



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

April 9, 2013

In Reply Refer To:
1800B3-PPD

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In Re: **WOLB(AM), Baltimore, Maryland**
Facility ID Number: 54711
File Number: BL-20070220ADT

WIOO(AM), Carlisle, Pennsylvania
Facility ID Number: 72985
File Number: BP-20040809AAO

Petitions for Reconsideration

Dear Counsel:

This letter is in regard to the Petitions for Reconsideration ("Petitions") filed by Radio One Licenses, LLC ("Radio One") on June 18, 2008, and July 9, 2008.¹ The June 18, 2008,² Petition for Reconsideration ("WOLB Petition") seeks reconsideration of our grant³ of Radio One's license application for WOLB(AM). The July 9, 2008, Petition for Reconsideration ("WIOO Petition") seeks reconsideration of our decision⁴ to reinstate the application by WIOO to change the frequency and operating power of WIOO(AM) ("WIOO Application"). For the reasons set forth below, we dismiss the WOLB Petition and deny the WIOO Petition.

¹ On July 2, 2008, WIOO Radio, Inc. ("WIOO") filed a Petition for Extension of Time and to Consolidate requesting that its opposition to both Petitions be due the same date. Thereafter, WIOO filed a Consolidated Opposition of WIOO ("Consolidated Opposition") on July 24, 2008. The Consolidated Opposition responded to both Petitions. Radio One filed a Consolidated Reply on August 4, 2008. WIOO filed a Motion for Leave to Respond accompanied by a Response of WIOO, Inc. on August 11, 2008. We accept all of these pleadings.

² On June 18, 2008, Radio One also filed a Request for Continuation of Program Test Authority until action on the WOLB License Application becomes final. For the reasons shown herein, we dismiss this request as moot.

³ See *Broadcast Actions*, Public Notice, Report No. 46739 (May 19, 2008).

⁴ See *WIOO Radio Inc.*, 23 FCC Rcd 9362 (2008) ("Staff Decision").

Background. Both Petitions arise out of the Bureau's reinstatement *nunc pro tunc* of the WIOO Application in the *Staff Decision*. In the *Staff Decision*, the Bureau reversed an earlier decision returning the WIOO Application as defective because it failed to provide daytime protection to co-channel stations WCST(AM), Berkeley Springs, West Virginia, and WOLB(AM), Baltimore, Maryland, in violation of Section 73.37 of the Commission's Rules (the "Rules").⁵

The *Staff Decision* relied on the Commission's longstanding processing policy providing for reinstatement *nunc pro tunc* of a defective application if the defect is cured through a timely-filed minor amendment.⁶ In this case, WIOO timely filed an engineering amendment and a Petition for Reconsideration ("WIOO Reconsideration") after the Bureau issued the *Dismissal Letter*. With respect to WCST(AM), WIOO submitted signal strength measurements establishing that the WIOO Application complied with the Rules.⁷ With respect to WOLB(AM), WIOO argued that Radio One had abandoned WOLB(AM)'s then-licensed site and filed a license application to cover its construction permit to operate from a new site (the "WOLB License Application"), rendering the WIOO Application grantable without a rule waiver.

However, Radio One had asked the Bureau to defer processing the WOLB License Application - thereby preventing a grant of the WIOO Application - until the Bureau had acted on a pending Radio One application to further modify WOLB(AM).⁸ Ultimately, the Bureau declined to do so and granted the WOLB License Application.⁹ The *Staff Decision* took official notice of the Bureau's grant of the WOLB License Application on May 14, 2008, granted reconsideration of the *Dismissal Letter*, and granted the WIOO Application.

Discussion. The Commission will consider a Petition for Reconsideration only when the petitioner shows either a material error in the Commission's original order or raises changed circumstances or unknown additional facts not known or existing at the time of petitioner's last opportunity to present such matters.¹⁰ It is also appropriate to consider new facts not previously presented when such consideration is required in the public interest.¹¹ However, it is Commission policy that petitions for reconsideration are not to be used for rearguing points previously advanced and rejected.¹²

⁵ See Letter to Jerrold Miller, Esq. and Richard J. Bodorff, Esq., Ref. No. 1800B3 (Audio Div., March 19, 2007) ("*Dismissal Letter*").

⁶ See *Staff Decision*, 23 FCC Rcd at 9364 (citing *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR 2d 776 (1984) (the "*Processing Policy Public Notice*").

⁷ WIOO originally had requested a waiver of the Rules with respect to WCST. See *Staff Decision*, 23 FCC Rcd at 9363 n. 4.

⁸ See BMP-200503017ABQ (Radio One filed the application to upgrade WOLB(AM)'s daytime power to 1000 Watts).

⁹ The *Staff Decision* also noted that Radio One was engaged in gamesmanship in seeking protection of WOLB(AM)'s previously-licensed facilities to block the WIOO Application. 23 FCC Rcd at 9365 n. 19.

¹⁰ See 47 C.F.R. §1.106, *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom.*, *Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966), and *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

¹¹ 47 C.F.R. §1.106(c)(2).

¹² See *Aircom Consultants, Inc.*, 18 FCC Rcd 1806, 1808 (2003) ("*Aircom*"), and *Knoxville Broadcasting Corp.*, 87 FCC 2d 1103, 1107 (1981) ("*Knoxville*").

Radio One's grievance is that the Bureau's grant of the WIOO Application interferes with its desire to increase WOLB(AM)'s power at its current site, which is the site specified in the WOLB License Application. If the Bureau had upheld the dismissal of the WIOO Application due to its failure to protect WOLB(AM)'s previously-licensed site, then Radio One could proceed with the power increase. However, once the Bureau granted the WOLB License Application, the *Staff Decision* correctly recognized that the prior-filed WIOO Application was only required to protect the facilities specified in the WOLB License Application, and the grant of that application mooted the issue of protection of WOLB's previously-licensed site.

In the WIOO Petition, Radio One argues the *Staff Decision* erroneously relied on the *Processing Policy Public Notice* to reinstate the WIOO Application. It claims WIOO's waiver request could not have been a curative amendment because WIOO did not make any changes to its application with respect to WOLB(AM). We reject this argument. WIOO timely demonstrated compliance with the Rules with respect to WCST(AM) and timely submitted updated information showing that WOLB(AM) should only need protection of the facilities specified in the WOLB License Application.¹³ Bringing current information to the Bureau's attention in this type of situation is completely appropriate, as was the Bureau's grant of the WOLB License Application. For the reasons stated in the *Staff Decision*, Radio One is not allowed to engage in the gamesmanship of seeking protection for past, present, and future WOLB(AM) facilities.¹⁴ Accordingly, the Bureau's reinstatement and grant of the WIOO Application was not in error.

The remainder of Radio One's arguments relate to the manipulation of the Commission's processes. Radio One itself admits it "made this exact argument" during the Bureau's consideration of the WIOO Reconsideration.¹⁵ It is settled Commission policy that petitions for reconsideration are not to be used for rearguing points previously advanced and rejected.¹⁶ Because the Bureau has already considered these arguments, we will dismiss them here as repetitious.

Finally, in seeking reconsideration of the WOLB License Application, Radio One has not demonstrated material error or raised changed circumstances or unknown additional facts. Radio One has also not demonstrated that consideration is required in the public interest. Thus, Radio One has not met its burden for reconsideration of the grant of the WOLB License Application,¹⁷ and we will dismiss the WOLB Petition.¹⁸

¹³ Although Radio One is correct that WIOO requested the waiver relating to WOLB(AM) prior to the filing of the WIOO Reconsideration, the Bureau did not consider that waiver. The *Dismissal Letter* stated "WIOO does not request a waiver of the prohibited overlap with WOLB. WIOO claims the overlap to WOLB's licensed facility is not applicable because WOLB abandoned its site and has been operating under a Special Temporary Authority (STA) from the site of [the construction permit]." The WIOO Reconsideration not only included again the waiver request, but also submitted the updated information that WOLB(AM) had filed the WOLB License Application to cover its construction permit to operate from a new site. There was no public interest justification for inaction on the WOLB License Application, and the grant of that application made the WIOO Application grantable.

¹⁴ See n. 9 *supra*.

¹⁵ WIOO Petition at 9; see *Staff Decision*, 23 FCC Rcd at 9363-65.

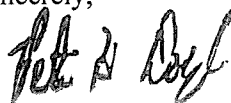
¹⁶ See *Aircom*, 18 FCC Rcd at 1808 and *Knoxville*, 87 FCC 2d at 1107.

¹⁷ See 47 C.F.R. §1.106.

¹⁸ Because we dismiss the WOLB Petition, Radio One's Request for Continuation of Program Test Authority is dismissed as moot.

Conclusions/Actions. Accordingly, IT IS ORDERED that the June 18, 2008 Petition for Reconsideration filed by Radio One Licenses, LLC IS DISMISSED, and the July 9, 2008, Petition for Reconsideration filed by Radio One Licenses, LLC IS DENIED to the extent indicated above, and otherwise IS DISMISSED.

Sincerely,

A handwritten signature in black ink, appearing to read "Pet H Doyle", written in a cursive style.

Peter H. Doyle
Chief, Audio Division
Media Bureau