

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Applications of)	
)	
ALVIN LOU MEDIA, INC.)	File No. BNP-20000201ADT
)	Facility ID No. 122420
For a New AM Broadcast Station)	
at Waipahu, Hawaii)	
)	
and)	
)	
KM COMMUNICATIONS, INC.)	File No. BNP-20000201AFD
)	Facility ID No. 122491
For a New AM Broadcast Station)	
at Makaha, Hawaii)	

ORDER ON RECONSIDERATION

Adopted: November 2, 2005

Released: November 4, 2005

By the Chief, Audio Division, Media Bureau:

1. We have before us a “Petition for Reconsideration of Application for Review Decision/MO&O in FCC 04-6: Alvin Lou Media, Inc. Must Lawfully Be Awarded the Right to File for a Construction Permit to Build the 1600 kHz Station on the Island of Oahu, HI with Illegal FCC Award of Such Right to KM Communications, Inc. Rescinded” (“Petition”), filed May 17, 2004, by Alvin Lou Media, Inc. (“ALM”). ALM seeks reconsideration of the Commission’s decision in *Alvin Lou Media, Inc. and KM Communications, Inc.* (“*Alvin Lou*”),¹ in which the Commission denied ALM’s application for review of the Media Bureau’s denial of reconsideration of its decision to award a dispositive preference under Section 307(b) of the Communications Act of 1934, as amended (the “Act”),² to the mutually exclusive application of KM Communications, Inc. (“KM”) for a new AM broadcast station at Makaha, Hawaii.

2. **Background.** ALM and KM filed mutually exclusive (“MX”) applications to participate in Broadcast Auction No. 32 for new AM broadcast stations.³ The two applications, both proposing new AM stations on the island of Oahu, Hawaii, were designated MX Group AM 39. The Media Bureau (“Bureau”) awarded KM a dispositive preference under Section 307(b), finding that KM proposed first local service at Makaha, Hawaii, as compared to ALM’s proposed fourth local service at Waipahu,

¹ 19 FCC Rcd 806 (2004).

² 47 U.S.C. § 307(b) (“Section 307(b”).

³ See *Public Notice*, “AM Auction Filing Window and Application Freeze,” 14 FCC Rcd 19490 (MMB/WTB 1999).

Hawaii.⁴ The Bureau denied ALM's petition for reconsideration by letter dated August 30, 2002,⁵ and as noted above the Commission denied ALM's application for review in *Alvin Lou*.⁶

3. **Discussion.** The Commission's rules prescribe limited circumstances under which a party may seek reconsideration of Commission denial of an application for review. A petition for reconsideration will only be entertained if one or more of the following circumstances is present:

- (i) The petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or
- (ii) The 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.⁷

4. ALM, in its Petition, does not cite to facts or events that occurred or circumstances that have changed since ALM's last opportunity to present such matters, or that were unknown to ALM and could not have been learned through the exercise of ordinary diligence. Indeed, the exhibits ALM attaches to its Petition antedate its October 3, 2002, Application for Review (e.g., contour maps dated in 2000 and 2001, a newspaper article dated August 20, 2001). Moreover, ALM does not argue new facts or changed circumstances; rather, it uses the Petition merely to criticize the Commission's holding in *Alvin Lou* and to re-assert the arguments it made in its Application for Review. "It is settled Commission policy that petitions for reconsideration are not to be used for the mere reargument of points previously advanced and rejected."⁸

5. **Conclusion.** ALM's Petition does not meet the standard set forth in our rules for reconsideration of a Commission denial of an application for review. Accordingly, under the Act and our rules,⁹ ALM's Petition IS DISMISSED AS REPETITIOUS.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle, Chief
Audio Division
Media Bureau

⁴ See *Letter to KM Communications, Inc. and Mr. Dave Garey*, Ref. No. 1800B3-TSN (MMB May 4, 2001); *Letter to KM Communications, Inc. and Mr. Dave Garey*, Ref. No. 1800B3-TSN (MMB Mar. 21, 2002).

⁵ *Letter to Mr. Dave Garey and Jeffrey L. Timmons P.C.*, Ref. No. 1800B3-TSN (MB Aug. 30, 2002).

⁶ See *supra* note 1.

⁷ 47 C.F.R. § 1.106(b)(2).

⁸ *S&L Teen Hospital Shuttle*, 17 FCC Rcd 7899, 7900 (2002).

⁹ 47 U.S.C. § 405, 47 C.F.R. § 1.106(b)(3).