



Federal Communications Commission
Washington, D.C. 20554

March 25, 2008

DA 08-673

In Reply Refer to:

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The Last Bastion Station Trust, LLC, as Trustee
c/o Media Venture Partners, LLC
244 Jackson St., 4th Floor
San Francisco, CA 94111

Georgia Eagle Broadcasting, Inc.
6316 Peake Road
Macon, GA 31210

In re: The Last Bastion Station Trust, LLC,
as Trustee
WMGL(FM), Ravenel, South Carolina
Facility ID: 61592
File No. BPH-20070413AFJ

**Application for Minor Change to a
Licensed Facility**

Petition for Reconsideration

Dear Applicants:

We have before us: (1) a Petition for Reconsideration ("Petition") filed by Georgia Eagle Broadcasting, Inc. ("Georgia Eagle") on August 10, 2007, asking for reconsideration of the grant of the referenced application of The Last Bastion Trust, LLC, as Trustee ("LBT"), for minor modification of the facilities of Station WMGL(FM), Ravenel, South Carolina (the "WMGL Application"); (2) LBT's August 23, 2007, Opposition to Petition for Reconsideration ("Opposition"); and (3) Georgia Eagle's September 6, 2007, Reply to the Opposition ("Reply"). For the reasons discussed below, we dismiss the Petition.

Background. On January 19, 2007, Citadel Broadcasting Company ("Citadel"), licensee of WNKT(FM), St. George, South Carolina, filed an application (the "WNKT Application")¹ to change the community of license of WNKT(FM) from St. George to Eastover, South Carolina. On April 13, 2007, Citadel, then the licensee of WMGL(FM),² filed the WMGL Application and, on the same day, amended the WNKT Application to make the two applications contingent with one another.³ The WMGL

¹ File No. BPH-20070119AEM.

² See File No. BALH-20060228ALE (consummated on June 12, 2007).

³ See 47 C.F.R. § 73.3517(e). The applications specifically referenced this contingency. See WMGL Application, Exhibit 5 at 1 and Exhibit 26 at 1; WNKT Application, as amended, Exhibit 1 and Exhibit 26 at 1.

Application was accepted for filing on April 18, 2007.⁴ No objections were filed against either the WMGL or WNKT Applications, and both were granted by the staff on July 5, 2007.⁵ On that same date, Georgia Eagle filed a modification application to change the community of license of its station WMCD(FM) from Claxton, Georgia to Sullivan's Island, South Carolina.⁶ That application remains pending. Georgia Eagle filed its Petition on August 10, 2007.

Discussion. Section 1.106(b)(1) of the Rules allows a petition for reconsideration to be filed by any party to the original proceeding or any party whose interests will be adversely affected by the action taken by the Commission.⁷ If the petitioner was not party to the original proceeding it must show good reason for why it was unable to participate in the earlier proceeding.

Georgia Eagle did not object to the WMGL Application prior to its grant. It also provides no reasonable explanation for why it was unable to participate in this proceeding prior to grant of the WMGL Application. Georgia Eagle attempts to excuse its actions by arguing that it could not have participated earlier in the proceeding and challenged the WMGL Application prior to its grant because it claims that it was necessary to first attain "party-in-interest" status. Georgia Eagle argues that if it filed an "informal objection," it could not have attained "status as a true 'interested person' or 'party in interest' [which] is necessary in order for a petitioner to preserve certain legal rights."⁸ The record therefore indicates that Georgia Eagle was fully aware of the filing of the WMGL Application, but made the deliberate decision not to participate earlier in the proceeding.

We find Georgia Eagle's arguments unsupportable and erroneous as a matter of law. Georgia Eagle is correct that neither the Communications Act of 1934, as amended (the "Act") nor the Rules provide for the filing of petitions to deny against minor modification applications such as the WMGL Application.⁹ Georgia Eagle argues that it had to wait until July 5, 2007, the date that the WMGL Application was granted and the date that Georgia Eagle filed its change in community of license modification application to become a true "party in interest." However, the Commission has held that where there is no statutory opportunity to file a formal petition to deny, the filing of an informal objection will preserve the objector's reconsideration rights.¹⁰ In addition, the filing of an informal objection may

⁴ Public Notice of the grants was released on July 11, 2007. *See Broadcast Applications*, Public Notice, Report No. 26467 (rel. April 18, 2007).

⁵ *See Broadcast Actions*, Public Notice, Report No. 46525 (rel. July 11, 2007).

⁶ *See* File No. BPH-20070705AAA.

⁷ 47 C.F.R. § 1.106(b)(1).

⁸ *See* Reply at 3, citing *Dick Broadcasting Company*, Memorandum Opinion and Order, 8 FCC Rcd 3897 (1993).

⁹ 47 U.S.C. § 309(d)(1) (excluding certain types of applications from Section 309(b) provisions regarding petitions to deny); *see also Manahawkin Communications Corporation*, Memorandum Opinion and Order, 17 FCC Rcd 342, 345 (2001) and *Idaho Broadcasting Consortium*, Memorandum Opinion and Order, 11 FCC Rcd 5264, n.1 (1996).

¹⁰ *See, e.g., Cloud Nine Broadcasting, Inc.*, Letter, 10 FCC Rcd 11555, 11556 (MMB 1992), citing, *inter alia, Rainbow Broadcasting Co.*, Memorandum Opinion and Order, 9 FCC Rcd 2839, 2844, n.24 (1994) ("*Rainbow*").

be made by one who is not a “party in interest.”¹¹ Georgia Eagle’s position is therefore incorrect as a matter of law and does not provide “good reason” for its failure to participate prior to grant of the WMGL Application.

The Commission has afforded reconsideration to petitioners where the grant of an application occurred shortly after the application was filed.¹² In these instances, the Commission found that an expeditious grant of the applications had not allowed sufficient time for potential objections to be filed; thus, it was in the public interest to allow those parties to file petitions for reconsideration. However, in each of those cases, the time period between the filing of the application and the grant was less than two weeks. In cases, such as the instant case, where the grant of an application occurred more than 30 days after the filing of the application, the Commission has found that late filers do not have standing to file petitions for reconsideration because they failed to participate in the earlier proceeding, despite having had adequate time to do so.¹³ Georgia Eagle cites *Rainbow*¹⁴ as an instance where the Commission granted reconsideration where no objection had been filed. We note, however, that this was a situation, as described above, where grant of the application occurred shortly after the application was filed.¹⁵ Accordingly, *Rainbow* is inapposite here. We find that Georgia Eagle had ample opportunity to object to the WMGL Application prior to the staff action. As a result, Georgia Eagle does not have standing to file a petition for reconsideration in this proceeding. For these reasons, the Petition will be dismissed.

Moreover, even if we were to consider the merits of Georgia Eagle’s Petition, we would deny it. Section 73.3517(e) of the Rules states in pertinent part:

The Commission will accept up to four contingently related applications filed by FM licensees and/or permittees for minor modification of facilities. Two applications are related if the grant of one is necessary to permit the grant of the second application. Each application must state that it is filed as part of a related group of applications to make changes in facilities, must cross-reference each of the related applications, and must include a copy of the agreement to undertake the coordinated facility modifications. All applications must be filed on the same date.¹⁶

¹¹ See, e.g., *Great Northern Radio, LLC and Entercom Springfield License, LLC*, Letter, 22 FCC Rcd 16,644, 16,645 (MB 2007) (informal objection may be filed by any person, any time before Commission action on any application for an instrument of authorization).

¹² See *Ted and Jana Tucker*, Memorandum Opinion and Order, 4 FCC Rcd 2816, 2816 (1989) (standing to file a petition for reconsideration found when application granted four days after public notice issued) and *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17854-55 (1997) (standing to file a petition for reconsideration found when application granted five days after acceptance).

¹³ See *Association for Community Education*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12684 (2004) (standing to file reconsideration not found when petitioner had more than 30 days to object to the application and failed to do so).

¹⁴ See *Rainbow*, 9 FCC Rcd at 2844, n.24 (1994).

¹⁵ See *id.* at 2844 (petition permitted in light of 11-day period between filing and grant of extension application).

¹⁶ 47 C.F.R. § 73.3517(e).

Georgia Eagle contends that because the WMGL Application was not filed “on the same day” as the WNKT Application, pursuant to Section 73.3517(e) of the Rules, the WMGL Application should not have been accepted for filing, nor should it have been granted.¹⁷

Although both applications were not “filed” the same day, the WNKT Application was amended on April 13, 2007, the same date that the WMGL Application was filed and made contingent with the WNKT Application. Both applications describe the contingent nature of each filing and cross-reference each other.¹⁸ The Bureau staff has followed a policy in such situations of allowing contingent minor modification applications and amendments (to an earlier-filed application) that are filed the same day to be considered as if both *applications* were filed on the same day as stated in Section 73.3517(e) of the Rules.¹⁹ This policy of allowing amendments to earlier-filed applications saves both the Commission and applicants time and resources by eliminating the extra step of having an applicant dismiss its earlier-filed application and re-file a new application with the contingent application. The Commission, of course, has the authority to waive *sua sponte* any provision of the Rules for good cause.²⁰ In this case, waiver of the “same day filing” requirement facilitated the efficient and expeditious processing of two applications in a manner which did not prejudice the filing rights of any other potential applicant. We affirm the application of that policy based on the particular circumstances of this application proceeding.²¹

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED, that Georgia Eagle’s Petition for Reconsideration is DISMISSED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Dan J. Alpert, Esq.
Andrew Kersting, Esq.
Citadel Broadcasting Company

¹⁷ Petition at 3-4.

¹⁸ We note that a coordination agreement was not required to be included in either application because at the time the WMGL Application was filed and the WNKT Application was amended (April 13, 2007), Citadel was the licensee of both stations.

¹⁹ For example, on May 21, 2007, the staff granted an amendment to the KLQQ(FM), Clearmont, Wyoming, application for minor change of a facility (File No. BPH-20070231AFT) to make the application contingent with the application of KGCL(FM), Ten Sleep, Wyoming, for a minor modification to a construction permit (File No. BMPH-20070306AAX), which was also granted.

²⁰ See 47 C.F.R. § 1.3.

²¹ See *Radio 2000, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 15453, 15456 (1996) (Commission affirms practice of accepting untimely amendments to minor change applications, renumbering the application as of the date of the amendment, and billing the applicant the appropriate filing fee where that process served the public interest by providing “speedier initiation of improved broadcast service to the public” while not favoring any group or prejudicing the rights of any party).