



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

August 24, 2018

In Reply Refer To:  
1800B3-ATS

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**In re: Independent School District #283**  
DKDXL(FM), St. Louis Park, MN  
Facility ID No. 28505  
File No. BMLEED-20020814AAT

**Regents of the University of Minnesota**  
KUOM-FM, St. Louis Park, MN  
Facility ID No. 122699  
File No. BMLEED-20180629ABH

**Petition for Reconsideration**

Dear Mr. Sibert and Counsel:

We have before us the Petition for Reconsideration (Petition) filed by Jeff Sibert (Sibert) requesting that Media Bureau (Bureau) “withhold cancellation” of the surrendered license of Independent School District #283 (ISD) for Station DKDXL(FM), St. Louis Park, Minnesota. For the reasons set forth below, we dismiss the Petition.<sup>1</sup>

**Background.** ISD operated DKDXL on a timesharing basis with Station KUOM-FM, St. Louis Park, Minnesota, which is licensed to UM. On June 26, 2018, ISD surrendered its license for DKDXL,<sup>2</sup> and on June 29, 2018, UM filed the referenced application to modify its license for KUOM-FM to specify unlimited hours and assume the hours formerly used by DKDX (License Mod Application).<sup>3</sup> No objection to the License Mod Application was filed, and the Bureau granted it on July 16, 2018.

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<sup>1</sup> Sibert filed the Petition on July 30, 2018. ISD and Regents of the University of Minnesota (UM) filed a “Joint Opposition to the Petition for Reconsideration” on August 15, 2018 (Opposition).

<sup>2</sup> Letter from Gregg P. Skall, Esq., Womble Bond Dickinson (US) LLP, to Marlene H. Dortch, Secretary, FCC (June 26, 2018).

<sup>3</sup> File No. BMLEED-20180629ABH.

In the Petition, Sibert requests that the Bureau “withhold cancellation” of the surrendered license for DKDXL.<sup>4</sup> Sibert states that “based on community concern” he spoke with Tom Marble, the Director of Technology at ISD, “to determine if there was a possibility to save the KDXL license for the community,” which would involve locating a new transmitter site and channel for the station, and assigning the license to another entity.<sup>5</sup> Sibert notes that “a possible option has already been found,” but that the school board would have to vote on this option and no meetings were scheduled for July.<sup>6</sup> Thus, Sibert requests that the Bureau withhold action on the DKDXL license for 90 days to allow the school board to meet and allow the community to “explore options.”<sup>7</sup> Sibert further argues that because DKDXL does not normally operate in July and August, KUOM-FM has full use of the channel during those months and would not be prejudiced by such action.<sup>8</sup>

In the Opposition, ISD and UM state that “ISD’s decision to surrender the DKDXL license is final, and ISD is not interested in expending any additional effort or expense with respect to DKDXL.”<sup>9</sup> ISD and UM also note that pursuant to the Sharetime Agreement they entered into in 1999, if either party surrendered its license, the remaining party would be offered the vacated hours of operation, subject to approval by the Commission.<sup>10</sup> ISD and UM further argue that Sibert is interfering with their private contractual relationship, that the Commission has approved of similar license modifications where one party to a time-share surrenders its license, and finally argues that the Petition is procedurally defective because Sibert did not participate earlier in the proceeding and has not identified any Bureau error warranting reconsideration.<sup>11</sup>

**Discussion.** Section 405(a) of the Communications Act of 1934, as amended (Act), states that any party to an order, decision, report, or action, or any other person aggrieved or whose interests are adversely affected, may petition for reconsideration.<sup>12</sup> To determine if a party’s interests have been adversely affected, the Commission frequently relies upon a three-pronged standing test under which a party must establish (1) a distinct and palpable injury-in-fact that is (2) traceable to the respondent’s conduct and (3) redressable by the relief requested.<sup>13</sup>

Sibert has not provided any explanation for why he has standing in this proceeding and thus has failed to satisfy any of the criteria of the test for standing. Moreover, the Commission has held that a third party generally lacks the standing to seek the reinstatement of a surrendered license.<sup>14</sup> Accordingly,

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<sup>4</sup> Petition at 1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Opposition at 3.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 4-5.

<sup>12</sup> 47 U.S.C. § 405(a).

<sup>13</sup> See *AT&T Corp. v. Business Telecom, Inc.*, Order on Reconsideration, 16 FCC Rcd 21750, 21752, para. 7 (2001).

<sup>14</sup> See *Susquehanna Radio Corp.*, Memorandum Opinion and Order, 30 FCC Rcd 13978, 13979, para. 4 (2015) (“Petitioners cite no precedent to support the theory that a third party with no contractual right to acquire a station’s license could have standing to seek reinstatement of the license after the licensee had surrendered the license for cancellation.”); *New Jersey Public Broad. Auth.*, Letter Order, 24 FCC Rcd 9064 (MB 2009) (licensee of AM station did not have standing to seek reinstatement of surrendered translator license which it was interested in

we dismiss the Petition because Sibert lacks standing to file it. Moreover, ISD clearly stated in the Opposition that it has no interest in assigning the license to a third party and that it has abided by its Sharetime Agreement to allow UM to use the hours in question at KUOM-FM.<sup>15</sup> Therefore, we would deny the Petition even if we were to consider it.

**Conclusion.** Accordingly, for the reasons discussed above, IT IS ORDERED that the Petition for Reconsideration filed on July 30, 2018 by Jeff Sibert IS DISMISSED

Sincerely,

A handwritten signature in blue ink, appearing to read 'A. Shuldiner', with a long, sweeping underline.

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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acquiring, but no contractual agreement existed or assignment application filed); *recon. denied*, Letter Order, 25 FCC Rcd 1325 (MB 2010), *rev. denied*, Memorandum Opinion and Order, 29 FCC Rcd 5558 (2014).

<sup>15</sup> Opposition at 3.