



Federal Communications Commission
Washington, D.C. 20554

February 9, 2011

In Reply Refer to:
1800B3-VMM

Mr. William B. Clay
5629 Charing Place
Charlotte, North Carolina 28211

David G. O'Neil, Esq.
Rini Coran, P.C.
1615 L Street, NW
Suite 1325
Washington, DC 20036

In re: WLLY-FM (formerly WAFC-FM),
Clewiston and Palm Beach Gardens,
Florida
Glades Media Company
Facility ID No. 24230

Minor Change Application
File No. BPH-20070119AES

Petition for Reconsideration

Gentlemen:

We have before us the petition for reconsideration ("Petition")¹ filed on June 6, 2007, by William B. Clay ("Clay"), directed to the Commission's grant of the above-referenced application ("Application") of Glades Media Company ("Glades") to, *inter alia*, change the community of license of Station WLLY-FM, from Clewiston, Florida, to Palm Beach Gardens, Florida. For the reasons set forth below, we dismiss the Petition.

Background. On January 19, 2007, Glades filed the Application. On May 7, 2007, the staff granted the unopposed Application pursuant to Section 73.3573(g) of the Commission's Rules ("Rules"), which treats an application to modify a station's authorization to specify a new community of license as one for minor modification.² Any such application must result in a preferential arrangement of

¹ Glades filed an Opposition on June 18, 2007, and Clay filed a Reply on June 25, 2007.

² See 47 C.F.R. § 73.3573(g). See also *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212 (2006), permitting broadcast stations to propose community of license changes by minor modification application ("Changes of Community").

allotments.³ On June 6, 2007, Clay filed the Petition, arguing that Glades had failed to establish any public benefit that would justify relocating WLLY-FM to Palm Beach Gardens.

Clay is a resident of Charlotte, North Carolina, a community located over 660 miles from Palm Beach Gardens, and over 700 miles from the Miami Urbanized Area, and does not allege that he is a regular listener of WLLY-FM. He thus lacks "listener standing" to file his Petition.⁴ He argues, however, that he should be accorded standing because grant of the Application causes him a "procedural injury,"⁵ which he describes as "the threat of injury in fact through imminent changes to the broadcast radio service available to petitioner where he resides and regularly pursues recreational activities."⁶

Clay acknowledges that Section 1.106(b)(1) of the Rules⁷ provides that petitions for reconsideration are unacceptable from non-parties unless they show why it was not possible to earlier participate in the proceeding. He acknowledges, further, that he could have participated earlier in this proceeding by filing an informal objection. He did not do so, he states, because party status in community of license change application proceedings "is denied to all entities other than the licensee applicant and the Commission *except* through a petition for reconsideration; he therefore filed the Petition in this proceeding "to establish his rights as a party to this proceeding yet avoid wasting the Commission's resources with the filing of an essentially identical informal objection."⁸ The remainder of Clay's Petition recites his participation in the *Changes of Community* proceeding⁹ and other filings he has made opposing applications granted pursuant to the Rules adopted in that proceeding.¹⁰ As relief, Clay requests that the Commission vacate the grant of the Application "and stay all similar proceedings until the Commission acts on the pending reconsiderations of the preceding rule making and corrects its errors with a new *Report and Order*."¹¹

Discussion. Clay lacks standing to file the Petition. His "procedural injury" arguments relying on the Supreme Court's holding in *Lujan* are misplaced. *Lujan* clearly states that a "procedural right" accrues only if there is an associated "concrete harm" to the person asserting the right.¹² Similarly, under the

³ See *Changes of Community*, 21 FCC Rcd at 14218. See also *Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

⁴ See, e.g., *CHET-5 Broadcasting, L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041, 13042 (1999) ("[W]e will accord party-in-interest status to a petitioner who demonstrates either residence in the station's service area or that the petitioner listens to or views the station regularly, and that such listening or viewing is not the result of transient contacts with the station").

⁵ Petition at 5-6 and n.16 (citing 5 U.S.C. § 706(2)(D); *Lujan v. Defenders of Wildlife*, 504 U.S. 572, 573, nn.7-8 (1992) ("*Lujan*"); *Sierra Club v. Marita*, 46 F.3d 606 (7th Cir. 1995); *Portland Audubon Society v. Endangered Species Commission*, 984 F.2d 1534, 1537 (9th Cir. 1993)).

⁶ Petition at 5.

⁷ 47 C.F.R. § 1.106(b)(1).

⁸ Petition at 3 (emphasis in original).

⁹ Clay claims that the Commission ignored his comments and reply comments in that proceeding. *Id.* at 4.

¹⁰ *Id.*

¹¹ *Id.* at 10.

¹² See *Lujan*, 504 U.S. at 568 n.8. (the Court states that it found no case "in which we actually found standing solely on the basis of a 'procedural right' unconnected to the plaintiff's own concrete harm").

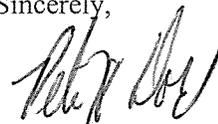
Commission's standing requirements,¹³ a petitioner must show that the challenged action would cause it a direct injury, *i.e.*, that the claimed injury can "fairly be traced" to the action challenged, and that granting the relief requested would prevent or redress the claimed injury.¹⁴

Clay does not explain, and we do not perceive, how grant of an application for a station over 660 miles from Clay's residence would result in a direct injury that threatens or otherwise affects the broadcast radio service available to him in Charlotte, North Carolina. Moreover, the vague "threat" of such harm that Clay alleges is conjectural rather than "direct." Even accepting, *arguendo*, Clay's conjecture that changes in his broadcast service are "imminent" in Charlotte, North Carolina, he has not shown how that supposed injury would be prevented or redressed if the Application were denied. Accordingly, we find no merit in Clay's argument that he has standing on "procedural injury" grounds, or otherwise. Clay's concerns are best addressed in a rulemaking proceeding rather than in an adjudication proceeding that has no connection to Clay's radio market.

Additionally, we do not accept Clay's rationalization that he did not file an informal objection in order to avoid wasting Commission resources. Section 1.106 (b)(1) of the Rules required Clay to show why it "was not possible for him to participate in the earlier stages of a proceeding."¹⁵ By Clay's own admission it was possible for him to do so - he simply elected not to. His failure to comply with Section 1.106(b)(1), therefore, compels dismissal of his Petition.¹⁶

Decision/Action: Clay's Petition is procedurally defective. Accordingly, IT IS ORDERED, that the Petition for Reconsideration filed by William B. Clay IS DISMISSED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Glades Media Company

¹³ Within the mandate of the Communications Act, the Commission may consider petitions from parties who might lack standing before a federal court, *i.e.*, parties who lack "Article III standing." *See, e.g., Gardner v. FCC*, 530 F.2d 1086, 1090 (D.C. Cir. 1976).

¹⁴ *See, e.g., Daniel R. Goodman*, Order on Reconsideration, 14 FCC Rcd 20547, 20549 (1999) (citing *Los Angeles Cellular Telephone Company*, Order, 13 FCC Rcd 4601,4603-4604 (CWD, 1998), citing *AmericaTel Corporation*, Memorandum Opinion, Order, Authorization and Certificate, 9 FCC Rcd 3993, 3995 (1994), citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972)).

¹⁵ 47 C.F.R. § 1.106(b)(1) (emphasis supplied).

¹⁶ Clay is correct that filing an informal objection against the Community Change Application would not confer "party" status under Section 1.106 of the Rules. However, because petitions to deny do not lie against minor modification applications, *see* 47 U.S.C. § 309(c) and 47 C.F.R. § 73.3584, the filing of an informal objection is "participation in our processes to the fullest extent permitted" and meets the requirements for standing to file a petition for reconsideration under 47 C.F.R. § 1.106(b)(1). *CMP-Houston KC, LLC*, Memorandum Opinion and Order, 23 FCC Rcd 10656, 10660 n.31 (2008), citing *Cloud Nine Broadcasting, Inc.*, Letter, 10 FCC Rcd 11555, 11556 (1995).