

**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

IN REPLY REFER TO:
1800B3-LLS

March 20, 1996

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In re: KKIC(AM), Boise, Idaho
BAL-951011EA

KJHY(FM), Emmett, Idaho
BALH-951011EB

Petition for Reconsideration

Dear Counsel:

We have on file a January 16, 1996 petition filed on behalf of Ray Montierth and Sawtooth Energy Reserves, Inc. ("Petitioners") seeking reconsideration of the Commission's December 5, 1995 grant of the assignment of license of stations KKIC(AM), Boise, Idaho from Northwest Broadcasting, Inc. ("NBI") to Western Pacific Inc. and KJHY(FM), Emmett, Idaho from Radio Broadcasting, Inc. ("RBI") to Capital West Inc.¹ Those transactions are related because Steve Sumner is the majority stockholder of both NBI and RBI and John Tanner is the sole shareholder of both Western Pacific Inc. and Capital West Inc. Essentially, Petitioners argue that Steve Sumner may have lost his right to control the majority of the stock in the licensee corporations through default judgments and stock sales, and thus he had no right to seek to sell the stations to Mr. Tanner. They also bring to our attention an injunction issued by a local court. For the reasons set forth below, we dismiss the petition for reconsideration as procedurally defective.

Petitioners were not parties to the underlying proceeding, and thus we would not consider their petition for reconsideration unless they show good reason why it was not possible for them to participate in the earlier stages of the proceeding. See 47 C.F.R. § 1.106(b)(1). Petitioners fail to do so. They merely state that they were not informed of the pendency of the applications by Steve Sumner and only learned of the applications through a newspaper advertisement on November 30, 1995. They do not, however, address the implied notice effectuated by the Commission's public notice of October 24, 1995 or the local public notice published pursuant to 47 C.F.R. § 73.3580.

¹ On February 15, 1996, NBI and RBI filed an opposition to the petition for reconsideration. On March 14, 1996, Petitioners filed a reply.

We further note that an Idaho court issued a preliminary injunction on January 6, 1996 to prohibit the sale of the stations until the court resolves the matters alleged, but also note that the sale had already been consummated by the parties on December 6, 1995. Because the injunction was issued after the sale was approved and consummated, this is now a matter for the local courts. The Commission grant merely authorizes the parties to proceed with the transaction and does not prejudice any relief the parties may ultimately be entitled to under a civil suit. Similarly, the issue of whether Steve Sumner had the authority to sign the applications is a matter of state corporate law and is beyond our jurisdiction. See John R. Kingsbery, 71 FCC 2d 1173 (1979); John F. Runner, Receiver (KBIF), 36 RR 2d 773 (1976); Transcontinental Television Corp., 21 RR 945 (1961). Only if a local court of competent jurisdiction resolves the issues of state corporate law would the Commission be in a position to determine whether any action is required on our part.

Accordingly, Ray Montierth and Sawtooth Energy Reserves, Inc.'s petition for reconsideration of grant of the applications assigning KKIC(AM), Boise, Idaho from Northwest Broadcasting, Inc. to Western Pacific Inc. and KJHY(FM), Emmett, Idaho from Radio Broadcasting, Inc. to Capital West Inc. IS HEREBY DISMISSED. Again, we emphasize that the Commission's grant of the assignment application is not intended to prejudice any relief to which a court of competent jurisdiction may ultimately determine that any person is entitled.

Sincerely,

Linda Blair, Chief
Audio Services Division
Mass Media Bureau