

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

In the Matter of)	
)	
CHRIS C. HUDGINS)	
)	FCC File No. 0000092006
Petition for Reconsideration of Grant of Renewal)	
of License for Amateur Radio Station N5IUF)	
)	

ORDER ON RECONSIDERATION

Adopted: April 10, 2001

Released: April 12, 2001

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us a petition submitted by Tom Blackwell (Blackwell)¹ requesting reconsideration of the March 10, 2000, action of the Licensing and Technical Analysis Branch of the Public Safety and Private Wireless Division (Branch) granting renewal of the license for Amateur Station N5IUF to the licensee, Chris C. Hudgins (Hudgins). For the reasons discussed below, we deny the Petition.

2. *Background.* Hudgins filed the above-captioned application for renewal of his Advanced Class amateur radio operator and station license on March 10, 2000, and it was granted on that same date.² In the Petition, Blackwell makes a number of allegations against Hudgins and “encourage[s] the Commission to make inquiries” into the matter.³ The Petition charges that Hudgins facilitated cheating at an amateur service license examination session, and harassed Blackwell in retaliation for Blackwell’s decision to act, as the Petition terms it, as a “Federal witness and/or Federal informant” providing information concerning Hudgins.⁴

3. In support of his allegations that Hudgins was involved in amateur service license examination cheating, Blackwell refers to a 1994 Commission decision ruling on an objection in which he first made these charges.⁵ In *Eagle Radio*, the Commission reconsidered, on its own motion, its grant of the license renewal application for Station KEGL(FM), in part because it had not earlier addressed an informal objection against the license renewal filed by Blackwell. In his informal objection to the Station

¹ Petition for Reconsideration, filed by Tom Blackwell (submitted April 10, 2000) (Petition).

² Application File No. 0000092006.

³ Petition at 7, ¶ 28.

⁴ *Id.* at 3, ¶ 10.

⁵ Application of Eagle Radio, Inc for Renewal of License of Station KEGL(FM) Forth Worth, Texas, *Memorandum Opinion and Order*, 9 FCC Rcd 1294 (1994) (*Eagle Radio*), *reconsideration denied*, 12 FCC Rcd 5105 (1997), *aff’d* Blackwell v. FCC, 132 F.3d 1480 (D.C. Cir. 1997) (unpublished opinion).

KEGL(FM) renewal application, Blackwell contended, *inter alia*, that Hudgins, a Station KEGL(FM) employee, as well as one of the station's disc jockeys, attempted to cheat on FCC amateur radio license exams.⁶ The Commission found these allegations to be an insufficient basis for denying the KEGL(FM) renewal application because these matters appeared to concern the actions of station employees acting as individuals rather than in the scope of their employment.⁷ The Commission did, however, refer the amateur radio license exam cheating allegations to the Private Radio Bureau, and referred other of Blackwell's allegations (concerning electronic jamming of a competing FM station's signal) to the FCC's Dallas Field Office.⁸ The Commission also noted that the Private Radio Bureau found that only one of the matters referred to it warranted action. Specifically, the Private Radio Bureau advised persons preparing and administering amateur radio license exams that they should use hypothetical rather than known call signs as exam answers.⁹

4. In the Petition, Blackwell elaborates on his claim that Hudgins engaged in improper conduct with respect to the preparation and administration of an amateur radio license exam. Blackwell states that his (Blackwell's) call sign was improperly used as an obvious wrong answer on certain multiple choice questions prepared by Hudgins. The Petition further argues that this conduct constituted harassment of Blackwell, and was in the nature of a "personal attack."¹⁰ As noted, Blackwell views this alleged harassment as retaliation against him for his filings and other actions in opposition to the Station KEGL(FM) renewal application. He urges the Commission to "investigate this" matter.¹¹

5. In addition, Blackwell alleges that Hudgins harassed him on other occasions and in other ways. He claims, for example, to have received death threats transmitted over amateur radio facilities. The death threat, Blackwell explained, took the form of a pre-recorded message consisting of a gunshot sound effect, followed by the words "Shut Up," which he says was directed to him and was transmitted repeatedly, along with the call sign of N5IUF, on the 444.15 MHz channel. Blackwell further states that he "received information" that Hudgins was giving out a computer code "which, when entered on 449.15 MHz, with touch tones, would play the pre-recorded death threat." Blackwell does not explain how or from what source he received this information, nor does he indicate precisely when any of these transmissions occurred. He does claim that he was able to verify the existence of the code as a trigger for the pre-recorded transmission.¹²

6. Blackwell further alleges that, shortly after he filed his informal objection to the Station KEGL(FM) license renewal, he observed Hudgins driving around his residence on several occasions.¹³ Also during this general time period, he claims to have been victimized by having his telephone number

⁶ *Id.*, 9 FCC Rcd at 1294 ¶ 4.

⁷ *Id.*, 9 FCC Rcd at 1294-95 ¶ 5.

⁸ *Id.*, 9 FCC Rcd at 1295 ¶ 5.

⁹ *Id.*, 9 FCC Rcd at 1295 n.4.

¹⁰ Petition at 3.

¹¹ *Id.* at 3, ¶ 12.

¹² *Id.* at 4, ¶ 15.

¹³ *Id.* at 5, ¶ 16.

transmitted to “thousands” of pagers.¹⁴ Finally, Blackwell recounts the history of litigation between him and Hudgins, including the issuance of a restraining order against Blackwell that was secured by Hudgins in the 44th State District Court of Dallas County, and ensuing settlements.¹⁵ Blackwell concludes by calling on the FCC “to examine all the public records that relate to the conduct of NSIUF, at the County and State Courts in Dallas, Texas, as well as the documents that have been previously filed with the Commission.”¹⁶

7. *Discussion.* On our own motion, we waive the requirement in Section 1.106(i) of the Commission’s Rules, 47 C.F.R. § 1.106(i), that petitions for reconsideration be filed with the Office of the Secretary. Blackwell states that he attempted to file the Petition through the Universal Licensing System (ULS) on Sunday, April 9, 2000, but was unable to do so. While Section 1.106(o) of the Commission’s Rules, 47 C.F.R. § 1.106(o), allows petitions for reconsideration of licensing actions in the Wireless Radio Services to be filed via ULS, ULS is not currently set up to accept petitions for reconsideration. Blackwell states that he was advised by unidentified Commission staff on April 10, 2000, that he could submit the Petition to the fccham@fcc.gov e-mail address. Blackwell then submitted the Petition via e-mail on April 10, 2000, which was within the time period for filing a petition for reconsideration of the Branch’s March 10, 2000, action, to fccham@fcc.gov. That e-mail address is a place to send complaints alleging violations of the Commission’s Rules by amateur radio operators. See the Enforcement Bureau’s Web site at <http://www.fcc.gov/eb/AmaCmpl.html>. Blackwell also mailed a copy of the Petition to the Commission’s Office of the Secretary, which was date-stamped May 18, 2000. We note, as a general matter, that parties doing business before the Commission may not claim reliance on informal staff advice to excuse rule violations.¹⁷ In this case, however, based on the specific facts presented in this matter, particularly in light of the fact that our Rules allow for filing through ULS and that a petition for reconsideration currently cannot be filed through ULS, we will waive the filing location requirement set forth in Section 1.106(i) of the Rules, and accept the Petition as being filed timely on April 10, 2000. We remind petitioners, however, that until ULS is set up to accept petitions for reconsideration, all petitions for reconsideration must be filed with the Office of the Secretary. In the future, we reserve the right to reject untimely petitions where petitioners make unsuccessful efforts to file electronically.

8. To have standing to file a petition for reconsideration, a person must either be a party to the proceeding or be one whose interests are adversely affected by the action in question, in which case it

¹⁴ *Id.* Blackwell says he was “forced to complain to the local police about telephone harassments, where my home telephone number was placed on thousands of pocket pagers in North Texas. These actions caused customers of the paging companies to call me, usually asking ‘Did you page me?’”

¹⁵ *Id.* at 5-7, ¶¶ 18-27.

¹⁶ *Id.* at 7, ¶ 28.

¹⁷ See, e.g., Mary Ann Salvatoriello, *Memorandum Opinion and Order*, 6 FCC Rcd 4705, 4708 (1991) (“Erroneous advice received from a government employee is insufficient [to warrant estoppel against the government], particularly when the relief requested would be contrary to an applicable statute or rule.”); Texas Media Group, Inc., *Memorandum Opinion and Order*, 5 FCC Rcd 2851, 2852 (1990), *aff’d sub nom. Malkan FM Associates v. FCC*, 935 F.2d 1313 (D.C. Cir. 1991) (“It is the obligation of interested parties to ascertain facts from official Commission records and files and not rely on statements or informal opinions by the staff.”); Hinton Telephone Company, *Memorandum Opinion and Order on Reconsideration*, 10 FCC Rcd 11625, 11637 (1995) (“The Commission has specifically held that parties who rely on staff advice or interpretations do so at their own risk.”).

shall show why it was not possible to participate in the proceeding earlier.¹⁸ If the person is not a party to the proceeding, the person must state with particularity the manner in which the person's interests are adversely affected by the action taken by the Commission.¹⁹ Generally, to establish standing in licensing matters, a petitioner for reconsideration must allege sufficient facts to demonstrate that failure to grant the requested relief would cause the petitioner to suffer a direct injury.²⁰ The petition must demonstrate a causal link between the claimed injury and the challenged action by establishing (1) that the injury “fairly can be traced” to the challenged action, and (2) that the injury would be prevented or redressed by the relief requested.²¹

9. Blackwell has not demonstrated that the Branch’s grant of the application for renewal of the license for Station N5IUF has caused him a direct injury. While Blackwell contends that he would be adversely affected by the license renewal,²² he does not provide the requisite particularized explanation of how a failure to overturn the Branch’s action will result in such injury to him. Moreover, Blackwell’s allegations relate to alleged past incidents of harassment. There is no allegation in the Petition that Hudgins is currently harassing Blackwell. Accordingly, we cannot discern how Blackwell would be injured by the grant of Hudgins’ renewal application. We find, therefore, that Blackwell does not have standing to petition for reconsideration of the grant of Hudgins’ renewal application.

10. Moreover, even assuming Blackwell had demonstrated standing, we would not consider anew those allegations that were previously considered in the *Eagle Radio* proceeding and in connection with Hudgins’ prior renewal application in the context of the most recent renewal application. When the Commission has considered allegations and nonetheless concluded that a licensee is qualified to remain a Commission licensee, it is barred from reexamining those matters in connection with future applications.²³ In this regard, we note that the Private Radio Bureau considered Blackwell’s “cheating” allegation in connection with Hudgins’ prior renewal application and concluded that the matter only warranted the issuance of guidance to preparing and administering Volunteer Examiners.²⁴ Moreover, Blackwell’s

¹⁸ 47 C.F.R. § 1.106(b)(1). This rule implements the statutory directive in Section 405 of the Communications Act that limits standing to file a petition for reconsideration to “any party [to the proceeding] or any other person aggrieved or whose interests are adversely affected thereby.” 47 U.S.C. § 405(a).

¹⁹ 47 C.F.R. § 1.106(b)(1).

²⁰ Daniel R. Goodman, Receiver; Dr. Robert Chan, Petition for Waiver of Sections 90.633(c) and 1.1102 of the Commission’s Rules, *Order on Reconsideration*, 14 FCC Rcd 20547, 20549 ¶ 4 (1999).

²¹ *Id.*, citing *Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59, 74 (1978). See also *City of Compton Police Department, Order on Reconsideration*, 15 FCC Rcd 16563 at 16566 ¶ 8 (WTB PSPWD rel. April 7, 2000). This is the same test that is used by the federal courts in determining whether a petitioner for judicial review of a Commission decision has standing under Article III. See, e.g., *Microwave Acquisition Corp. v. FCC*, 145 F.3d 1410 (D.C. Cir. 1998).

²² Petition at 2, ¶ 4.

²³ See *Theodore E. Sousa*, 92 FCC 2d 173, 180 (1982), (citing *Radio Para La Paza*, 40 FCC 2d 1102 (1972) for the holding that “where an applicant’s programming proposals had in fact been considered as part of the renewal decision-making process, we were precluded from reviewing such matters some thirteen months later in light of the strong Congressional policy favoring administration [sic] finality reflected in Section 405 of the Act.”)

²⁴ *Eagle Radio*, 9 FCC Rcd at 1295 n.4.

allegations that Hudgins caused Blackwell's telephone number to be displayed on pagers, resulting in unwanted telephone calls, was considered in the prior proceeding.²⁵

11. Because the allegations raised in the Petition may bear on the basic qualifications of Hudgins to remain a licensee, we have reviewed those allegations that were not clearly considered in the previous proceedings, notwithstanding our finding that Blackwell lacks standing. We conclude that the allegations do not raise a substantial and material question of fact warranting further investigation as to Hudgins's basic qualifications to remain a licensee. With regard to the allegation that Hudgins communicated "death threats" against Blackwell, Blackwell provides no competent evidence that Hudgins was responsible for the message. In fact, the Petition does not allege that Hudgins created or transmitted this message. The Petition states only that Blackwell "received information" that Hudgins was giving out a computer code which, when entered on a specified frequency with touch tones, would cause the message to be transmitted.²⁶ Although the Petition also states that the pre-recorded message was accompanied by the call sign N5IUF, we are not persuaded that this sufficiently establishes complicity on Hudgins's part. Based on the information currently before us, we do not believe that any further FCC action is warranted.²⁷

12. Blackwell lacks standing to object to the grant of Hudgins' renewal application. Moreover, we are barred from considering many of his allegations because they were previously considered in connection with Hudgins' prior renewal application. We have thoroughly reviewed Blackwell's remaining allegations, and we conclude that he has not raised any substantial and material question of fact concerning Hudgins' qualifications to remain a Commission licensee.

13. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) and Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by Tom Blackwell on April 10, 2000, IS DENIED.

²⁵ *Id.*, 9 FCC Rcd at 1294 n.3.

²⁶ Petition at 4, ¶ 15.

²⁷ We also note, moreover, that although Blackwell complained to law enforcement authorities, no action was taken against Hudgins. Petition at 7, ¶ 20. Blackwell's remaining allegations relate to civil litigation involving himself, Hudgins, and other individuals. While Blackwell complains about a lawsuit Hudgins filed against him, the judge presiding over the litigation made no finding that the lawsuit was improper, and the litigation was ultimately settled. Blackwell also alleges that an affidavit and the Commission's order were altered when offered on behalf of Hudgins in state court, but he presents no evidence that Hudgins was personally responsible for this alleged misconduct. *Id.* at 5-6 ¶¶ 18-22.

14. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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