

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

In re Application of	)	
	)	
ROBERT E. COMBS	)	File No. BNP-20000131ABF
	)	Facility ID No. 122542
For a Construction Permit for a New AM Station	)	
at Boise, Idaho	)	

**ORDER ON RECONSIDERATION**

**Adopted:** November 2, 2005

**Released:** November 4, 2005

By the Chief, Audio Division, Media Bureau

1. **Background.** We have before us a Petition for Reconsideration (“Petition”), filed August 13, 2004, by Robert E. Combs (“Combs”). Combs filed an application to participate in AM Broadcast Auction No. 32 (“Auction No. 32”), proposing a new AM broadcast station at Boise, Idaho.<sup>1</sup> Combs’s application was mutually exclusive with three other Auction No. 32 applications, each proposing a new AM broadcast station at or near Las Vegas, Nevada.<sup>2</sup> Combs seeks reconsideration of the Commission’s decision in *Robert E. Combs*,<sup>3</sup> in which the Commission denied Combs’s application for review of the Media Bureau’s denial of reconsideration of its decision, under Section 307(b) of the Communications Act of 1934, as amended (the “Act”),<sup>4</sup> to direct the three Las Vegas-area applicants to proceed to auction, with Combs’s mutually exclusive Boise application to be dismissed upon grant of a construction permit to the winning auction bidder.<sup>5</sup> In *Robert E. Combs*, the Commission also denied Combs’s Petition for Leave to Amend his application to attempt to eliminate the mutual exclusivity between his Boise application and the Las Vegas-area applications.<sup>6</sup>

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

<sup>1</sup> File No. BNP-20000131ABF.

<sup>2</sup> Lotus Broadcasting Corp. filed an application proposing a new AM station at Las Vegas, Nevada, File No. BNP-20000131ABG; Kemp Communications, Inc. filed an application proposing a new AM station at Las Vegas, Nevada, File No. BNP-20000201AFW; and Palmetto Radio Group, Inc. filed an application proposing a new AM station at Sunrise Manor, Nevada, File No. BNP-20000201AFZ.

<sup>3</sup> 19 FCC Rcd 13421 (2004).

<sup>4</sup> 47 U.S.C. § 307(b).

<sup>5</sup> Also before us are the Opposition of Lotus Broadcasting Corp., the winning auction bidder, filed August 26, 2004, and Combs’s Reply, filed September 8, 2004.

<sup>6</sup> *Robert E. Combs*, 19 FCC Rcd at 13428-30.

- (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.<sup>7</sup>

3. Combs, in his Petition, does not cite to facts or events that occurred or circumstances that have changed since Combs's last opportunity to present such matters, or that were unknown to Combs and could not have been learned through the exercise of ordinary diligence. Indeed, Combs presents no new evidence or other factual matter. While Combs does attach new declarations of three broadcast engineers,<sup>8</sup> none of these presents new facts or changed circumstances. The engineers merely criticize certain aspects of the Commission's holding. Specifically, Markley calls attention to his previously filed November 18, 2003, statement, in which he supported Combs's argument that Combs's mutual exclusivity with the Las Vegas-area applications was occasioned by a Commission database error.<sup>9</sup> However, staff analysis determined that this was not the case, and the Commission considered and rejected Combs's and Markley's argument.<sup>10</sup> Further, all three engineers contend that Combs's Boise application was not mutually exclusive with the Las Vegas-area applications, based on precedent from the 1970s and 1980s concerning the determination of mutual exclusivity based on nighttime interference and the ability of an AM proposal to accept interference.<sup>11</sup> Again, however, the Commission in *Robert E. Combs* rejected these arguments, citing more recent law with which Combs's engineers apparently disagree.<sup>12</sup>

4. Likewise, Combs uses the Petition merely to criticize the Commission's holding in *Robert E. Combs* and to re-assert the legal arguments he made in his Application for Review and Petition for Leave to Amend. "It is settled Commission policy that petitions for reconsideration are not to be used for the mere reargument of points previously advanced and rejected."<sup>13</sup>

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<sup>7</sup> 47 C.F.R. § 1.106(b)(2).

<sup>8</sup> Combs submits new engineering statements of Donald L. Markley, P.E. ("Markley"); Louis R. du Treil, Sr., P.E. ("du Treil"); and Benjamin F. Dawson III, P.E. ("Dawson"). Combs also re-submits a copy of Markley's earlier engineering statement, originally submitted November 18, 2003.

<sup>9</sup> Markley Statement, ¶ 6.

<sup>10</sup> *Robert E. Combs*, 19 FCC Rcd at 13430.

<sup>11</sup> See Markley Statement, ¶¶ 2-5; du Treil Statement, first through fourth unnumbered paragraphs; Dawson Statement at 1-3.

<sup>12</sup> See *Robert E. Combs*, 19 FCC Rcd at 13428 n.46, citing *Nelson Enterprises, Inc.*, 18 FCC Rcd 3414 (2003) ("*Nelson*"). See also *Review of the Technical Assignment Criteria for the AM Broadcast Service*, 6 FCC Rcd 6273 (1991), *recon. granted in part and denied in part*, 8 FCC Rcd 3250 (1993) (cited in *Nelson*).

<sup>13</sup> *S&L Teen Hospital Shuttle*, 17 FCC Rcd 7899, 7900 (2002).

5. **Conclusion.** As Combs only offers reargument of contentions rejected by the Commission, his 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,<sup>14</sup> Combs's Petition IS DISMISSED AS REPETITIOUS.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle, Chief  
Audio Division  
Media Bureau

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<sup>14</sup> 47 U.S.C. § 405, 47 C.F.R. § 1.106(b)(3).