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

In the Matter of	)	
	)	
Application of Punjabi American Media, LLC, for	)	Facility ID No. 85824
Minor Modification to K227AH, River Pines,	)	File No. BPFT-20160729ALZ
California	)	

MEMORANDUM OPINION AND ORDER

Adopted: June 22, 2020 **Released: June 22, 2020**

By the Commission:

I. INTRODUCTION

1. We have before us Applications for Review (AFRs) filed by Charles Gwyn (Gwyn) and Pierce Dandridge (Dandridge) on January 28, 2019.[1] The AFRs challenge the Media Bureau's (Bureau) dismissal of petitions for reconsideration that Gwyn and Dandridge filed in relation to the Bureau's grant of an application (Application) to change the frequency and community of license of FM Translator K227AH, River Pines, California (Station).[2] For the reasons set forth below, we dismiss in part and otherwise deny the Gwyn AFR, and grant in part, dismiss in part and otherwise deny the Dandridge AFR.

II. BACKGROUND

2. Punjabi American Media, LLC (PAM), filed the Application during a filing window (250-Mile Waiver Window) opened as part of the Commission's AM revitalization efforts that ran from July 29, to October 31, 2016.[3] PAM initially proposed to move the Station from Channel 227 to Channel 290, and from River Pines to Granite Bay, California. However, toward the end of the filing window, PAM amended the Application to specify Channel 289, and Elk Grove, California.[4] As amended, the Application conflicted with another application filed during the same window. Thus, when Channel 290 became available in December 2017 due to the expiration of a construction permit for an LPFM station on

[1] Application for Review of Charles Gwyn, File No. BPFT-20160729ALZ (filed Jan. 28, 2019) (Gwyn AFR); Application for Review of Pierce Dandridge, File No. BPFT-20160729ALZ (filed Jan. 29, 2019) (Dandridge AFR).

[2] *Family Stations, Inc*., File Nos. BALFT-20160729ALB, BPFT-20160729ALZ, Letter Order (MB Dec. 19, 2018) (*Reconsideration Decision*).

[3] *Media Bureau Advises AM Radio and FM Translator Licensees and Permittees that Second AM Station Filing Window for FM Translator Modifications Will Open on July 29, 2016*, Public Notice, 31 FCC Rcd 7765 (MB 2016).

[4] *Broadcast Applications*, Public Notice, Report No. 28829, at 7 (MB Sept. 28, 2016) (noting the filing of an engineering amendment to the Application on September 23, 2016) (*September 2016 Public Notice*).

that channel,[5] PAM filed a minor amendment to the Application that proposed operation on Channel 290 at Elk Grove.[6]

3. Nine months later, Gwyn filed an Informal Objection to the Application.[7] Therein, he argued that the Application conflicted with the Local Community Radio Act of 2010 (LCRA). PAM opposed the Informal Objection.[8] The Bureau denied the Informal Objection, noting that "modification applications do not constitute applications for 'new FM translator stations,' under the language of Section 5 of the LCRA" and granted the Application on October 3, 2018.[9]

4. Gwyn and Dandridge (the latter of which had not previously objected to the Application) each filed petitions for reconsideration.[10] Therein, they argued that the Application conflicted with the LCRA. PAM opposed the petitions for reconsideration.[11] Among other things, PAM argued that Gwyn and Dandridge lacked standing. Gwyn and Dandridge each replied.[12]

[5] File No. BNPL-20131104AUY. The construction permit was issued to Women's Civic Improvement Club of Sacramento, Inc. (WCIC). As there was no application for a license to cover the permit filed prior to the permit's expiration date, staff cancelled the permit. In response, WCIC filed a license application. *See* File No. BLL-20171219ADO. The Bureau dismissed the license application. *Broadcast Actions*, Public Notice, Report No. 49220 (MB Apr. 23, 2018). WCIC then filed a petition for reconsideration of the dismissal, which the Commission denied on August 24, 2018. *Women's Civic Improvement Club of Sacramento, Inc*., Letter Order (MB Aug. 24, 2018). That decision was not appealed and is now final.

[6] *Broadcast Applications*, Public Notice, Report No. 29132, at 7 (MB Dec. 14, 2017) (noting the filing of an engineering amendment to the Application on December 11, 2017) (*December 2017 Public Notice*).

[7] Informal Objection of Charles Gwyn, File No. BPFT-20160729ALZ (filed Sept. 24, 2018).

[8] Joint Opposition to Informal Objection of Family Stations, Inc., and Punjabi American Media, LLC, File Nos. BALFT-20160729ALB, BPFT-20160729ALZ (filed Oct. 2, 2018) (Joint Opposition to Gwyn P4R). PAM was joined in the filing by Family Stations, Inc. (FSI). At the time the pleading was filed, FSI had agreed to assign the Station's license to PAM but still held the Station's license. *See* File No. BALFT-20160729ALB.

[9] *Broadcast Actions*, Public Notice, Report No. 49337, at 8 (MB Oct. 9, 2018).

[10] Petition for Reconsideration of Charles Gwyn, File Nos. BALFT-20160729ALB, BPFT-20160729ALZ (filed Oct. 15, 2018) (Gwyn PFR); Petition for Reconsideration of Pierce Dandridge, File Nos. BALFT-20160729ALB, BPFT-20160729ALZ (filed Nov. 1, 2018) (Dandridge PFR).

[11] Joint Opposition to Petition for Reconsideration of Family Stations, Inc., and Punjabi American Media, LLC, File Nos. BALFT-20160729ALB, BPFT-20160729ALZ (filed Oct. 30, 2018) (opposing Gwyn PFR); Joint Opposition to Petition for Reconsideration of Family Stations, Inc., and Punjabi American Media, LLC, File Nos. BALFT-20160729ALB, BPFT-20160729ALZ (filed Nov. 14, 2018) (opposing Dandridge PFR) (Joint Opposition to Dandridge PFR). PAM was again joined in these filings by FSI. *See supra* note 8.

[12] Reply to Objection of Charles Gwyn, File Nos. BALFT-20160729ALB, BPFT-20160729ALZ (filed Nov. 5, 2018) (Gwyn PFR Reply); Reply to Opposition of Pierce Dandridge, File Nos. BALFT-20160729ALB, BPFT-20160729ALZ (filed Nov. 21, 2018) (Dandridge PFR Reply).

5. On December 19, 2018, the Bureau dismissed the petitions for reconsideration. The Bureau found that both Gwyn and Dandridge lacked standing. Gwyn and Dandridge then filed the AFRs.[13] PAM opposed the AFRs,[14] and Gwyn and Dandridge jointly replied.[15]

III. DISCUSSION

6. Section 405(a) of the Communications Act of 1934, as amended (Act), permits the filing of petitions for reconsideration by "any party" to a proceeding, or "any other person aggrieved or whose interests are adversely affected thereby."[16] The Commission has implemented section 405(a) through section 1.106(b)(1) of the Commission's rules (Rules),[17] which states that "any party to the proceeding, or any other person whose interests are adversely affected by any action taken by the Commission or by the designated authority, may file a petition requesting reconsideration of the action taken."[18] If a petition for reconsideration is filed by a non-party, the non-party must "state with particularity the manner in which the [petitioner's] interests are adversely affected" and "show good reason why it was not possible … to participate in the earlier stages of the proceeding."[19] We find that the Bureau correctly held that Gwyn and Dandridge lacked standing to file petitions for reconsideration and affirm their dismissal.

7. *Gwyn AFR*. For the reasons discussed below, we dismiss in part and otherwise deny the Gwyn AFR. At the outset, we dismiss as procedurally defective a number of allegations and arguments made by Gwyn for the first time in the AFR.[20] In addition, we reject Gwyn's argument that there are three categories of persons entitled to standing to file a petition for reconsideration: persons who are parties to the proceeding, persons "aggrieved," and persons whose interests were "adversely affected").[21] The Commission previously considered and rejected this argument, holding that section 405(a) creates only two classes of petitioner who may claim standing to file a petition for reconsideration: (1) "any

[13] Although submitted more than 30 days after the *Reconsideration Decision*, the AFRs were timely filed because the Commission extended certain filings deadlines due to the lapse in appropriations. *See Suspension of Filing Deadlines*, Public Notice, 34 FCC Rcd 67 (OGC 2019); *Revisions to Filing and Other Deadlines Following Resumption of Normal Commission Operations*, Public Notice, 34 FCC Rcd 99 (OGC 2019).

[14] Consolidated Opposition to Applications for Review of PAM, File No. BPFT-20160729ALZ (filed Feb. 13, 2019).

[15] Joint Reply to Consolidated Opposition of Charles Gwyn and Pierce Dandridge, File No. BPFT-20160729ALZ (filed Feb. 20, 2019) (AFR Reply).

[16] 47 U.S.C. § 405(a).

[17] 47 CFR § 1.106(b)(1).

[18] *Id*.

[19] *Id*.

[20] 47 U.S.C. § 155(c)(5); 47 CFR § 1.115(c). *See* Gwyn AFR at 12 (alleging for the first time that Gwyn resides within the coverage area of "the last open LPFM channel within Sacramento" and that grant of the Application resulted in the "loss of a future, non-commercial, educational radio service receivable at [his] residence"), 12-13 (for the first time alleging a conflict with *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945) (*Ashbacker*)), 13-14 (arguing that, because Gwyn is "demonstrated to be associated with nonprofit WCIC, or any other nonprofit may it be" or "a listener of the future LPFM service on this channel," he is "a party to this proceeding as an active future participant"), 14 (arguing for the first time that section 5(2) of the LCRA—which requires decisions to be made based on "the needs of the local community"—makes members of the local community parties in interest), 14-15 (alleging for the first time that the translator "would be listenable" at Gwyn's residence and that a neighborhood Gwyn frequents is within the 60 dBu contour of the translator).

[21] Gwyn AFR at 3.

party;" or (2) "any other person aggrieved or whose interests are adversely affected."[22] Further, the Commission has clearly stated that, although section 1.106(b)(1) of the Rules does not mirror the operative language of the statute and does not include the term "aggrieved," the Commission applies the rule as having the same meaning as the statutory provision, giving force to both terms—"aggrieved" and "adversely affected."[23]

8. We next affirm the Bureau's finding that Gwyn, as a non-party to the proceeding[24] did not demonstrate in his petition for reconsideration that he was "aggrieved" nor that his interests were "adversely affected" by grant of the Application.[25] As the Bureau observed, in his petition for reconsideration, Gwyn did not claim to be a resident of the station's current or proposed service area, a listener of the station, or a competitor in the market.[26] Gwyn did claim that he was "adversely affected by the loss of a Sacramento LPFM channel" through his association with a nonprofit entity.[27] However, as the Bureau pointed out, Gwyn did not assert that he was "affiliated with an organization that wishe[d] to

[22] *New Life Community Temple of Faith, Inc*., Memorandum Opinion and Order, 34 FCC Rcd 648, 650-51, para. 7 (2019) (*New Life*). For this reason, we reject Gwyn's argument that the Bureau erred in failing to separately consider whether he was aggrieved. *See* Gwyn AFR at 3. In any event, we note that the Bureau considered and rejected all of Gwyn's factual allegations that the Application's grant had caused—or would cause—him injury. *Reconsideration Decision* at 3-4. That is the analysis required by section 405(a) of the Act. *See, e.g., New Life*, 34 FCC Rcd at 651, para. 8 (noting that to establish standing under section 405(a), "a petitioner must allege facts sufficient to show that the Commission's action on the application would cause it to suffer a direct injury, establish that the injury can be traced to the challenged action, and demonstrate that the injury would be prevented or redressed by the requested relief").

[23] *New Life*, 34 FCC Rcd at 651, para. 7.

[24] *See Reconsideration Decision* at 3. *See also CMP Houston-KC, LLC*, Memorandum Opinion and Order, 23 FCC Rcd 10656, para. 11 n.31 (2008) (*CMP Houston-KC*) (explaining that petitions to deny do not lie against minor modification applications and that an entity filing an informal objection to such an application, therefore, was not a "party" to the proceeding, but noting that an entity filing an informal objection to such an application can establish standing to file a petition for reconsideration under the "aggrieved or adversely affected" test of section 405(a)), *citing Cloud Nine Broad., Inc.,* Letter Order, 10 FCC Rcd 11555, 11556 (MMB 1995).

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

[26] *Reconsideration Decision* at 3. In the broadcast regulatory context, a non-party attempting to establish standing as someone "aggrieved" or whose interests were "adversely affected" generally must show it in one of three ways: "(1) as a competitor in the market subject to signal interference; (2) as a competitor in the market subject to economic harm; or (3) as a resident of the station's service area or regular listener of the station." *See, e.g., Tribune Media Co.*, MB Docket No. 19-30, Memorandum Opinion and Order, 34 FCC Rcd 8436, 8448, para. 23 (2019). Gwyn alleged in his PFR that he was "a resident of Sacramento" and alleged the Station's proposed 60 dBu contour "include[d] coverage of the City of Sacramento, and [would] be listenable in Sacramento." Gwyn PFR at 2. PAM noted that Gwyn's residence was not within the Station's 60 dbu contour, and that Gwyn had not stated in the Gwyn P4R that he was a resident of the station's primary service area and an actual listener of the station. Joint Opposition to Gwyn P4R at 3. Gwyn later disclaimed any reliance on residency or listenership to demonstrate standing. Gwyn PFR Reply at 3 ("Parties misinterpret the standing in this case. It would not make sense for the Petition to state he was a listener for a proposed translator that just was granted in the last month. The standing is derived from the translator plan to usurp future usage of the co-channel within Sacramento that could be used for future LPFM that is currently reserved via LCRA, Section 5.") (emphasis omitted). Further, to the extent that Gwyn claimed (and continues to claim) that the LCRA granted him standing to file his petition for reconsideration, this argument lacks merit. *See* Gwyn PFR Reply at 2; Gwyn AFR at 12 ("Petitioner believes it has additional standing because it was demonstrated that Applicant's proposal is not compliant with the LCRA . . ."). The LCRA did not modify the standing requirements set forth in section 405(a) of the Act. In addition, as noted above, we dismiss as procedurally defective Gwyn's new arguments made for the first time in the AFR attempting to establish standing. *See supra* note 20.

[27] Gwyn PFR at 2-3.

apply for a construction permit for a new LPFM station serving the Sacramento area."[28] Moreover, even if Gwyn had made such an assertion, the Bureau correctly noted that there was no "basis to assume" that any application submitted by such an organization "would be successful."[29] For these reasons, we find no error in the Bureau's analysis,[30] and reject Gwyn's challenge to the Bureau's findings.

9. *Dandridge AFR*. For the reasons discussed herein, we grant in part, dismiss in part and otherwise deny the Dandridge AFR. At the outset, we dismiss as procedurally defective a number of allegations and arguments made by Dandridge for the first time in the AFR and the AFR Reply.[31] We further reject his argument that the Bureau erred in finding he lacked standing to petition for reconsideration of the Application's grant. In so doing, we uphold the Bureau's determination that Dandridge was not a party to the proceeding.[32] We also affirm the Bureau's finding that Dandridge failed

[28] *Reconsideration Decision* at 4 (noting that Gwyn could not apply for an LPFM construction permit because "individuals are not eligible to hold LPFM licenses"). *See also* 47 CFR § 73.853(a) (providing that an LPFM station may be licensed only to: (1) nonprofit educational organizations, (2) state and local governments and non-government entities, or (3) Tribal Applicants).

[29] *Reconsideration Decision* at 4, *quoting Urbanmedia One*, Order on Reconsideration, 32 FCC Rcd 5264, 5268, para. 6 (2017) ("standing is not conferred on a person that lacks current harm, even if such person alleges potential future harm").

[30] Because the Bureau found Gwyn had not demonstrated he was "adversely affected," it did not reach his arguments that he participated earlier in the proceeding or that "there was good cause for his failure to participate earlier." *Id.* at 4, n.26. For the same reason, the Bureau did not reach Gwyn's substantive argument that the Application did not comply with the LCRA. Because we affirm the Bureau's finding that Gwyn did not demonstrate he was "aggrieved" nor that his interests were "adversely affected," we likewise need not consider these arguments. Specifically, we need not consider Gwyn's arguments that (1) he did participate in the proceeding prior to filing his petition for reconsideration, (2) "the public was not afforded the opportunity" to file a petition to deny and this impeded the ability for him to file "any type of appeal through reconsideration," (3) the Commission violated section 309 of the Act by classifying the Application as proposing a minor change resulting in the public being "deprived of public notice and ability to file Petition to Deny without reason," (4) the public notice issued regarding the Application did not "divulge the jumps to communities as far a[s] 250 miles" and thus was "misleading" and did not give the public "adequate information to pursue timely participation," and (5) the Application did not comply with the LCRA Gwyn AFR at 6-7, 10-12; AFR Reply at 2-9, 12. It is worth noting that the third and fourth of these arguments are made for the first time in the Gwyn AFR and are procedurally barred. 47 U.S.C. § 155(c)(5); 47 CFR § 1.115(c) (both barring applications for review that rely "on questions of fact or law upon which the [designated authority issuing the decision] has been afforded no opportunity to pass").

[31] 47 U.S.C. § 155(c)(5); 47 CFR § 1.115(c), (d). *See also* Dandridge AFR at 6 (arguing for the first time that the Application as originally filed and the amendment should have been addressed separately), 7 (alleging for the first time that the Commission decision to treat applications filed during the AM Revitalization windows as minor modifications "was not substantiated" and violated section 309 of the Act, and alleging that the amendment filed in December 2017 was a "major amendment outside of any filing window"), 12 (arguing for the first time that Dandridge has standing because the Application was not compliant with the LCRA), 13 (for the first time alleging a conflict with *Ashbacker*), 14 (arguing for the first time that section 5(2) of the LCRA affords Dandridge—as a member of the local community—party-in-interest status here, and that, because he is "demonstrated to be associated with nonprofit WCIC, or any other nonprofit may it be" or "a listener of the future LPFM service on this channel," he is "a party to this proceeding as an active future participant"), 15 (arguing for the first time that "the loss of a future non-commercial, education[al] LPFM channel has qualitative effects on the community, and thus [Dandridge's] local quality of life,"); AFR Reply at 9-10 (citing for the first time language in the public notice the Bureau issued regarding the 250-Mile Waiver Window, which stated "only one application may be filed by/on behalf of each AM station" and arguing that this means "one application for one 250-mile hop").

[32] *See Reconsideration Decision* at 4.

to show "good reason" for his failure to participate earlier in this proceeding.[33] The Bureau properly rejected Dandridge's argument that local public notice was required,[34] and his assertion that it would have been "redundant" for him to file an objection to the Application because Gwyn had already filed a pleading raising the same concern.[35]

10. We do find that, as Dandridge asserts,[36] the Bureau failed to consider two arguments made in his petition for reconsideration. We therefore grant the Dandridge AFR in part and consider the arguments herein. We first turn to Dandridge's argument that he had "good reason" for failing to object to the Application prior to its grant because the *December 2017 Public Notice* was defective, listing only the Station's licensed community (River Pines) and not its proposed community (Elk Grove).[37] We find that the listing in the public notice of only the Station's licensed community does not justify Dandridge's

[33] *Id.* at 4-5. *See CMP Houston-KC*, 23 FCC Rcd at 10660, para. 11 n.31 (filing of an informal objection to a minor modification application ensures participation to the fullest extent permitted). Because the Bureau found Dandridge had not shown "good reason," it did not reach "his arguments that his interests are adversely affected." *Reconsideration Decision* at 5, n. 34. For the same reason, the Bureau did not reach Dandridge's substantive argument that the Application did not comply with the LCRA. Because we affirm the Bureau's determination that Dandridge failed to show "good reason," we need not consider other arguments made in the Dandridge AFR and the AFR Reply. Specifically, we need not consider his arguments that (1) he is "in the proposed service area" of the Station, (2) the Application's grant has caused "a loss of future non-commercial educational radio service receivable" at Dandridge's home, (3) "the loss of a future non-commercial, education[al] LPFM channel has qualitative effects on the community, and thus [Dandridge's] local quality of life," and (4) grant of the Application violated the LCRA. Dandridge AFR at 5, 12-13, 15; Reply at 12. The third of these arguments is made for the first time in the Dandridge AFR and is procedurally barred. *See supra* note 31.

[34] *Reconsideration Decision* at 4-5, *citing Revitalization of the AM Service*, MB Docket No. 13-249, First Report and Order, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 30 FCC Rcd 12145, 12152, para. 15 (2015) (*AM Revitalization Order*).

[35] *Id*. at 5 (noting that Dandridge was not permitted to "sit back and hope that a decision will be in its favor").

[36] Dandridge AFR at 5, 10-12 (asserting that the Reconsideration Decision "did not take all the information into consideration from the petition," and reprising arguments that the public notice did not "divulge" the proposed change in community of license from River Pines to Elk Grove and thus did "not give the public adequate information to pursue timely participation"); Reply at 10-12 (alleging "the FCC Public Notice posted for the application move to Elk Grove, CA shrouded the requisite information of the proposed application" and arguing that "[t]his deterred [Dandridge's] knowledge of the application amendment").

[37] Dandridge PFR at 2 (noting that "public notice demonstrates minor modification to the licensed station connected to its old community of license," stating that the public notice listed "the current licensed community of license," and arguing that it is unreasonable to expect "a member of the public to have read the FCC Daily Digest daily, and then specifically query each 'minor change' translator application in CDBS to check the contour engineering to see if it is indeed a major change proposing to move 250 miles into their community"); Dandridge PFR Reply at 2. We note that the Dandridge PFR also asserted that the public notices listed the "licensed channel." Dandridge PFR at 2. However, per standard Bureau practice, the public notices actually listed the proposed channel. *See Broadcast Applications*, Public Notice, Report No. 28790, at 37 (MB Aug. 3, 2016) (Application as originally filed) (*First August 2016 Public Notice*); *Broadcast Applications*, Public Notice, Report No. 28791, at 5 (MB Aug. 4, 2016) (Application as amended on Aug. 1, 2016) (*Second August 2016 Public Notice*); *September 2016 Public Notice*, at 7; *December 2016 Public Notice* at 7. In addition, we note that, in the Dandridge AFR, Dandridge asserts for the first time that the public notices regarding the Application and amendments thereto listed the wrong applicant. Because the Bureau did not have an opportunity to pass on these allegations, we find they are procedurally barred. *See* 47 U.S.C. § 155(c)(5); 47 CFR § 1.115(c). In any event, as explained *supra* note 8, at the time the public notices were issued, an application to assign the Station's license from FSI to PAM was pending but FSI still held the Station's license. It is standard practice to list the current licensee/permittee of a Station in public notices related to the filing of applications related to that Station.

failure to participate earlier in this proceeding.[38] This is especially true, here, where (1) the Act grants the Commission the authority to "adopt reasonable classifications of applications and amendments,"[39] (2) the Commission decision to classify applications filed during the 250-Mile Waiver Windows as minor modification applications that are not subject to the notice requirements of section 311 of the Act or 73.3580 of the Rules was adopted via notice-and-comment rulemaking,[40] (3) the Bureau followed its

[38] In his AFR Reply, Dandridge argues that *Salem Media of Oregon, Inc*., File No. BMPFT-20160729ANA, Letter Order (MB April 11, 2017) (*Salem Media*) required the Bureau to find the public notice issued regarding the Application and amendments was deficient and thus Dandridge had good reason for failing to participate earlier. *See* AFR Reply at 10-12. We note that *Salem Media* predates the Dandridge PFR by more than 18 months. Despite this, Dandridge discusses *Salem Media* for the first time in the AFR Reply. *Id*. Accordingly, we find Dandridge's *Salem Media* argument is procedurally barred. *See* 47 U.S.C. § 155(c)(5); 47 CFR § 1.115(c). In any event, we note that *Salem Media* is a Bureau-level decision and thus not binding on the Commission. *See Comcast Corp. v. FCC*, 526 F.3d 763, 769 (D.C. Cir. 2008). In addition, even if *Salem Media* had precedential value, it is inapposite because the Bureau did not rule that the petitioner established "good reason" for not participating earlier based on the alleged inadequacies with the Public Notice, and because it involved allegations of predicted interference that the Bureau found it would be in the public interest to consider.

[39] 47 U.S.C. § 309(g).

[40] *AM Revitalization Order*, 30 FCC Rcd at 12153, para. 16 (2015). We note that, in the AFR, Dandridge argues the Bureau should have treated the last amendment—which was filed outside of the 250-Mile Waiver Window—as a major amendment. Dandridge AFR at 6, 10; AFR Reply at 9. Dandridge is procedurally barred from making this argument in the Dandridge AFR. Although Dandridge made this argument in the Dandridge PFR Reply, Dandridge PFR Reply at 6, the argument did not respond to matters raised in the Joint Opposition to Dandridge PFR, and thus was unauthorized and not passed upon by the Bureau. 47 CFR § 1.106(h) (specifying that "[r]eplies … shall be limited to matters raised in the opposition"); 47 U.S.C. § 155(c)(5); 47 CFR § 1.115(c), (d). On alternative and independent grounds, we find this argument lacks merit. In the Public Notice announcing the 250-Mile Waiver Filing Window, the Media Bureau explained that, "[p]ursuant to . . . §74.1233(d)(l), mutually exclusive applications must be resolved through settlement or technical amendments." *Media Bureau Initiates AM Revitalization Outreach Efforts; Modification Window Procedures and Requirements Announced*, Public Notice, 30 FCC Rcd 14690, 14693 (MB 2015). Such amendments must propose only "minor" (as opposed to major) changes, 47 CFR §74.1233(d)(l), and routinely are filed after the close of the filing window in which the applications were filed. *Settlement Window Announced for Certain FM Translator Mutually Exclusive Applications*, Public Notice, 33 FCC Rcd 8562, 8563, para. 4 (MB/WTB 2018); *Settlement Period Announced for Cross-Service FM Translator Mutually Exclusive Applications for Auction 100*, Public Notice, 33 FCC Rcd 3486, 3487, para. 4 (MB/WTB 2018); *Settlement Period Announced for Cross-Service FM Translator Mutually Exclusive Applications for Auction 99*, Public Notice, 32 FCC Rcd 7292, 7293, para. 4 (MB/WTB 2017); *Settlement Window Announced for Certain FM Translator Mutually Exclusive Applications*, Public Notice, 33 FCC Rcd 8202, 8203, para. 4 (MB/WTB 2018). The Bureau did not diverge from standard practice in treating the post-filing window amendment as "minor" because the only change relative to the facilities proposed during the filing window was a move to a first adjacent channel. 47 CFR § 74.1233(a). In addition, it is worth noting that the Commission has taken action "to provide those applicants who participated in the [250-Mile Waiver] windows with maximum flexibility in providing service to their authorized communities and nearby areas," allowing "an applicant [to] apply to further move its cross-service FM translator already relocated pursuant to the 2016 modification windows, as a minor modification application, as long as the proposed further modification complies with both [section 74.1201(g)] and with the 250-mile limitation imposed in the First Report and Order." *Revitalization of the AM Radio Service*, MB Docket No. 13-249, Second Report and Order, 32 FCC Rcd 1724, 1727, n.22 (2017). Allowing minor amendments to pending 250-Mile Waiver Filing Window applications to resolve mutual exclusivity issues is both consistent with the Commission's processing of other window-filed applications and with the Commission's expressed desire to afford flexibility to applicants participating in the 250-Mile Waiver Filing Window.

standard procedures in providing public notice of the Application and all amendments thereto,[41] and (4) Dandridge had nine and a half months in which to examine the amendment filed on December 11, 2017, and file an objection.[42] We next consider and reject as unsubstantiated Dandridge's claim that consideration of his petition for reconsideration was required "in the public interest."[43] In his petition for reconsideration, Dandridge asserted this but offered no specifics as to why it was the case.[44] Indeed, given Dandridge's untimely participation and his failure to make a public interest showing, we find no basis to conclude that consideration of his petition for reconsideration was required "in the public interest." Because we find the first argument the Bureau failed to address unpersuasive and the second unsubstantiated, we conclude that the Bureau's failure to consider these two arguments in the *Reconsideration Decision* was harmless error.

11. *LCRA*. On alternative and independent grounds, we deny both the Gwyn and Dandridge AFRs to the extent they argue that section 5 of the LCRA applied to the Application.[45] Section 5 of the

[41] The public notice required was listing of the Application (and the amendments) in the Bureau's public notices of applications accepted for filing. 47 CFR § 74.1233(d)(1). The Bureau listed the Application (and each amendment thereto, including the amendment submitted in December 2017) in such a notice. *First August 2016 Public Notice* at 37; *Second August Public Notice* at 5; *September 2016 Public Notice* at 7; *December 2017 Public Notice* at 7. These public notices were automatically generated by the Commission's Consolidated Database System and the information listed did not vary from that listed in other public notices regarding FM translator minor change applications (or engineering amendments thereto).

[42] Dandridge alleged that he was not "in the 60 dBu contour" of the Station's proposed facilities "until the last amendment," which was put on public notice on December 14, 2017. Dandridge PFR Reply at 3.

[43] AFR Reply at 10; Dandridge PFR at 3 (noting "it is not unordinary for the Commission to consider a Petition for Reconsideration in the public interest despite not having participated in petitioning prior to a translator grant."). *See also* 47 CFR § 1.106(c)(2) (permitting consideration of a petition for reconsideration "which relies on facts or arguments not previously presented" if "consideration of the facts or arguments relied on is required in the public interest").

[44] Dandridge PFR at 3. While Dandridge does cite decisions in support of the general principal he cites, three of these decisions are Bureau-level and thus not binding on the Commission. *See Comcast Corp. v. FCC*, 526 F.3d 763, 769 (D.C. Cir. 2008); Dandridge PFR at 3 (citing *Lake Country Broad., Inc*., Letter Order, 28 FCC Rcd 8929 (MB 2013) and *R&S Media*, Memorandum Opinion and Order and Order to Show Cause, 19 FCC Rcd 6300, 6301-2, paras. 4-6 (MB 2004)); AFR Reply at 10-12 (citing *Salem Media*). In any event, these Bureau-level cases are inapposite. In *Lake Country*, the Bureau did not rely on the "public interest" provision in Section 1.106(c); rather, the Bureau found "good reason" under Section 1.106(b)(1) for the petitioner's failure to participate earlier. *Lake Country*, 28 FCC Rcd at 8931 (failure to participate earlier was justified by "short time frame (three full business days) between public notice of acceptance and grant" of the application at issue). In *R&S Media* and *Salem Media*, the Bureau found it served the public interest to consider petitioners' arguments that grant of the application would result in interference to the petitioners' stations, which petitioners argued amounted to modification of the licenses for their stations and triggered the protest provision of section 316 of the Act. *R&S Media*, 19 FCC Rcd at 6302, para. 6; *Salem Media*, s*upra* note 38. The one Commission-level decision Dandridge cites does not discuss the public interest at all. *See Aspen FM, Inc*., Memorandum Opinion and Order, 12 FCC Rcd 17852 (1997) (*Aspen FM*). Instead, the Commission found that the petitioner had shown "good reason" under Section 1.106(b)(1) for its failure to participate earlier in the proceedings. *Aspen FM*, 12 FCC Rcd at 17855, para. 9 (finding petitioner had shown good cause for failing to participate earlier where application granted four days after public notice of its acceptance).

[45] Gwyn AFR at 14-15; Dandridge AFR at 3-4, 13-14.

LCRA applies only with respect to licensing of "new" FM translator stations.[46] The Application at issue here involved modification of an existing translator station's facilities, not authorization of a "new" FM translator station, and thus section 5 of the LCRA does not apply.[47]

IV. ORDERING CLAUSES

12. For the reasons set forth herein, **IT IS ORDERED THAT**, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended,[48] and sections 1.115(c) and (g) of the Commission's rules,[49] the Application for Review filed by Charles Gwyn on January 28, 2019, **IS DISMISSED** and, on alternative and independent grounds, **IS DENIED**, and the Application for Review filed by Pierce Dandridge on January 28, 2019, **IS GRANTED IN PART AND OTHERWISE DISMISSED** and, on alternative and independent grounds, **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[46] Local Community Radio Act of 2010, Pub. L. 111-371, 124 Stat. 4072, § 5 (2011) ("The Federal Communications Commission, *when licensing new FM translator stations, FM booster stations, and low-power FM stations*, shall ensure that— (1) licenses are available to FM translator stations, FM booster stations, and low-power FM stations; (2) such decisions are made based on the needs of the local community; and (3) FM translator stations, FM booster stations, and low power FM stations remain equal in status and secondary to existing and modified full-service FM stations." (emphasis added)).

[47] *See Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, MB Docket No. 18-119, Report and Order, 34 FCC Rcd 3457, 3462, para. 9 (2019) (rejecting suggestion that "the facilities specified in a translator channel change modification application must not preclude future LPFM licensing opportunities in the relevant market" and explaining that "such an approach is not required by Section 5 of the [LCRA], which pertains to the licensing of new rather than existing stations").

[48] 47 U.S.C. § 155(c)(5).

[49] 47 CFR §§ 1.115(c), (g).