the operation of Station KBSR(AM).

Conclusion. As discussed above, we find that Solberg's past misconduct occurred both prior to the ten-year limit on consideration of such matters in evaluating character qualifications, and prior to the most recent KBSR(AM) license term. We further find no evidence of violations of the Act or the Rules regarding the operation of KBSR(AM) during its most recent license term. Finally, we find that Station KBSR(AM) served the public interest, convenience, and necessity during the subject license term. Accordingly, the Objection IS DENIED. IT IS ORDERED that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the license renewal application of Sun Mountain, Inc., for Station KBSR(AM), Laurel, Montana (File No. BR-20041202AGC) IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Dan J. Alpert, Esq., Counsel for Sun Mountain, Inc.

⁹ *1990 Policy Statement*, 5 FCC Rcd at 3252.

¹⁰ See Supplemental Findings at 9, 14, 20-21.

¹¹ *1985 Policy Statement*, 102 FCC2d at 1229 (“As to the time period relevant to character inquiries, we find that, as a general matter . . . even as to consideration of past conduct indicating ‘a flagrant disregard of the Commission's regulations and policies,’ a ten year limitation should apply. The ‘inherent inequity and practical difficulty’ (citation omitted) involved in requiring applicants to respond to allegations of greater age suggests that such limit be imposed.”). We note that the 10-year time period is merely a general standard, and that the Commission may apply a different standard based on the particular facts presented. However, no showing has been made in this case that warrants a different standard.