



Federal Communications Commission
Washington, D.C. 20554

May 2, 2019

In Reply Refer to:
1800B3-HOD

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Steven L. White, Director
Triangle Access Broadcasting, Inc.
7813 Highlandview Cir.
Raleigh, NC 27613

In re: Carolina Radio Group, Inc.
W225DF, Raleigh, NC
Facility ID No. 143608
File No. BNPFT-20180723AAW

Petition for Reconsideration

Dear Mr. Ramsey and Mr. White:

We have before us a Petition for Reconsideration (Petition) filed by Triangle Access Broadcasting, Inc. (Triangle) on August 30, 2018. Triangle challenges our grant of an application (Application) for a construction permit for W225DF, Raleigh, North Carolina (Translator), filed by Carolina Radio Group, Inc. (CRG). For the reasons discussed below, we dismiss the Petition.

Background. CRG initially filed the Application on July 23, 2018. At that time, the Application specified WBBB(FM), Raleigh, North Carolina, as the Translator's primary station. On August 7, 2018, CRG amended the Application, changing the Translator's primary station to the HD3 signal of WQDR-FM, Raleigh, North Carolina. Public notice of the amendment was issued on August 10, 2018.¹ We granted the Application on August 20, 2018.²

Triangle then filed the Petition. Therein, Triangle acknowledges that it is not a party to the application proceeding and thus must show good cause why it could not participate earlier. Triangle argues that it was effectively precluded from participating earlier because we granted the Application "only 10 days after public notice was given" that it had been amended.³

¹ *Broadcast Applications*, Public Notice, Report No. 29297 (MB Aug. 10, 2018) (*Public Notice*).

² *Broadcast Actions*, Public Notice, Report No. 49306 (MB Aug. 23, 2018).

³ Petition at 3. Triangle also argues that CRG must demonstrate a "technical need" for the Translator. *Id.* at 1-3. However, given our finding that Triangle's petition is not acceptable under Section 1.1106(b), we do not consider this argument.

In response to the Petition, CRG filed an Opposition to Petition for Reconsideration (Opposition) on September 10, 2018, which asserts that Triangle cannot show “good cause” why it did not participate earlier in this proceeding.⁴ Triangle filed a Reply to Opposition (Reply) on September 14, 2018, which restates its argument that there was good cause for its failure to participate earlier.⁵

Discussion. Section 1.106(b)(1) of the Commission’s rules permits “any party to a proceeding, or any other person whose interests are adversely affected” to file a petition for reconsideration.⁶ If a petitioner was not a party to the original proceeding, it must show good reason why it was not possible to participate earlier in the proceeding.⁷ The Commission has found such good reason to exist and has accepted petitions for reconsideration filed by non-parties when grant of an application occurred shortly after the application was placed on public notice.⁸ In these cases, the Commission has concluded that expedient grant of an application effectively precluded participation during the initial consideration of the application.⁹

We reject Triangle’s argument that it was effectively precluded from participating earlier in this proceeding. Here, ten days elapsed between public notice that CRG had amended the Application and grant of the Application. To date, the Commission has found effective preclusion to exist only where the period between the filing of an application and its grant was less than a week.¹⁰ This is consistent with the Commission’s determination, in other contexts, that ten days is a reasonable period of time for preparing and filing of a pleading.¹¹ Finally, we note that Triangle had both constructive and actual notice of the acceptance for filing of the amended Application.¹² For these reasons, we conclude Triangle had adequate opportunity to participate earlier in the proceeding. Because it failed to do so, the Petition is not acceptable under Section 1.106(b). We also find that reconsideration of the grant of the Application is not required in the public interest under Section 1.106(c)(2). Accordingly, we will dismiss the Petition.

⁴ Opposition at 6-7.

⁵ Reply at 2. Triangle also reprises its “technical need” argument. *Id.* at 2-4.

⁶ 47 CFR § 1.106(b)(1).

⁷ *Id.*

⁸ See *Ted and Jana Tucker*, Memorandum Opinion and Order, 4 FCC Rcd 2816, 2816, para. 3 (1989) (standing to file a petition for reconsideration found when application granted four days after public notice issued); *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17854-55, para. 9 (MMB 1997) (standing to file a petition for reconsideration found when application granted five days after acceptance); *Castle Holdings, LLC*, Letter Order, 31 FCC Rcd 2217, 2219 (MB 2016) (standing to file a petition for reconsideration found when application granted two days after public notice issued).

⁹ *Id.*

¹⁰ *Id.*

¹¹ See, e.g., 47 CFR § 1.45(c) (providing that a reply to an opposition to any to any motion, petition, or request must be filed within five days after the time for filing oppositions has expired); 47 CFR § 1.106(h) (providing that a reply to an opposition for a petition for reconsideration must be filed within seven days after the opposition is filed); 47 CFR § 1.301(c)(2) (providing that interlocutory appeals must be filed with the Commission’s Secretary within five days after the relevant order is released).

¹² Petition at 3 (noting that Triangle took certain steps “when it learned of the updated primary station, and before the grant”).

Conclusion/Ordering Clauses. For the reasons set forth above, **IT IS ORDERED** that the Petition for Reconsideration filed by Triangle Access Broadcasting, Inc., on August 30, 2018, **IS DISMISSED.**

Sincerely,

A handwritten signature in black ink, appearing to read "Al Shuldiner", with a long horizontal flourish extending to the right.

Albert Shuldiner
Chief, Audio Division
Media Bureau