



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

May 14, 2012

In Reply Refer To:
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In re: Results Radio of Chico Licensee, LLC
KMJE(FM), Woodland, California
Facility ID No. 52516
File No. BPH-20110824ACL

Petition for Reconsideration

Dear Counsel and Ms. Samitz:

We have before us a Petition for Reconsideration ("Petition") filed by Eileen Samitz on October 25, 2011.¹ The Petition requests reconsideration of our September 19, 2011, grant of the captioned application filed by Results Radio of Chico Licensee, LLC ("Licensee"), for a minor change to its construction permit ("CP") for Station KMJE(FM), Woodland, California.² For the reasons discussed below, we dismiss the Petition.

Background. On March 4, 2010, Licensee filed a minor modification application to change KMJE's antenna location from the Mace Boulevard site specified in its then-outstanding construction permit³ to the Yolo County Central Landfill ("YCCL").⁴ It requested processing pursuant to "a policy

¹ Samitz filed a supplement to her petition on November 21, 2011 ("Supplement").

² Licensee filed an Opposition on December 23, 2011, to which Samitz replied on January 6, 2012.

³ File No. BMPH-20090527AFU.

exemption to Section 73.215” that permits a short-spaced station to maintain its current level of otherwise prohibited contour overlap from a fully-spaced site when relocating to a short-spaced site.⁵ In a letter dated November 23, 2010, the Commission informed Licensee that this request violated Section 73.215 of the Rules against contour overlap, noting that the exemption only applied to existing facilities.⁶ On June 17, 2011, Licensee withdrew its request and asked the Commission to dismiss its modification application without prejudice. On June 27, 2011, Licensee filed an application for minor modification of the CP to construct at a site with an existing tower, Dunnigan Hills.⁷ It filed its covering license application on August 23, 2011.⁸ Shortly thereafter, Licensee filed the referenced CP application,⁹ once again specifying the YCCL site. The Commission granted this application on September 19, 2011, and the public notice was issued September 22, 2011.¹⁰

On October 25, 2012, Eileen Samitz petitioned for reconsideration of this grant. Samitz claims that the CP modification application to operate from Dunnigan Hills and subsequent move to the YCCL site “exploit[ed] a loophole” in Section 73.215 of the Rules and constituted abuse of process.¹¹ Specifically, she argues that Licensee “had no intention of broadcasting in good faith” from the Dunnigan Hills site, but was part of Licensee’s “strategy to bypass the interference restrictions” of Section 73.215 of the Rules.¹² To support this claim, she asserts that the antenna from the Dunnigan Hills site was not installed until September 19, 2011, was not certified by the manufacturer until September 23, 2011 – about a month after Licensee filed its covering license application – and that Licensee failed to secure the required building and electrical permits from the county for the antenna and equipment.¹³

Licensee contests the Petition’s allegations regarding use of the Dunnigan site. It maintains that Samitz’s own evidence demonstrates that the antenna was installed on August 19, 2011, and notes that KMJE initiated a signal on August 23, 2011.¹⁴ It also claims that Section 405(a) of the Communications Act of 1934, as amended (“Act”), bars the Commission from considering the Petition because the Commission’s date stamp indicates receipt on October 25, 2011, one day beyond the 30-day filing

⁴ File No. BMPH-20100304ABF (dismissed Jun. 23, 2011).

⁵ Opposition at 5.

⁶ Letter from James D. Bradshaw, Deputy Chief, Audio Division, Media Bureau, to Results Radio of Chico, LLC (Nov. 23, 2010).

⁷ File No. BMPH-20110627ABB, granted June 30, 2011; covering license File No. BLH-20110823ACJ filed August 23, 2011 (accepted for filing).

⁸ File No. BLH-20110823ACJ (accepted for filing).

⁹ File No. BPH-20110824ACL, granted Sept. 19, 2011.

¹⁰ *Broadcast Actions*, Public Notice, Report No. 47577, Sept. 22, 2011.

¹¹ Petition at 1.

¹² *Id.* at 2.

¹³ *Id.* at 1. Attachment 2 is a letter from Jeff Anderson, Associate Planner at Yolo County Planning and Public Works, who states that Licensee failed to get building and electrical permits. Notwithstanding the fact that this issue is beyond our jurisdiction, *see, e.g., KM Communications, Inc.*, Letter, 22 FCC Rcd 18891, 18893 (MB 2007) (stating that the Commission does not involve itself in zoning matters) we accept Licensee’s explanation that it inadvertently failed to apply for a permit and promptly corrected the error. *See* Opposition at 6, n.11. Anderson further states that “to my knowledge ... [Licensee is] not broadcasting from that location.” This claim is unsubstantiated and we will not consider it further.

¹⁴ Opposition at 6.

period.¹⁵

Discussion. We find that the Petition was late-filed and will dismiss it as untimely. Section 405(a) of the Act provides that "petitions for reconsideration must be filed within thirty days from the date upon which public notice is given of the action . . . complained of."¹⁶ The Commission generally lacks authority to extend or waive the statutory 30-day filing period for petitions for reconsideration set forth in Section 405(a) of the Act.¹⁷ Thus, it will only accept late-filed petitions for reconsideration if the petitioner shows that extraordinary circumstances warrant overriding the statutory filing deadline. As the D.C. Circuit has explained, "[a]lthough section 405 does not absolutely prohibit FCC consideration of untimely petitions for reconsideration, we have discouraged the Commission from accepting such petitions in the absence of extremely unusual circumstances."¹⁸ Consistent with the D.C. Circuit's decisions, the Commission in applying that standard has focused on whether the Commission has failed to adhere to its procedural rules for providing notice of its decisions.¹⁹

Samitz does not claim error on the Commission's part. Rather, she avers that the Petition was timely filed and attached a copy of her UPS tracking report to the Reply.²⁰ It indicated that the Petition was received by the Commission's facility in Capitol Heights, Maryland, on October 24, 2011. However, the Commission stamped the Petition as received on October 25, 2011, and our caselaw declares the Commission's date stamp to be "authoritative and conclusive."²¹ We have held consistently that we are without authority to waive or extend, even by as little as one day, the statutory 30-day filing period for petitions for reconsideration, absent extraordinary circumstances which are not present here.²² We thus conclude that the Petition must be dismissed as untimely pursuant to Section 405 of the Act.

Even if we were to consider the arguments raised in the Petition,²³ we would deny them on the merits. As Licensee points out, Samitz's own submissions establish that the antenna was installed on August 19, 2011, and fail to otherwise demonstrate that Licensee never operated from the Dunnigan Hills site. Moreover, we disagree with the contention that Licensee's subsequent move to the YCCL site

¹⁵ Opposition at 1-2. In reply, Samitz asserts that we should not have granted the Dunnigan Hills modification application because the CP had expired and the covering license application was late-filed. Reply at 3-5. We will not address these assertions because they were raised first in the Reply, contrary to Section 1.106(h) of the Rules, which states that matters in the reply "shall be limited to matters raised in the opposition."

¹⁶ 47 U.S.C. § 405(a).

¹⁷ See, e.g., *Reuters Limited v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986) ("*Reuters*"); *Pueblo Radio Broadcasting Service*, Memorandum Opinion and Order, 6 FCC Rcd 1416, 1416 (1991); *Panola Broadcasting Co.*, Memorandum Opinion and Order, 68 FCC 2d 533, 533 (1978).

¹⁸ *Virgin Islands Telephone Corp. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993), citing *Reuters*, 781 F.2d at 951-52. See *21st Century Telesis Joint Venture v. FCC*, 318 F.3d 192, 199-200 (D.C. Cir. 2003).

¹⁹ See *Emmis Radio License Corp.*, Memorandum Opinion and Order, 17 FCC Rcd 14733 n.4 (2002) and *Adelphia Communications Corporation*, 12 FCC Rcd 10759, 10760 n.9 (1997) (both citing *Gardner v FCC*, 530 F.2d 1086, 1091-92 (D. C. Cir.) (1976) (dismissing petitions for reconsideration where in each case the petitioner did not allege that there was defective notice that made it impossible to meet the filing deadline for requesting reconsideration).

²⁰ Reply at Annex II.

²¹ *Ole Brook Broadcasting, Inc.*, Memorandum Opinion and Order, 15 FCCR 20644 (2000), citing *Richardson Independent School District*, Memorandum Opinion and Order, 5 FCC Rcd 3135, 3136 (1990) ("*RISD*").

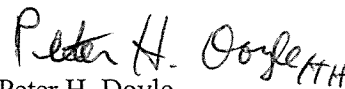
²² *RISD*, *supra*; *Metromedia, Inc.*, Memorandum Opinion and Order, 56 FCC 2d 909, 909-10 (1975).

²³ The Supplement was filed well beyond the 30-day window and thus would have been dismissed without consideration even if the Petition had been timely filed. See 47 C.F.R. §1.106(f). Thus, we do not consider it here.

exploited a loophole in Section 73.215 of the Rules. The Commission has defined abuse of process as “any action designed or intended to manipulate or take improper advantage of a Commission process, procedure or rule in order to achieve a result which that process, procedure or rule was not designed or intended to achieve to subvert the underlying purpose of that process, procedure or rule.”²⁴ Here, we do not find an attempt to manipulate a Commission process. Indeed, the Media Bureau has explicitly sanctioned a similar “two-step” approach in a similar context.²⁵ Furthermore, Licensee undertook considerable expense and provided documentation that it worked with local officials by moving to the YCCL site vis-à-vis the Dunnigan Hills site. Such coordination, if anything, demonstrates that Licensee was attempting in good faith to comply with applicable rules and regulations.²⁶

Conclusion/Actions. Accordingly, IT IS ORDERED that the petition for reconsideration filed on October 25, 2011, by Ms. Eileen Samitz, IS DISMISSED.

Sincerely,

A handwritten signature in black ink that reads "Peter H. Doyle" with a stylized "HH" at the end.

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁴ *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, Notice of Proposed Rulemaking, 2 FCC Rcd 5563, 5563 (1987).

²⁵ *Media Bureau Offers Examples to Clarify the Treatment of Applications and Rulemaking Petitions Proposing Community of License Changes, Channel Substitutions, and New FM Allotments*, Public Notice, 22 FCC Rcd 6852 (MB 2007). In an example intended to illustrate how the streamlined community of license procedures work in practice, the Bureau suggested that applicants seeking to change community of license on non-adjacent channels do so in two steps: (1) to first file a minor modification application, and (2) once the licensee initiates program tests and files a license to cover, to then file another minor modification application for the new community of license.

²⁶ See Opposition at Annex C (letter from Jim Provenza, Yolo County Supervisor, stating that “Rural Radio has been a model of cooperation with the community and its local officials...”).