

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

In the Matter of	)	
	)	
Frank Rackley, Jr.	)	File No. BR-20120210ABF
	)	Facility ID No. 22294
Application for Renewal of License for	)	
DWNB(AM), Meridian, Mississippi	)	

ORDER ON RECONSIDERATION

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

By the Commission:

I. INTRODUCTION

1. Before the Commission is a Petition for Reconsideration (Petition) filed by Eddie J. Rackley (Administrator) and Jimmie L. Hopson (Hopson) (collectively, Petitioners) on February 26, 2020.¹ Petitioners seek reconsideration of a Commission order² (Review Order) which dismissed and, on alternative and independent grounds, denied Petitioners' Application for Review (AFR) and upheld a Media Bureau (Bureau) decision dismissing the captioned application for license renewal (Renewal Application).³ For the reasons set forth below, we dismiss the Petition as procedurally defective and, alternatively and independently, deny the Petition.

II. BACKGROUND

2. Frank Rackley, Jr. (Frank Rackley or Licensee) was the licensee of station WNB(AM), Meridian, Mississippi (Station)⁴ until his death on January 25, 2011. Under the Commission's rules (Rules), an application for involuntary assignment of license must be filed with the Commission within thirty days after the date of death of the licensee.⁵ However, no such application was filed within that time period.⁶ More than a year after the Licensee's death, on February 10, 2012, the Administrator, who had not yet been appointed the executor of the Licensee's estate, filed the Renewal Application which

¹ Petition for Reconsideration filed by Eddie J. Rackley, Administrator and Jimmie L. Hopson, File No. BR-20120210ABF (filed Feb. 26, 2020) http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=94155.

² *Frank Rackley, Jr.*, Memorandum Opinion and Order, 35 FCC Rcd 681 (2020).

³ *Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, FCC to Mr. Eddie J. Rackley, Administrator, and Mr. Jimmie L. Hopson*, Ref. No. 1800B3-VM, (MB June 20, 2018) (Cancellation Order). On reconsideration, the Bureau upheld the dismissal of the Renewal Application as defective. *Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, FCC to Aaron P. Shainis, Esq.*, Letter Order (MB Sept. 4, 2019) (Reconsideration Order).

⁴ Due to the cancellation of the Station's license when the Renewal Application was dismissed, the Station is now listed in the Bureau's licensing database with the call sign DWNB.

⁵ 47 CFR § 73.3541 ("Within 30 days after the occurrence of such death or legal disability, an application on FCC Form 316 shall be filed requesting consent to involuntary assignment of such permit or license or for involuntary transfer of control of such corporation to a person or entity legally qualified to succeed to the forgoing interests under the laws of the place having jurisdiction over the estate involved.").

⁶ As the court-appointed administrator of the Licensee's estate, the Administrator would have been the rightful entity to sign the Assignment Application.

identified Frank Rackley as the licensee and contact representative,⁷ and signed his own name in place of the Licensee's in the application's signature field.⁸ Additionally, the Renewal Application was signed by Eddie Rackley, not as "Administrator," but as a purported "Officer" of the Licensee.⁹

3. Almost seven years after the Licensee's death, on December 7, 2017, the Administrator filed the Form 316 application for consent to the involuntary assignment of the Station's license from the Licensee to the Administrator (Assignment Application). The Assignment Application included documents from the probate court showing it approved Eddie Rackley as the Administrator of the Licensee's estate in 2014¹⁰ and subsequently approved the Administrator's request to sell the Station and its assets to Hopson for \$10,000 in 2015.¹¹ On April 19, 2018, the Bureau granted the Assignment Application authorizing the assignment to the Administrator. However, the Administrator never submitted a notice of consummation for the Assignment Application. Moreover, the parties never took the steps needed to obtain FCC approval for Hopson to become the licensee of the Station. Specifically, neither the Administrator nor Hopson ever submitted an assignment application for Hopson to be approved as the Station's new licensee. The Assignment Application listed Eddie Holt as the Administrator's contact representative. The Bureau's staff specifically instructed Mr. Holt about the need to file an application for consent to assign the Station's license from the Administrator to Hopson. Nevertheless, no such application was filed.

4. On June 20, 2018, the Bureau dismissed the Renewal Application as defective because it was improperly filed in the Licensee's name without acknowledging his death. The Bureau stated that as a result, the Station's license expired by its own terms on June 1, 2012.¹²

5. On July 24, 2018, the Administrator filed a Petition for Reconsideration (PFR) of the Cancellation Order. The Administrator argued that reconsideration was warranted because he had not been represented by counsel and was unfamiliar with the Rules and the Commission's procedures.¹³ The Bureau's Reconsideration Order upheld the dismissal of the Renewal Application. The Reconsideration Order pointed out that section 73.3513(a)(1) of the Rules required that the Renewal Application be signed by the Licensee due to his status as an individual licensee.¹⁴ Because the Renewal Application did not comply with or request a waiver of this requirement, the Renewal Application was defective and subject to dismissal under section 73.3566(a) of the Rules.¹⁵ The Bureau rejected the Administrator's arguments as unsupported by any Rule or precedent and inconsistent with Commission policy holding that licensees

⁷ If an involuntary assignment application had been timely filed, granted, and consummated, the Administrator would have been able to properly file the Renewal Application.

⁸ Renewal Application, Section I (listing the Licensee as the applicant and the contact representative) and Section II (signature of the Administrator as "Officer").

⁹ Renewal Application, Section II (signature of the Administrator as "Officer"). The Renewal Application certified that the Station was operating and had not been silent for any period of 30 days or longer, which meant that some undisclosed party or parties continued to operate the Station following the Licensee's death. *Id.*, Section III, Questions 4 and 6.

¹⁰ *Agreed Judgement Appointing Administrator and Waiving the Requirement of a Bond Pending Inventory* (Chancery Court, Lauderdale County, MS, July 8, 2014).

¹¹ *Judgement Approving Final Accounting, Authorizing Sale of Property, and Closing Estate* (Chancery Court, Lauderdale County, MS, June 26, 2015).

¹² *Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, FCC to Eddie J. Rackley and Jimmie L. Hopson*, Letter Order (June 20, 2018) (Cancellation Order).

¹³ PFR at 2-3.

¹⁴ Reconsideration Order at 2 (citing 47 CFR § 73.3513(a)(1)).

¹⁵ *Id.* (citing 47 CFR § 73.3566(a)).

and parties prosecuting applications at the Commission assume the responsibility of complying with the Rules even if they are not represented by counsel.¹⁶

6. The Administrator and Hopson then filed the AFR seeking Commission review of the Bureau's Reconsideration Order.¹⁷ The Petitioners did not argue the Bureau's reasoning was flawed. Rather, they restated their initial argument that the Renewal Application should be reinstated because the Administrator had lacked counsel and familiarity with the Rules at the time he filed the Renewal Application.¹⁸ Additionally, the Petitioners asserted for the first time that: (a) they did not intend to deceive the Commission;¹⁹ (b) the Commission should take into consideration Hopson's status as an innocent third party and a minority;²⁰ and (c) the Commission should have continued negotiating a consent decree with the Petitioners because it would have served the public interest.²¹

7. On January 28, 2020, the Commission issued the Review Order dismissing the Petitioners' AFR, and on alternative and independent grounds, denying it. We dismissed the Petitioners' defense of lack of counsel and lack of familiarity with the Rules finding the Petitioners simply reiterated their original argument and failed to raise any error in the Bureau's legal analysis.²² Alternatively, we rejected this defense for the reasons stated in the Bureau's Reconsideration Order. We dismissed the Petitioner's other claims because they were not properly raised before the Bureau.²³ We alternatively denied the remaining arguments on the merits. We stated that the Petitioners' lack of deceptive intent and Hopson's status as a minority and innocent third party did not provide a basis for overturning Commission precedent that it would "adhere strictly" to the signature requirements set forth in the Rules. Further, we also rejected the Petitioners' argument concerning negotiation of a possible consent decree. We noted that there was no basis for a consent decree, and that a decision as to whether to enter into a consent decree is at the agency's nonreviewable discretion.²⁴

8. The Petitioners then filed the instant Petition, contending that reconsideration of the Review Order is warranted because we did not properly consider: (a) the Administrator's initial lack of counsel; (b) Mr. Hopson's status as an innocent party; and (c) the public interest benefits of entering into a consent decree, as compared to upholding the expiration of the Station's license.

III. DISCUSSION

9. We dismiss the Petition as defective for failing to meet the requirements for reconsideration of a Commission decision on an application for review and, on alternative and independent grounds, we deny the Petition on the merits. A party may seek reconsideration of a Commission denial of an application for review only on the basis of either changed circumstances or newly-discovered facts.²⁵ The Petition, however, does not allege any change in circumstances or offer

¹⁶ *Id.* at 1.

¹⁷ AFR at 1.

¹⁸ *Id.* at 2-3.

¹⁹ *Id.* at 3.

²⁰ *Id.* at 2, 4-5 and Attach. H.

²¹ *Id.* at 3-5 and Attach. E-G.

²² Review Order, 35 FCC Rcd at 683, para. 8 (citing 47 CFR § 1.115(b)(2)(i)).

²³ Review Order, 35 FCC Rcd at 684, para. 9 (citing 47 U.S.C. § 155(c)(5) and 47 CFR § 1.115(c)).

²⁴ Review Order, 35 FCC Rcd at 684, para. 10 (citing *New York State Dept. Of Law v. FCC*, 984 F.2d 1209 (D.C. Cir. 1993)).

²⁵ A petition for reconsideration of a Commission denial of an application for review will only be entertained if one or more of the following circumstances are present: (a) The petition relies on facts which relates to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or (b) the

any newly-discovered facts. We reaffirm that “[i]t is settled Commission Policy that petitions for reconsideration are not to be used for the mere reargument of points previously advanced and rejected.”²⁶ Accordingly we dismiss the Petition as procedurally defective.

10. On alternative and independent grounds, we deny the Petition as meritless. At the outset, we deny the Petitioner’s overarching argument that the Review Order made “short shrift of the arguments presented” in the AFR.²⁷ As stated above, in the Review Order, we primarily dismissed the Petitioners’ arguments on procedural grounds.²⁸ It is well within our authority to dismiss pleadings on procedural grounds without addressing the substantive merits of the arguments.²⁹ Even so, the Review Order also fully addressed the Petitioners’ claims on the merits and rejected each of them based upon precedential support that the Petition makes no attempt to rebut.

11. Next, we deny the Petitioners’ contention that we should “[take] into consideration” the fact that the Administrator initially acted without counsel.³⁰ It is well settled that parties acting *pro se* assume the responsibility of complying with the Rules.³¹ The Petitioners themselves concede that “acting without counsel does not excuse the misdeed,”³² but they again cite no precedent or rule to support their position that we should reconsider our earlier dismissal of their argument. In this case, the Administrator improperly signed the Renewal Application filed in the deceased Licensee’s name without notifying the Commission of the Licensee’s death. The Administrator’s failure to file a valid renewal application resulted in the expiration of the Station’s license on its own terms. The application signature and involuntary assignment rules are well-established, and the Administrator’s *pro se* status does not excuse his failure to comply with those requirements.

12. We also reject the Petitioners’ assertion that Hopson’s status as an innocent third party is relevant because the Commission has historically shown “a willingness to protect innocent victims.”³³ In the AFR, the only support the Petitioners provided for this claim was one newspaper article from 1985

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. 47 CFR § 1.106(b)(2).

²⁶ See *S&L Teen Hospital Shuttle*, Order on Reconsideration, 17 FCC Rcd 7899, 7900-01, para. 3 (2002) (citing *Mandeville Broad. Corp. and Infinity Broad. of Los Angeles*, Order, 3 FCC Rcd 1667, para. 2 (1988)).

²⁷ Petition at 5.

²⁸ Reconsideration Order at 4-5.

²⁹ See 47 U.S.C. § 155(c)(5).

³⁰ Petition at 5.

³¹ *Eagle Broad. Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 595 (2008) (applicant’s *pro se* status did not exempt it from complying with Commission rules or statutory provisions); *Mandeville Broadcasting Corp.*, Memorandum Opinion and Order, 2 FCC Rcd 2523, 2524 (1987) (“[P]ro se parties do assume the responsibility of conforming with the Commission’s Rules and policies.”) (citations omitted); see also *James M. Lout*, Forfeiture Order, 27 FCC Rcd 15200, 15203, para. 8 (2012) (rejecting the argument that forfeiture amount should be reduced because applicant participated in the auction *pro se*); *RF Data, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 22410, 22412, para. 7 (2001) (refusing to waive requirement because party was acting *pro se* and was unaware of the requirement); *Inquiry into Alleged Abuses of the Commission’s Processes by Applicants for Broadcast Facilities*, Order, 4 FCC Rcd 6498, 6489 n.2 (1989) (noting that while pleadings filed by *pro se* parties are entitled to patient and reasoned analysis, such pleadings still must comply with Commission Rules by demonstrating elements warranting relief).

³² Petition at 5.

³³ Petition at 5.

that has no precedential value and is not relevant to this case.³⁴ The Petitioners did not offer any new support for this claim in the Petition. The Petitioners acted on their own accord and could have sought guidance for taking appropriate steps under the Rules following the Licensee's death but did not do so.

13. Furthermore, we find the Petitioners have failed to provide any support for their assertion that the Station's license should be reinstated on equity grounds. As we explained in the Review Order, section 73.3513(a)(1) of the Rules requires that the individual applicant sign the renewal application "if the applicant is the individual."³⁵ An original signature on an application is critical because "[t]he original signature requirement provides assurance that the applicant has personally reviewed the application and can be held responsible for the truthfulness and accuracy of the statements therein."³⁶ We again note that in 2001, the Commission decided to disallow *nunc pro tunc* amendments of application signatures on equitable grounds because the potential for abuse was too great.³⁷ The Review Order correctly upheld the Bureau's finding that here, the Renewal Application was improperly signed as it was filed in Frank Rackley's name but signed by the Administrator. The Petitioners provide no support for overturning the precedent we cited in the Review Order requiring the dismissal of the Renewal Application.³⁸

14. For similar reasons, we again reject the Petitioners' assertion that the public interest is better served by entering into a consent decree with the parties rather than upholding the Station's license expiration.³⁹ As the Review Order states, a decision about whether to enter into a consent decree is "committed to the agency's nonreviewable discretion."⁴⁰ Furthermore, there is no basis for entering into a consent decree because, as discussed above, there are no grounds for accepting or amending the improperly-signed Renewal Application.

IV. ORDERING CLAUSE

15. For the reasons set forth above, **IT IS ORDERED** that, the Petition for Reconsideration, filed February 25, 2020, by Eddie Rackley, Jr. and Jimmie L. Hopson, **IS DISMISSED** pursuant to 47 CFR § 1.106(b)(2) and, alternatively and independently, **IS DENIED** pursuant to 47 CFR § 1.106(j).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁴ *Id.* at 5 (citing AFR Attach. H). The article discusses several broadcasters that were fraudulently induced to believe they had complied with the Rules by a former Commission employee who sent false licenses, permits, and authorizations to his broadcast clients on official Commission letterhead. The article quotes two broadcasters that praised the Commission's attempts to help the affected stations obtain proper authorizations. Unlike the situation detailed in the article, the parties here are not victims of a fraud.

³⁵ 47 CFR § 73.3513(a)(1).

³⁶ See *Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4706, para. 6 (1991).

³⁷ *Hardrock Concrete Placement Company*, Memorandum Opinion and Order, 16 FCC Rcd 2593, 2595, para. 8 (2001).

³⁸ In the absence of a properly filed renewal application, the Station's license expired on its own terms on June 1, 2012.

³⁹ Petition at 4 (describing the Station as "long standing" in the community, the "sparse AM service" in the area, and noting that the Station would be minority-owned).

⁴⁰ Review Order at 4 (quoting *New York State Dept. v. FCC*, 984 F.2d 1209, 1211 (D.C. Cir. 1993)).