

**Before the
Federal Communications Commission
Washington, D.C. 20554**

FILED/ACCEPTED

JAN - 5 2009

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Canyon Media Corporation)
)
Application for Minor Modification of FM)
Station KONY(FM), St. George, Utah (FIN-)
18140) to Change Community of License to)
Hurricane, Utah)

FCC File No. BPH-20070726AHL

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AUDIO SERVICES DIVISION

To: The Commission, Office of the Secretary

REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION

Canyon Media Corporation ("Canyon"), licensee of FM radio station KONY(FM), St. George, Utah (FIN-18140), by its counsel and pursuant to Section 1.106 of the Commission's Rules,¹ hereby replies to the Opposition to Petition for Reconsideration filed by Western Broadcasting LS, LLC ("Western") on December 23, 2008 in the above-captioned matter.

In its Opposition, Western suggests that Canyon is asking the FCC to get into the middle of a private contractual matter, which it rarely does. To the contrary, there is no contractual issue in this proceeding at all. Under the Memorandum of Understanding filed with the contingent applications for KONY(FM) and Western's KURR(FM), Canyon is explicitly given the right to withdraw its consent to the change in the city of license of KONY(FM) at any point up until the grants of the construction permits for the respective stations become final. Canyon is doing so, and the filing of its Petition for Reconsideration is evidence of that withdrawal of consent.

¹ 47 C.F.R. § 1.106.

Unlike the cases cited by Western involving Commission approval of the assignment or transfer of control of a station license,² Canyon is here only trying to preserve the status quo. Western, by asking the Commission to disregard Canyon's withdrawal of consent, is attempting to force a city of license change that Canyon no longer wants (absent the conclusion of an agreement between the parties for Canyon to give up its right to cancel the agreement for Canyon's city of license change). The community of license change will become final if the Commission does not grant this Petition for Reconsideration, unlike a purchase and sale agreement like those involved in the cases that Western cites, which do not become final and effective unless and until the parties take the affirmative step of closing the transaction. Thus, in the assignment and transfer cases that Western cites, the FCC approval did nothing more than make a closing possible if the litigation did not prevent it. Here, if the Commission does not grant the Reconsideration request, the change in city of license will be effective despite Canyon's express opposition to that happening. As the Commission will not change the city of license of a station without its consent, Western is essentially asking that the Commission abandon its own policies and force Canyon to change its city of license when it no longer wishes to do so.³

Thus, it is actually Western that is asking the Commission to intervene in the private contractual matter, by somehow forcing the city of license change for KONY(FM) to become final despite Canyon's withdrawal of its consent to the change, as it has every right to do under

² Western Opposition at footnote 6.

³ It is Canyon's understanding that the Audio Services Branch has taken the position that a change in city of license is effective upon grant of the construction permit, even if no license application to cover the construction permit is ever filed. Thus, absent grant of this Reconsideration request, the Canyon change in city of license will become permanent.

the Memorandum of Understanding between the parties.⁴ Canyon does not seek to involve the Bureau in a private contractual matter, nor to have it interpret or enforce an agreement between the parties.⁵ Rather, Canyon simply seeks to conserve Commission resources and avoid the prospect of prematurely changing KONY(FM)'s community of license against its wishes. As the Media Bureau's grant of the above-captioned construction permit has not yet become final under the FCC's Rules, by its terms, the agreement between the parties can be terminated, thereby obviating the need to change KONY(FM)'s community of license.

While Canyon has acknowledged that there are private discussions between the parties that could lead to an agreement that would reverse Canyon's desire for the grant of this Reconsideration request, unless and until such negotiations have reached fruition, Canyon does not want to be forced to change its city of license. The Commission cannot deny Canyon's request without effectively determining that, for some reason, Canyon's explicit contractual right to terminate its consent to the city of license change is not effective. As Western itself has acknowledged in its opposition, the Commission should not and cannot make such contractual determinations. Thus, the Commission must preserve the status quo and allow Canyon to retain its current city of license unless and until some other agreement is reached between the parties.

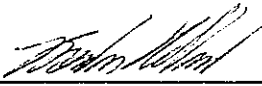
⁴ Western suggests that there is nothing in the agreement between the parties that contemplates the negotiation of another agreement for compensation for the city of license change. Western misses the point with this argument, as Canyon is not claiming that such a provision exists, but instead Canyon merely relies on the explicit statement in the contract that allows Canyon to withdraw from the agreement at any point until finality.

⁵ Western Opposition at 2.

Therefore, Canyon respectfully requests that the Media Bureau reconsider its action in this matter and undo the city of license change (unless the parties are able to resolve the matter and moot this filing before the Commission acts on this Petition).

Respectfully submitted,

CANYON MEDIA CORPORATION

By: 
David D. Oxenford
Brendan Holland

Its Counsel

DAVIS WRIGHT TREMAINE LLP
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20006
(202) 973-4244

Dated: January 5, 2008

CERTIFICATE OF SERVICE

I, Rhea Lytle, a Secretary in the law firm of Davis Wright Tremaine LLP, hereby certify that on this 5th day of January 2009, I caused a copy of the foregoing "**REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION**" to be served by U.S. Mail upon the following:

Peter Doyle*
Audio Division Chief
Media Bureau
Federal Communications Commission
445 12th Street, S.W., Room 2-A360
Washington, D.C. 20554

Christina H. Burrow, Esq.
Dow Lohnes PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, D.C. 20036
Counsel to Western Broadcasting LS, LLC



Rhea Lytle

*Via Hand Delivery