



Federal Communications Commission  
Washington, D.C. 20554

December 9, 2009

*In Reply Refer to:*  
1800B3-BSH-LAS

Rama Communications, Inc.  
3765 N John Young Parkway  
Orlando, Florida 32804

Genesis Communications I, Inc.  
2110 Powers Ferry Road  
Suite 198  
Atlanta, Georgia 30339

Re: **AM Broadcast Auction 84  
MX Group 84-163A**

Micanopy, Florida  
Facility ID No. 161019  
File No. BNP-20040130AFB

**Application for New AM Station  
Construction Permit**

WHOO(AM), Kissimmee, Florida  
Facility ID No. 54573  
File No. BMJP-20040128AKY

**Application for Major Change in  
Licensed AM Station**

**Petition for Reconsideration**

Dear Applicants:

This letter refers to the Petition for Reconsideration ("Petition") filed January 2, 2009, by Genesis Communications I, Inc. ("Genesis"), one of two mutually exclusive ("MX") applicants in AM Broadcast Auction 84 MX Group 84-163A. The other applicant, Rama Communications, Inc. ("Rama"), proposes a new AM station at Micanopy, Florida. Genesis's Petition was directed against the action taken in the December 4, 2008, Audio Division letter, in which the staff declined to find a dispositive preference for either of the applicants under Section 307(b) of the Communications Act of 1934, as amended<sup>1</sup> (the "Act"), and directed that the applications should therefore proceed to auction.<sup>2</sup> For the reasons set forth

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<sup>1</sup> 47 U.S.C. § 307(b).

<sup>2</sup> *Rama Communications, Inc. and Genesis Communications I, Inc.*, Letter, Ref. No. 1800B3-ATS (MB Dec. 4, 2008) (the "Letter Order").

below, we dismiss the Petition as an interlocutory appeal under Section 1.106(a)(1) of the Commission's Rules (the "Rules").<sup>3</sup>

*Background.* Genesis and Rama filed mutually exclusive applications during the filing window for AM Broadcast Auction 84.<sup>4</sup> The mutual exclusivity would normally be resolved by a competitive bidding process.<sup>5</sup> However, in the *Broadcast First Report and Order*, the Commission determined that the competitive bidding procedures should be consistent with its statutory mandate under Section 307(b) of the Act to provide a "fair, efficient, and equitable" distribution of radio services across the nation. To this end, the Commission directed the staff to undertake a traditional Section 307(b) analysis prior to conducting an auction for mutually exclusive AM applications.<sup>6</sup> The Commission also noted that the FM allotment priorities fulfill its obligation under Section 307(b), and would apply in making a Section 307(b) determination regarding mutually exclusive AM applications before auction.<sup>7</sup>

In this case, the *Letter Order* found no dispositive preference under Section 307(b), and determined that the applications should therefore proceed to auction. The Petition contends that the *Letter Order* erred in failing to determine that Genesis was entitled to a Section 307(b) preference for its proposal to change the community of license of Station WHOO(AM) from Kissimmee, Florida, to Winter Park, Florida.

*Discussion.* We find that the Genesis Petition is procedurally improper. We believe that determinations such as the *Letter Order* are more appropriately characterized as interlocutory rulings, against which reconsideration petitions do not lie.<sup>8</sup> Section 1.106(a)(1) of the Rules specifically prohibits petitions for reconsideration of interlocutory actions.<sup>9</sup>

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<sup>3</sup> 47 C.F.R. §1.106(a)(1).

<sup>4</sup> See *AM New Station and Major Modification Filing Window; Minor Modification Application Freeze*, Public Notice, 18 FCC Rcd 23016 (MB/WTB 2003).

<sup>5</sup> See *Implementation of Section 309(j) of the Communications Act-Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses*, First Report and Order, 13 FCC Rcd 15920 (1998) ("*Broadcast First Report and Order*"); *recon. denied*, Memorandum Opinion and Order, 14 FCC Rcd 8724 (1999); *modified*, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999).

<sup>6</sup> *Broadcast First Report and Order*, 13 FCC Rcd at 15964-65.

<sup>7</sup> See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982). The FM allotment priorities are as follows: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local transmission service, and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). The FM allotment priorities were first applied to Section 307(b) determinations in mutually exclusive AM proceedings in *Alessandro Broadcasting Co.*, Decision, 56 RR 2d 1568 (Rev. Bd. 1984).

<sup>8</sup> See *Elvis L. Moody*, Letter, 24 FCC Rcd 3209 (MB 2009) (no countervailing public interest sufficient to warrant processing procedures that are not in keeping with Section 1.106(a)(1) and the standards enunciated by the Commission in the *Broadcast First Report and Order*).


<sup>9</sup> 47 C.F.R. § 1.106(a)(1). The rule is clear that, with one noted exception that is clearly inapposite, the Commission or delegated authority will only entertain petitions requesting reconsideration of a final action. The rule exception is that "a petition for reconsideration of an order designating a case for hearing will be entertained if, and insofar as,

An interlocutory action is an interim determination on a matter involving an application; it does not grant or deny the application.<sup>10</sup> The *Letter Order* was an interlocutory action, not a final ruling on either of the conflicting applications in MX Group 84-163A. No action was taken on the mutually exclusive applications, nor was either application granted or dismissed upon the release of the *Letter Order*. From a procedural standpoint, this particular AM application proceeding was far from final when the *Letter Order* was issued. At that point, the applicants were only directed to proceed to auction. The winning applicant still will need to file a complete Form 301 application; the staff will then perform a technical and legal analysis; the application will be placed on a public notice of acceptance in accordance with Section 309(b) of the Act,<sup>11</sup> and, importantly, a 10-day petition to deny period pursuant to Section 309(d)(1) of the Act<sup>12</sup> will ensue.<sup>13</sup>

*Conclusion/Action.* Accordingly, Genesis Communications I, Inc.'s January 2, 2009, Petition for Reconsideration of the *Letter Order* IS DISMISSED pursuant to Section 1.106(a)(1) of the Commission's Rules.

Sincerely,



Peter H. Doyle   
Chief, Audio Division  
Media Bureau

cc: John C. Trent, Esq.  
Christopher D. Imlay, Esq.

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the petition relates to an adverse ruling with respect to petitioner's participation in the proceeding. Petitions for reconsideration of other interlocutory actions will not be entertained." *Id.*

<sup>10</sup> See *Iridium 2GHz LLC*, Order, 18 FCC Rcd 18121, 18122 (IB 2003).

<sup>11</sup> 47 U.S.C. § 309(b).

<sup>12</sup> 47 U.S.C. § 309(d)(1).

<sup>13</sup> Moreover, in keeping with the Commission's efforts to reduce the administrative burdens at the initial stages of the auction process, while balancing the goals of public participation and the expeditious institution of new broadcast service, in the *Broadcast First Report and Order*, the Commission clearly defined the time frame in which it would entertain pleadings in the auctions context. No pre-auction pleadings were contemplated.