



Federal Communications Commission
Washington, D.C. 20554

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DA 07-4382

In Reply Refer to:

1800B3-KCB/MW

Released: October 25, 2007

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In re: DKBKH(FM), Shamrock, Texas
Facility ID: 81640
File No. BRH-20050401AAA

Petition for Reconsideration

Dear Mr. Miller:

We have before us a "Petition to Reconsider Revocation of KBKH's License and Dismissal of KBKH's Renewal Application," ("Petition") filed February 10, 2007, by Colonel R.E. Jackson on behalf of Terry Keith Hammond ("Hammond") and a "Supplement to Petition for Reconsideration" (the "Supplement") filed June 26, 2007, by Jerrold Miller, Esquire, on behalf of Hammond.¹ Hammond seeks reconsideration of the January 11, 2007, staff action recording the dismissal of the license renewal application for Station KBKH(FM), Shamrock, Texas (the "Application"), in the Commission's CDBS data base, deleting the station's call sign, and terminating station KBKH(FM)'s operating authority.² For the reasons set forth below, we deny the Petition.

Background. On April 1, 2005, Hammond timely filed the Application. In a *Hearing Designation Order* released on September 15, 2006,³ the full Commission determined that Hammond's conviction for criminal felony theft raised a substantial and material question of fact concerning his qualifications to be and remain a licensee. In addition, the Commission noted that Hammond failed to report the felony conviction in the renewal application, raising false certification, misrepresentation, and

¹ 47 C.F.R. § 1.106 indicates that a petition for reconsideration "and any supplement thereto" must be filed within 30 days of public notice of the action for which reconsideration is sought. Hammond's Supplement was filed more than four months late. The Supplement is accompanied by a "Motion to Accept Supplement to Petition for Reconsideration." It supplies the verification of the Petition required by 47 C.F.R. § 1.52 for pleadings not submitted by an attorney and makes additional arguments in support of the Petition. Because the Petition was timely filed and the Supplement presents new facts not occurring until after the petition deadline, the Motion is granted and the Supplement accepted.

² *Letter to from Peter H. Doyle, Chief, Audio Division, Media Bureau to Terry Keith Hammond*, Reference 1800B3 (Media Bureau, January 11, 2007) ("*Staff Decision*").

³ *Terry Keith Hammond*, Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order, 21 FCC Rcd 10267 (2006) ("*Hearing Designation Order*").

lack of candor issues. It also appears that Hammond willfully or repeatedly violated the Commission's rules with respect to his operation of KBKH(FM), and also made false certifications and misrepresentations in an application to modify KBKH(FM)'s license. Moreover, Hammond apparently failed to respond fully to Commission staff investigating the matters at issue in this proceeding, raising issues as to whether he deliberately sought to avoid revealing the facts surrounding his operation of the station and matters relevant to his character qualifications. Accordingly, the Commission designated the Application for evidentiary hearing regarding, *inter alia*, Hammond's basic qualifications to be a Commission licensee.

On September 15, 2006, the Presiding Administrative Law Judge Arthur Steinberg ("the ALJ") commenced the hearing proceeding to determine whether Hammond was qualified to be and remain a licensee. Hammond received notice of the ALJ Order. No written (or other) notice of appearance was ever filed by, or on behalf of, Hammond, and no one attended or entered an appearance on behalf of Mr. Hammond for the November 15, 2006, prehearing conference. The ALJ therefore dismissed Hammond's Application with prejudice on November 17, 2006, certifying to the Commission the issues regarding Hammond's qualifications to be a Commission licensee.⁴ No appeal of this action was taken.

Subsequently, on January 11, 2007, after the ALJ's action had become final, the Media Bureau issued the *Staff Decision* taking the ministerial actions of dismissing the Application in the Commission's CDBS data base, cancelling the station's call sign, and terminating its operating authority. Hammond filed the Petition and Supplement in response to the *Staff Decision*.

In the Petition, Hammond states that when the *Hearing Designation Order* was issued and when the Petition was filed, he was awaiting an appeal hearing for his felony conviction. Hammond alleges that he was under the impression that, under Texas law, the original conviction is vacated once a notice of appeal is filed. Therefore, he believed his renewal application was "correct and filed in good faith and therefore does not believe it should have been dismissed."⁵ Moreover, Hammond argues that if his conviction is overturned on appeal, the question of his fitness to be a Commission licensee would be "immaterial." Accordingly, he requests that the staff reconsider the action "until his legal appeal process is completed."⁶ Furthermore, Hammond argues that KBKH(FM) is the only aural service licensed to Shamrock and the surrounding areas and the cancellation of the KBKH(FM) license is contrary to the public interest.

In the June 27, 2007, Supplement, Hammond reiterates that he was in a Texas prison at the time the September 15, 2006, *Hearing Designation Order* was issued. He alleges that he was therefore unable to respond in a timely fashion to the Commission's procedural requirements. Specifically, in the Supplement Hammond alleges that during his incarceration, prison authorities failed to deliver a number of Commission documents to him and that he was deprived of the means to respond to the *Hearing Designation Order* and related matters. Moreover, Hammond claims that during this time he was without communications counsel. Finally, the Supplement indicates that Hammond's petition for writ of *habeas corpus* was granted on February 28, 2007, and he is now out of prison pending re-sentencing by the Judicial District Court of Wheeler County, Texas.

⁴ *Terry Keith Hammond*, Memorandum Opinion and Order, FCC O6M-37, Mimeo No. 05895, EB Docket No. 06-163 (Released Nov. 17, 2006).

⁵ Petition at 1.

⁶ *Id.*

Discussion. Under Section 1.106 of the Rules, as interpreted by established case law, “reconsideration is appropriate only when the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner’s last opportunity to present such matters.”⁷ In his Petition, Hammond has not demonstrated material error or omission in the *Staff Decision*, and the new facts presented in the Supplement – that Hammond’s *habeas corpus* petition had been granted and he is now out of jail awaiting re-sentencing – are not relevant to that determination. The staff action that is the subject of Hammond’s Petition for Reconsideration is ministerial in nature. It consists merely of the recording in the Commission’s data base of the ALJ’s dismissal with prejudice of the Application. The staff had no discretion with respect to that action. Should the Commission reopen the hearing proceeding and reverse the ALJ’s decision, the staff will take the ministerial action of reinstating the KBKH(FM) license renewal application.

Conclusion/Action. For the reasons set forth above, Terry Keith Hammond’s February 10, 2007, “Petition to Reconsider Revocation of KBKH’s License and Dismissal of KBKH’s Renewal Application,” as supplemented on June 26, 2007, IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Terry Keith Hammond
Col. R.E. Jackson

⁷ *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC Rcd 685, 686 (1964); *see also National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003); *see also* 47 C.F.R. § 1.106(c).

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