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

In the Matter of	)	
	)	
Royce International Broadcasting Company (Assignor)	)	File No. BALH-200021120ACE Facility ID No. 57889
	)	
and	)	
	)	
Entercom Communications Corp. (Assignee)	)	
	)	
Application for Assignment of License of Station KUDL(FM) (formerly KWOD), Sacramento, California	)	

MEMORANDUM OPINION AND ORDER

Adopted: June 17, 2016 **Released: June 20, 2016**

By the Commission:

1. We have before us a February 18, 2016, Application for Review (2016 AFR)[1] filed by Royce International Broadcasting Company (Royce), seeking review of a Media Bureau (Bureau) decision[2] that dismissed as "plainly not warranting Commission consideration" because the Royce "fail[ed] to identify any material error, omission, or reason warranting reconsideration," pursuant to Section 1.106(p)(1) of the FCC's Rules (Rules),[3] Royce's October 19, 2015, Petition for Reconsideration (Petition). The Petition sought reconsideration of our *Memorandum Opinion and Order*[4] which dismissed in part and denied in part Royce's September 20, 2005, Application for Review (2005 AFR) seeking to overturn the Bureau's grant of the above-captioned application (Application) for Commission consent to the assignment of license of Station KUDL(FM), Sacramento, California (Station), from Royce to Entercom Communications Corp. (Entercom).[5] For the reasons set forth below, we deny the 2016 AFR.

2. The sole issue presented for review is the propriety of the Bureau's action dismissing the Petition. Royce claims that the *Bureau Order* was arbitrary, capricious and contrary to law, and that the staff dismissal pursuant to Section 1.106(p)(1)[6] has frustrated its ability to seek judicial review. Substantively, Royce reiterates the following arguments that were rejected in the *Bureau Order*: (1) the *2015 MO&O* violated Section 155(d) of the Communications Act of 1934, as amended,[7] and Section 706

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[1] On March 1, 2016, Royce filed a Motion for Leave to File Erratum to Application for Review to correct two typographical errors in the 2016 AFR. On March 4, 2016, Entercom filed an Opposition to the 2016 AFR, to which Royce replied on March 17, 2016.

[2] *See Royce International Broadcasting Company,* Order on Reconsideration, DA 16-62 (MB 2016) (*Bureau Order*).

[3] 47 CFR § 1.106(p)(1).

[4] *See Royce International Broadcasting Company,* Memorandum Opinion and Order, 30 FCC Rcd 10556 (2015) (*2015 MO&O*).

[5] *See Royce International Broadcasting Company,* Letter Order, 20 FCC Rcd 13720 (MB 2005).

[6] 47 CFR § 1.106(p)(1).

[7] 47 U.S.C. § 155(d).

of the Administrative Procedure Act[8] because the Commission took almost 10 years to act on the 2005 AFR; (2) this application proceeding "is governed" by *Kidd v. FCC*,[9] a case decided after the pleading cycle for the 2005 AFR had closed; and (3) the *2015 MO&O* improperly rejected three Royce arguments as procedurally barred.

3. In Opposition, Entercom alleges that the 2016 AFR "merely rehashes (often verbatim) matters that have repeatedly been addressed and resolved by the Commission."[10] It argues that: (1) the Bureau properly applied Section 1.106(p) in this case;[11] (2) Royce continues to mischaracterize Section 155(d) of the Act and 706 of the APA;[12] (3) Royce also continues to mischaracterize both *Kidd*, the appellate case on which Royce relies and the facts of this case;[13] and (4) Royce's claim that the Bureau "prevented [it] from getting" a ruling on three arguments presented for the first time in the 2005 AFR fails because that contention was sufficiently addressed by the *2015 MO&O* and the *Bureau Order.*[14]

4. *Discussion*. We affirm the dismissal of the Petition. A petition for reconsideration of the Commission's denial of an application for review will be entertained only if: (1) the petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters, or (2) the petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.[15] Petitions failing to meet these narrow grounds are subject to dismissal.[16]

5. The Petition did not meet the narrow grounds for reconsideration of the *2015 MO&O*. Initially, we find that Royce could have raised its Section 155(d) "undue delay" argument earlier in this proceeding and therefore that this issue was impermissibly argued for the first time in the Petition. Moreover, to the extent that Royce believed that the Commission's delay in ruling on its 2005 AFR was prejudicial,[17] it fails to show how a different outcome would have been reached if action had occurred sooner.[18]

6. We also agree with the Bureau's rejection as meritless Royce's claim in the Petition that the October 2005 *Kidd* appellate decision is a new fact or changed circumstance that occurred after Royce's last opportunity to present such matters to the Commission, warranting reconsideration of our *2015 MO&O*. Royce ignores the well-established flexibility accorded parties by Commission procedures.

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[8] 5 U.S.C. § 706.

[9] *Kidd Commc'ns v. FCC,* 427 F.3d 1 (D.C. Cir 2005) *(Kidd).*

[10] Opposition at 2.

[11] *Id.* at 3.

[12] *Id.* at 3-4.

[13] *Id.* at 4-7.

[14] *Id.* at 8.

[15] 47 CFR § 1.106(b)(2)(i) and (ii); *see also Fireside Media and Jet Fuel Broadcasting,* Memorandum Opinion and Order, 27 FCC Rcd 10694, 10696, para. 4 (2012) (Sections 1.106(b)(2)(i) and (ii) of the Commission's rules set forth the conditions under which the Commission will consider petitions for reconsideration of Commission denial of an application for review).

[16] *See, e.g.,* 47 CFR §§ 1.106(b)(3) and 1.106(p)(1), (2) and (3).

[17] Reply at 4.

[18] *See Bureau Order* at para. 7 (Royce "fundamentally mischaracterizes" Section 155(d) of the Act as mandating Commission action within three months whereas this statutory provision merely sets a non-mandatory objective; Royce "has not shown prejudice by establishing that the result reached would likely have been different if action had occurred sooner.").

Royce could have filed a motion to accept a late-filed pleading with the Bureau upon release of the *Kidd* decision or at any time during the pendency of the 2005 AFR. The Commission historically has found that good cause exists for acceptance of such pleadings.[19] Royce filed no such motion.

7. Finally, regarding Royce's contention in the Petition and here that the Commission acted arbitrarily in dismissing on procedural grounds three arguments that Royce claims were "subsumed within" the primary issue of whether the Bureau correctly processed the Application in accordance with the Commission's multiple ownership rules,[20] as we concluded in footnote 11 of the *2015 MO&O*, Royce never presented any of these specific arguments to the Bureau. Thus, they were properly dismissed in the *2015 MO&O,* pursuant to Section 1.115(c) of the Rules.[21] The Bureau properly noted in the *Bureau Order* that it is the Commission's obligation to rule only on allegations actually made; it is not the Commission's obligation to flesh out or embellish arguments inexpertly made by petitioners.[22] Accordingly, we conclude that these arguments were improperly raised for the first time before the Commission and therefore subject to dismissal pursuant to Section 1.106(p)(2) of the Rules.

8. Having found that each of the arguments raised in the Petition is subject to dismissal for the reasons stated above, we also conclude that the Bureau appropriately concluded that the Petition was itself subject to dismissal. Accordingly, we dismiss as moot the argument that the staff dismissal of the Petition pursuant to Section 1.106(p)(1) was arbitrary, capricious and contrary to law. In 2015, we denied Royce's 2005 AFR, concluding that Royce's contentions that the Bureau's grant of the Application was improper were without merit. Regarding Royce's untimely and unsupported contention that it was somehow prejudiced by the delay in our so affirming the Bureau, while that delay is regrettable, it does not alter the fact that the Bureau's grant of the Application was appropriate.

9. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and Section 1.115(g) of the FCC's Rules, 47 CFR § 1.115(g), the February 18, 2016, Application for Review filed by Royce International Broadcasting Company, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[19] *See, e.g., WSTE–TV, Inc.,* Memorandum Opinion and Order, 75 FCC 2d 52, 63 (1979) (good cause exists for acceptance of additional pleadings inasmuch as they focus on the Commission's most recent views concerning the use of translator stations, a subject central to this proceeding upon remand); *Amendment of Section 73.202(B) Table of Allotments, FM Broadcast Stations (Genoa, CO),* Report and Order, 18 FCC Rcd 1465 n.2 (MB 2003) ("We will grant the motions and accept the late-filed pleadings . . . because they will facilitate resolution of this case based upon a full and complete factual record."); *New Mexico Broadcasting, Inc.,* Memorandum Opinion and Order, 88 FCC 2d 1469 n.2 (1982) (Commission uses good cause standard to determine acceptance of unauthorized pleadings).

[20] 2016 AFR at 11.

[21] 47 CFR § 1.115(c).

[22] *See, e.g., Tama Radio Licenses of Tampa, Florida, Inc.,* Memorandum Opinion and Order, 25 FCC Rcd 7588, 7589, para. 2 (2010) ("The Commission is not required to sift through an applicant's prior pleadings to supply the reasoning that our rules require to be provided in the application for review."); *Red Hot Radio, Inc*., Memorandum Opinion and Order, 19 FCC Rcd 6737, 6745 n.63 (2004) ("Our rules do not allow for a 'kitchen sink' approach to an application for review, rather the burden is on the Applicant to set forth fully its argument and all underlying relevant facts in the application for review.").