



Federal Communications Commission
Washington, D.C. 20554

October 29, 2018

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Re: Application for Consent to Assignment of License of
Digital Class A Television Station

KOHC-CD, Oklahoma City, Oklahoma
Facility ID No. 10265
File No. BALCDT-20180329ACG

Gentlemen,

We have before us a Petition for Reconsideration (Petition) filed by El Nacional de Oklahoma, Inc. (El Nacional). El Nacional seeks reconsideration of the Division's grant of the above-captioned application (the Application) for consent to assign station KOHC-CD, Oklahoma City, Oklahoma (KOHC), from Sunshine State Television Network, Inc. (Sunshine State), to HC2 Station Group, Inc. (HC2, collectively with Sunshine State, the Applicants).¹ HC2 filed its "Opposition to the Petition for Reconsideration" on June 15, 2018, to which El Nacional filed a reply on June 19, 2018.² Sunshine State filed its "Opposition to the Petition" on August 13, 2018 (Sunshine State Opposition).³ We dismiss the Petition for the reasons below.

¹ Petition for Reconsideration of by El Nacional de Oklahoma Inc. (filed June 7, 2018) (Petition).

² Opposition to Petition for Reconsideration of HC2 Station Group, Inc. (HC2 Opposition); Reply to Opposition to Petition for Reconsideration of El Nacional de Oklahoma, Inc. (Reply).

³ Opposition to Petition for Reconsideration of Sunshine State Television Network, Inc. (Sunshine State Opposition).

Background. As set forth in the pleadings, El Nacional entered into a Time Brokerage Agreement with Sunshine State that included a purchase option.⁴ On July 20, 2015, El Nacional filed a lawsuit against Sunshine State in the District Court of Oklahoma County (Oklahoma Court) for Sunshine State's alleged refusal to honor the purchase option (state court litigation).⁵ On February 13, 2017, the Oklahoma Court issued a default judgment against Sunshine State for its failure to appear in court on the trial date.⁶ On March 16, 2017, the Oklahoma Court granted El Nacional's request for an "Agreed Order for Delivery" (AOD), which authorized El Nacional to remove its property from KOHC.⁷ El Nacional took possession of its property on March 22, 2017, which forced KOHC to suspend its operations and go silent.⁸

On March 29, 2017, Sunshine State notified the Commission that, on March 23, 2017, KOHC suspended its operations and went silent to replace the equipment that El Nacional had removed from the station.⁹ Subsequently, on April 25, 2017, Sunshine State filed a request for silent authority for KOHC.¹⁰ On March 20, 2018, Sunshine State notified the Commission that KOHC had resumed operations on March 17, 2018.¹¹ The Applicants then filed the Application on April 4, 2018,¹² which the Division granted after Tiger Eye Broadcasting Corporation, the only party to file an objection to the Application, withdrew its Informal Objection.¹³

In its Petition, El Nacional, by and through its president, Randy Quiroga-King, requests that the Division rescind its grant of the Application and investigate Sunshine State's "deceptive activities before the Commission."¹⁴ According to El Nacional, KOHC did not resume its operations and transmit a broadcast signal until May 7, 2018, which was approximately 15 months after KOHC suspended its operations and went silent.¹⁵ Therefore, El Nacional claims that the Division should not have granted the Application because KOHC's license had expired pursuant to Section 312(g) of the Communications Act of 1934, as amended (the Act).¹⁶ Furthermore, El Nacional claims that because Sunshine State never notified the Commission that KOHC had suspended its operations and went silent, Sunshine State has been deceiving the Commission for more than a year leading up to the filing of the Application.¹⁷

⁴ Petition at 1.

⁵ *Id.*, Attachment 1; Sunshine State Opposition, Attachment A.

⁶ Petition, Attachment 1.

⁷ *Id.* at Attachment 2.

⁸ *Id.* at 1; *infra* n. 9.

⁹ Notice of Suspension of Operations to FCC of Sunshine State Television Network, Inc., LMS File No. 0000022391 (Notice of Suspension of Operations).

¹⁰ Suspension of Operations and Silent Authority of Digital Class A Station Application of Sunshine State Television, Inc., LMS File No. 0000024431 (STA Request). It is unclear whether KOHC went silent on March 23, 2017 (the date indicated in the Notice of Suspension of Operations), or March 27, 2017 (the date indicated in the STA Request). For the purposes of this Memorandum Opinion and Order, we assume that KOHC was silent on March 23, 2017.

¹¹ Notice of Resumption of Operations of Sunshine State Television Network, Inc., LMS File No. 000004898 (Notice of Resumption of Operations). We note that KOHC's license would have statutorily expired on March 23, 2018. *See* 47 U.S.C. § 312(g).

¹² *See* File No. BALCDT-20180329ACG.

¹³ *See* Letter from David J. Brown, Deputy Chief, Video Division, Media Bureau, to Tiger Eye Broadcasting Corporation, BALDTA-20180329ACG (May 29, 2018).

¹⁴ Petition at 1.

¹⁵ *Id.* at 2.

¹⁶ *Id.* 42 U.S.C. § 312(g).

¹⁷ Petition at 2.

In its opposition, HC2 argues that the Division should dismiss the Petition because El Nacional does not have standing to file a petition for reconsideration pursuant to Section 1.106 of the Commission's rules. HC2 states that El Nacional did not participate in the original proceeding granting the Application or explain how its "interests are adversely affected by grant of the [Application]." ¹⁸ HC2 also refutes El Nacional's assertion that KOHC's license had expired pursuant to Section 312(g) of the Act. ¹⁹ Based on Sunshine State's various filings with the Commission, ²⁰ HC2 claims that Sunshine State did in fact resume operations before its license was set to expire pursuant to statute. In fact, according to HC2, El Nacional "concedes that [Mr. Quiroga-King] [did] not know exactly when [KOHC] resumed operations" and did not provide supporting statements explaining how he monitored KOHC's operational status. ²¹ Furthermore, HC2 states that El Nacional's claim that Sunshine State has been "deceiving" the Commission has no basis because Sunshine State notified the Commission with regards to KOHC's operational status through the above-referenced filings. ²²

In its reply to HC2, El Nacional states that Mr. Quiroga-King, being aware of the "FCC's off-air policies," regularly monitored the station's signal with an off-air receiver from March 22, 2017 through April 2, 2018. ²³ Based on this monitoring, El Nacional again claims that KOHC "did not resume broadcasting by the one year anniversary of going dark – which was March 22, 2018." ²⁴ In this regard, El Nacional claims that Sunshine State provided the Commission with false information by stating that KOHC went dark on March 27, 2017. ²⁵ As such, El Nacional reiterated that the Division should have never granted the Application because KOHC's license expired pursuant to Section 312(g) of the Act. ²⁶

In its opposition, filed after El Nacional submitted its reply, Sunshine State argues that El Nacional does not have standing to file a petition for reconsideration. ²⁷ Like HC2, Sunshine State states that El Nacional failed to establish that it "holds an interest in the Commission's decision . . . , and fails to show that a Petition for Reconsideration is proper based on the Supporting Declaration and submitted Exhibits." ²⁸ Sunshine State also argues that El Nacional and Mr. Quiroga-King were not candid with, and made misrepresentations to, the Commission regarding the nature of the state court litigation. ²⁹

Discussion. Pursuant to Section 1.106(b)(1) of the Rules, any party to a proceeding, or any party whose interests are adversely affected by a decision, shall show, if it has not participated prior to filing of the petition for reconsideration, "good reason why it was not possible for [it] to participate in the earlier stages in the proceeding." ³⁰ Our review of the record shows that El Nacional was served with, among other pleadings,

¹⁸ HC2 Opposition at 2.

¹⁹ *Id.*

²⁰ See Notice of Suspension of Operations; STA Request; Sunshine State Television Network, Inc., Notice of Resumption of Operations.

²¹ HC2 Opposition at 3.

²² *Id.* at 2-3.

²³ Reply at 1. We note that El Nacional attached a copy of Mr. Quiroga-King's Monitoring Schedule. See *Id.*, Television Monitoring Schedule (Monitoring Schedule).

²⁴ *Id.* at 1.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Sunshine State Opposition at 3.

²⁸ *Id.* at 3-6.

²⁹ *Id.* at 7.

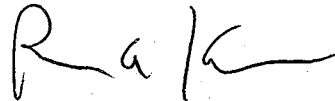
³⁰ 47 CFR § 1.106(b)(1). We need not reach the issue of standing as we find that the Petition is procedurally barred.

a copy of the informal objection that Tiger Eye Broadcasting Corporation had filed.³¹ This alone should have prompted El Nacional to inquire why it was receiving such pleadings and investigate the matter further. Had El Nacional done its due diligence into the matter, El Nacional would have timely discovered that Sunshine State included Mr. Quiroga-King and El Nacional in the Application. Therefore, we will dismiss the petition for reconsideration on procedural grounds.

We further find, though not dispositive, that the substantive arguments in the Petition have no merit. First, El Nacional failed to adequately support its argument that KOHC's license had statutorily expired. While the Monitoring Schedule shows that Mr. Quiroga-King monitored KOHC's operational status on the day KOHC's license was set to statutorily expire, Mr. Quiroga-King did not monitor the station's operational status on March 17, 2018 – the day Sunshine State stated that it resumed operations. Without this information we have no reason to believe that KOHC did not resume operations on March 17, 2018. Second, the record does not support El Nacional's claim that Sunshine State failed to notify the Commission of KOHC's suspension of operations and silent status. Sunshine State filed a notice informing the Commission that KOHC had suspended its operations and filed a request for silent authority. Finally, we have no reason to believe that Sunshine State intended to provide false information to the Commission regarding the day KOHC had suspended its operations. The time difference between March 22, 2018, the day El Nacional claims that KOHC had suspended its operations, and March 23, 2018, the day identified in Sunshine State's notice that KOHC had suspended its operations, is inconsequential and does not prove an intent to deceive.

Accordingly, **IT IS ORDERED**, That the Petition for Reconsideration filed by EL Nacional de Oklahoma, Inc., **IS DISMISSED**.

FEDERAL COMMUNICATIONS COMMISSION



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³¹ See Informal Objection of Tiger Eye Broadcasting Corporation, pg. 7, (filed May 16, 2018); Opposition to Informal Objection of HC2 Station Group, Inc., pg. 4 (filed May 17, 2018); Withdrawal of Informal Objection of Tiger Eye Broadcasting, pg. 3 (filed May 22, 2018); Letter from David J. Brown, Deputy Chief, Video Division, FCC Media Bureau, to Tiger Eye Broadcasting Corporation, pg. 2 (May 29, 2018).