



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

August 14, 2009

DA 09-1812

In Reply Refer to:
1800B3-BSH/LAS

Released: August 14, 2009

Amy Meredith
Powell Meredith Communications Company
813 Ventura Park
Irving, TX 75061

Mark N. Lipp, Esq.
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20006

Re: **AM Broadcast Auction 84
MX Group 84-99**

New (AM), Draper, Utah
Facility ID No. 161124
File No. BNP-20040130BOJ

**Application for a New AM Station
Construction Permit**

Petition for Reconsideration

Dear Ms. Meredith:

We have before us a Petition for Reconsideration ("Petition") filed June 4, 2009, by Powell Meredith Communications Company ("Powell Meredith"), one of ten mutually exclusive ("MX") applicants in AM Broadcast Auction 84 MX Group 84-99.¹ Powell Meredith's Petition objects to the action taken in the April 8, 2009, Audio Division letter finding a dispositive preference for the above-referenced application of RAMS III ("RAMS") under Section 307(b) of the Communications Act of 1934, as amended (the "Act").² For the reasons set forth below, we dismiss the Petition as untimely.

RAMS, Powell Meredith, and the eight other MX applicants filed mutually exclusive applications during the filing window for AM Broadcast Auction 84.³ The mutual exclusivity would normally be

¹ RAMS III filed an Opposition to Petition for Reconsideration on June 3, 2009.

² 47 U.S.C. § 307(b). *RAMS III et al.*, Letter, Ref. No. 1800B3-BSH/LAS (MB Apr. 8, 2009) (the "Letter Order").

³ See *AM New Station and Major Modification Filing Window; Minor Modification Application Freeze*, Public Notice, 18 FCC Rcd 23016 (MB/WTB 2003).

resolved by a competitive bidding process.⁴ However, in the *Broadcast First Report and Order*, the Commission determined that the competitive bidding procedures should be consistent with its statutory mandate under Section 307(b) of the Act to provide a “fair, efficient, and equitable” distribution of radio services across the nation. To this end, the Commission directed the staff to undertake a traditional Section 307(b) analysis prior to conducting an auction for mutually exclusive AM applications.⁵ The Commission also noted that the FM allotment priorities fulfill its obligation under Section 307(b), and would apply in making a Section 307(b) determination regarding mutually exclusive AM applications before auction.⁶

In this case, the *Letter Order* awarded a dispositive preference under Section 307(b) to RAMS, based upon the finding that RAMS would provide the first local aural transmission service to Draper, Utah (Priority (3)) whereas each of the other MX applications would provide only Priority (4) benefits. Under well-settled policy, the establishment of a first local transmission service at Draper under Priority (3) is preferred to Priority (4) proposals. On June 4, 2009, Powell Meredith filed its Petition, arguing that the staff should not have considered the RAMS proposal for Draper under priority (3), and that the staff erred in finding the community of Draper to be independent from Salt Lake City, Utah, and Provo-Orem, Utah.

Powell Meredith’s Petition was late-filed and we will dismiss it on that basis. The *Letter Order* was released on April 8, 2009. Thus, pursuant to Section 405(a) of the Act⁷ and Section 1.106(f) of the Commission’s Rules,⁸ petitions for reconsideration were due by May 8, 2009. The Petition is dated May 15, 2009, but it was not filed with the Commission until June 4, 2009.⁹ The Commission generally lacks the authority to waive or extend the statutory 30-day filing period for petitions for reconsideration set

⁴ See *Implementation of Section 309(j) of the Communications Act-Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses (“Broadcast First Report and Order”)*, First Report and Order, 13 FCC Rcd 15920 (1998); *recon. denied*, Memorandum Opinion and Order, 14 FCC Rcd 8724 (1999); *modified*, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999).

⁵ *Broadcast First Report and Order* at 15964-65.

⁶ See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982). The FM allotment priorities are as follows: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local transmission service, and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). The FM allotment priorities were first applied to Section 307(b) determinations in mutually exclusive AM proceedings in *Alessandro Broadcasting Co.*, Decision, 56 RR 2d 1568 (Rev. Bd. 1984).

⁷ 47 U.S.C. § 405(a).

⁸ 47 C.F.R. § 1.106(f).

⁹ Since the Petition is dated May 15, 2009, it is clear that the Petition would not have been filed by the May 8, 2009, deadline.

forth in Section 405(a) of the Act,¹⁰ unless the petitioner shows that its failure to file in a timely manner resulted from “extraordinary circumstances.”¹¹ No such circumstances are present here.

We note that Powell Meredith’s Petition is procedurally improper and subject to dismissal for an additional reason. With one exception not relevant here, petitions for reconsideration may not be filed against interlocutory actions, such as the *Letter Order*.¹²

Accordingly, IT IS ORDERED, that the June 4, 2009, Petition for Reconsideration filed by Powell Meredith Communication Company IS DISMISSED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁰ See *Reuters Limited v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986). See also *Pueblo Radio Broadcasting Service*, Memorandum Opinion and Order, 6 FCC Rcd 1416 (1991); *Panola Broadcasting Co.*, Memorandum Opinion and Order, 68 FCC 2d 533 (1978).

¹¹ *Gardner v. FCC*, 530 F.2d 1086, 1091-92 (D.C. Cir. 1976); *Richardson Independent School District*, Memorandum Opinion and Order, 5 FCC Rcd 3135, 3136 (1990).

¹² 47 C.F.R. § 1.106(a)(1) (prohibiting generally the filing of petitions for reconsideration against interlocutory actions).