

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

In the Matter of)	
)	
GENESIS COMMUNICATIONS I, INC.)	File No. BMJP-20040128AKY
)	Facility ID No. 54573
Application for a Major Change to)	
Broadcast Station WHOO(AM),)	
Kissimmee, Florida)	
)	
and)	
)	
RAMA COMMUNICATIONS, INC.)	File No. BNP-20040130AFB
)	Facility ID No. 161019
Application for a New AM Broadcast Station)	
at Micanopy, Florida)	

MEMORANDUM OPINION AND ORDER

Adopted: April 15, 2014

Released: April 16, 2014

By the Commission:

1. In this *Memorandum Opinion and Order*, we deny the January 6, 2010, Application for Review (“AFR”) filed by Genesis Communications I, Inc. (“Genesis”), licensee of broadcast station WHOO(AM), Kissimmee, Florida. Genesis filed an application in AM Auction 84 for a major change to WHOO(AM), specifically a change of community of license from Kissimmee, Florida, to Winter Park, Florida.¹ Genesis seeks review of the Media Bureau’s (“Bureau”) December 9, 2009, decision dismissing Genesis’s Petition for Reconsideration of the Bureau’s determination that neither Genesis nor mutually exclusive applicant Rama Communications, Inc. (“Rama”), applicant for a new AM station at Micanopy, Florida,² would receive a preference under Section 307(b) of the Communications Act of 1934, as amended,³ and that both would proceed to auction.⁴

2. Upon review of the Application for Review and the entire record, we conclude that Genesis has not demonstrated that the Bureau erred. The Bureau dismissed Genesis’s Petition for Reconsideration on the ground that a determination under Section 307(b) is not a final decision, and under Section 1.106(a)(1) of the Rules, petitions for reconsideration of interlocutory actions generally will not

¹ File No. BMJP-20040128AKY.

² File No. BNP-20040130AFB.

³ 47 U.S.C. § 307(b) (“Section 307(b”).

⁴ *Rama Communications, Inc. and Genesis Communications I, Inc.*, Letter, 1800B3-BSH-LAS (MB Dec. 9, 2009) (“*Staff Decision*”), dismissing Petition for Reconsideration of *Rama Communications, Inc. and Genesis Communications I, Inc.*, Letter, 1800B3-ATS (MB Dec. 4, 2008) (“*Letter Decision*”). Both Genesis and Rama are currently scheduled to participate in AM Auction 84, which is to commence on May 6, 2014. *See Closed Auction of AM Broadcast Construction Permits; Status of Short-Form Applications to Participate in Auction 84*, Public Notice, DA 14-399 (MB/WTB Mar. 25, 2014), at 13.

be entertained.⁵ An interlocutory action by definition is non-final, one that neither denies nor dismisses an application nor terminates an applicant's right to participate in the proceeding.⁶ For an agency action to be "final," first, the action must mark the "consummation" of the agency's decision making process, and not be merely of a tentative or interlocutory nature; and second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow.⁷

3. In the instant case, Genesis sought reconsideration of a *Letter Decision* that was not final. The application process is consummated only when an authorization, such as a construction permit, is issued, or when an application is dismissed or denied.⁸ The Bureau, in the *Letter Decision*, neither awarded Rama an authorization nor denied or dismissed Genesis's application. Instead, the Bureau found that Genesis's proposal would provide superior nighttime population coverage, while Rama's Micanopy proposal would provide superior daytime population coverage. Following Commission precedent, the Bureau held that there was thus no dispositive Section 307(b) preference, and ordered the two mutually exclusive applications to auction.⁹ While Genesis cites the *First Report and Order* in our proceeding implementing Section 309(j) of the Communications Act and establishing broadcast auction procedures,¹⁰ nothing in that Order or in subsequent orders supports Genesis's assertion that "the Section 307(b) issue must be finally resolved before the Media Bureau is authorized to conduct an auction proceeding."¹¹ Moreover, there is no rule or case support for the claim that auction or post-auction procedures must be delayed until all reviews and appeals are final.¹² On the contrary, such an approach would frustrate the

⁵ 47 C.F.R. § 1.106(a)(1).

⁶ Cf. *Fresno FM Limited Partnership, et al.*, Memorandum Opinion and Order, 5 FCC Rcd 7261, 7261 (1990) (former 47 C.F.R. § 1.115(e)(1) specifically provided that applications for review of interlocutory Review Board rulings could only be filed as part of an application for review of the Board's final decision; Memorandum Opinion and Order from which applicant sought review was interlocutory, as it neither terminated applicant's right to participate in the proceeding nor denied applicant's application, thus Motion for Leave to File Application for Review was denied, and accompanying Application for Review dismissed).

⁷ *Bennett v. Spear*, 520 U.S. 154, 177-78, 117 S.Ct. 1154, 1168 (1997).

⁸ See *Jet Fuel Broadcasting and Bott Communications, Inc.*, Memorandum Opinion and Order, FCC 14-15 (rel. Feb. 20, 2014).

⁹ See *Sharon Berlin Ingles, Powell Meredith Communications Company, and TELNS Broadcasting Company, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 8815, 8817 (2008) ("*Ingles*") (on petition to deny after dispositive Section 307(b) preference awarded, Bureau found one mutually exclusive applicant proposed superior nighttime coverage, while another proposed superior daytime coverage; all members of group designated for auction).

¹⁰ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, First Report and Order, 13 FCC Rcd 15920, 15965 (1998) ("*Broadcast First Report and Order*") ("Specifically, with respect to AM applications, a traditional Section 307(b) analysis will be undertaken by the staff prior to conducting auctions of competing applications. If the Section 307(b) determination is dispositive, the staff will grant the application proposing to serve the community with the greater need if there are no competing applications for that community . . . If no Section 307(b) determination is dispositive (or if more than one application remains for the community with the greater need), the applicants must then be included in a subsequently scheduled auction."), *recon. granted in part.*, Memorandum Opinion and Order, 14 FCC Rcd 8724 (1999), *further recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 4543 (MMB 2000).

¹¹ Application for Review at 9.

¹² Cf. *Delta Radio, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 16889 (2003); *Abundant Life, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 4006 (2002) ("*Abundant Life*") (both holding that winning auction bidder's final payment obligation is not delayed by pendency of review or appeal of petition to deny long-form application). In *Abundant Life*, the Commission stated that the purpose of the prior rule postponing payment until the staff had denied or dismissed any petitions to deny (former 47 C.F.R. § 73.5006(d)) was not to shield an applicant from payment until there was no possibility that its application would be denied. Rather, the rule provided sufficient time for the Commission to determine, after initial evaluation of any petitions to deny, whether grant of the application was in the public interest. 17 FCC Rcd at 4009. Similarly, there is no rule guaranteeing that an

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clear policy objective of Section 309(j) of the Communications Act to promote the “rapid deployment of new technologies, products, and services for the benefit of the public”¹³

4. Moreover, it is inaccurate for Genesis to assert that its right to challenge the Bureau’s Section 307(b) finding has been compromised, given that it retains the ability to present its arguments contesting the Bureau’s Section 307(b) determination before any authorization can be awarded.¹⁴ The Media Bureau properly decided the matters raised, and we uphold its action for the reasons stated in the *Staff Decision*.¹⁵

5. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,¹⁶ and Section 1.115(g) of the Commission’s rules,¹⁷ the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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auction applicant is shielded from participating in an auction while it pursues an asserted Section 307(b) preference. Our obligation under Section 307(b) is discharged when the staff makes a determination as to which, if any, applicant merits a Section 307(b) preference. To the extent that Genesis wishes to pursue its claim, the Commission or the courts can grant appropriate relief in the event that Genesis prevails. *F.C.C. v. Radiofone, Inc.*, 516 U.S. 1301, 116 S.Ct. 283 (1995).

¹³ 47 U.S.C. § 309(j)(3)(A). Additionally, as observed by the Wireless Telecommunications Bureau in denying stay of an auction pending full resolution of a defaulting licensee’s challenge, to require full resolution of all issues before holding an auction would be to “risk delay of future auctions for review by the Commission and courts of the myriad issues parties could raise in attempts to circumvent auctions for their individual purposes.” *Alpine PCS, Inc.*, Order, 23 FCC Rcd 10485, 10492 (WTB 2008).

¹⁴ 47 C.F.R. §§ 73.3584(a), 73.5006(b) (providing for ten-day period for the filing of petitions to deny an auction winner’s FCC Form 301 long-form application). *See, e.g., Ingles*, 23 FCC Rcd at 8817 (dispositive Section 307(b) preference for one of three members of mutually exclusive auction group overturned on grant of petitions to deny).

¹⁵ Although Genesis, in its Application for Review, makes several arguments regarding the merits of the staff’s Section 307(b) decision, we decline to entertain those arguments here, as our review is limited to the Bureau’s dismissal of the Petition for Reconsideration as interlocutory.

¹⁶ 47 U.S.C. § 155(c)(5).

¹⁷ 47 C.F.R. § 1.115(g).