



Federal Communications Commission  
Washington, D.C. 20554

February 12, 2008

**DA 08-347**

*In Reply Refer to:*

1800B3-JP

Released: February 12, 2008

Dwayne Burris  
SIBR, Inc.  
1304 West Broadway Place  
Hobbs, NM 88240

In re: SIBR, Inc.  
DKPOE(AM), Midland, Texas  
Facility ID: 128875  
File No. BL-20060105ACS

**Petition for Reconsideration**

Dear Mr. Burris:

We have before us SIBR, Inc.'s ("SIBR") April 24, 2006, Petition for Reconsideration of the staff action dismissing the above-captioned application. For the reasons set forth below we deny the petition for reconsideration.

**Background.** On January 5, 2006, SIBR filed the above-captioned application for a license to cover a construction permit.<sup>1</sup> The construction permit authorized SIBR to construct a new Class B AM station, KPOE, on 880 kilohertz at Midland, Texas. The station was to employ 2.0 kW daytime power and 0.5 kW nighttime power using different daytime and nighttime transmitter sites and directional antenna systems.

On March 17, 2006, the staff dismissed the above-captioned license to cover application as patently defective.<sup>2</sup> The staff found that: (1) the authorized KPOE(AM) nighttime facilities were not constructed before the construction permit expiration date of December 16, 2005; (2) SIBR failed to submit complete nondirectional proof of performance and complete daytime and nighttime directional antenna proofs of performance in violation of Section 73.33 of the Commission's Rules<sup>3</sup> ("the Rules"); and (3) SIBR failed to submit the required radiofrequency electromagnetic field measurements and tower fencing distances.<sup>4</sup> Moreover, the staff observed that SIBR did not submit an explanation as to why the KPOE nighttime facilities were not constructed. Instead, SIBR proposed to relocate the KPOE(AM) nighttime facilities to the daytime site and to use a nondirectional antenna and 0.03 kW power at night. The staff noted that such facility modifications are not permitted in license to cover applications and that SIBR's proposed modifications would create an impermissible Class D AM facility.<sup>5</sup> The staff held that,

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<sup>1</sup> File No. BNP-20001017AAD.

<sup>2</sup> Letter to Dwayne Burris from Susan N. Crawford, Assistant Chief, Audio Division, Media Bureau (Mar. 17, 2006).

<sup>3</sup> 47 C.F.R. § 73.33.

<sup>4</sup> This information is necessary to obtain program test authority and ensure compliance with the Commission's radiofrequency maximum permissible exposure limits.

<sup>5</sup> See 47 C.F.R. § 73.21(a)(3).

as a result of the above defects, the KPOE(AM) construction permit was automatically forfeited and the call sign KPOE(AM) was deleted.<sup>6</sup> SIBR filed a timely petition for reconsideration of these actions on April 24, 2006.

**Discussion.** The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts, not known or existing at the time of petitioner's last opportunity to present such matters.<sup>7</sup> SIBR does not challenge the findings in the March 17, 2006, staff letter. Instead, SIBR claims that "several issues out of its control" prevented construction from being completed prior to the expiration of the construction permit, and thus, that the construction deadline should be tolled.<sup>8</sup> SIBR states that it experienced difficulty obtaining land on which to build the daytime facilities and was subsequently unable to procure land to build the nighttime facilities. SIBR asks that the construction permit be reinstated and that it be allowed to file an amended FCC Form 302-AM to provide the missing materials. Additionally, SIBR asks for permission to operate KPOE(AM) as a daytime only station or alternatively, authority to co-locate the nighttime facilities with the daytime facilities along with a waiver of the coverage area. However, supplemental materials submitted by SIBR on May 23, 2006, indicate that SIBR has been unable to obtain permission from the land owner of the daytime site to co-locate the nighttime facilities.

The time period granted by the original construction permit may only be tolled if construction is prevented by: (1) natural disasters or (2) administrative or judicial review of the permit, either by the Commission or a court of competent jurisdiction considering any necessary local, state, or federal requirement for the construction or operation of the station, including any zoning or environmental requirements.<sup>9</sup> SIBR's circumstances do not fall within this limited exception to the three year construction deadline. Additionally, SIBR did not ask for tolling of the expiration date of the construction permit pursuant to Section 73.3598(c) of the Rules.<sup>10</sup> SIBR failed to comply with the terms of its construction permit for Station KPOE(AM). Therefore, the staff acted properly in dismissing the above-captioned application and subjecting the construction permit to forfeiture under Section 73.3598(e) of the Rules.<sup>11</sup>

Because SIBR's petition for reconsideration fails to show a material error or omission in the original decision and did not raise additional facts unknown or not existing until after SIBR's last opportunity to present such matters it will be denied.<sup>12</sup>

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<sup>6</sup> See 47 C.F.R § 73.3598(e).

<sup>7</sup> 47 C.F.R § 1.106, and *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sum nom.*, *Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

<sup>8</sup> Petition for Reconsideration at 1.

<sup>9</sup> See 47 C.F.R § 73.3598.

<sup>10</sup> 47 C.F.R. § 73.3598(c).

<sup>11</sup> 47 C.F.R. § 73.3598(e).

<sup>12</sup> See *Infinity Broadcasting Operations, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 4216 (2004).

**Conclusion/Actions.** For the above stated reasons, SIBR's Petition for Reconsideration is DENIED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Glen L. Houston, Esq.