



Federal Communications Commission
Washington, D.C. 20554

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DA 09-2392

In Reply Refer to:

1800B3-JWR

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In re: DKTMN(FM), Cloudcroft, NM
Facility ID No. 89049

BLH-20010924AAM
BRH-20030703ACC
BLH-20030703ACD
BLSTA-20040413ABX
BLSTA-20040415AGE
BRH-20050601AYL

Petition for Reconsideration

Dear Counsel:

We have before us a Petition for Reconsideration ("Petition") filed on February 19, 2008, by A-O Broadcasting Corporation ("A-O"), licensee of Station DKTMN(FM), Cloudcroft, New Mexico (the "Station"). A-O seeks reconsideration of the January 18, 2008, Commission action denying its application for review of the staff *Order* determining that the Station's license had expired as a matter of law, pursuant to Section 312(g) of the Communications Act of 1934, as amended (the "Act"),¹ due to its failure to operate for twelve consecutive months.² For the reasons stated below, we dismiss the petition for reconsideration as repetitious.

Section 1.106(b)(3) of the Commission's Rules provides that a petition for reconsideration of an order denying an application for review which fails to rely on new facts or changed circumstances may be dismissed by the staff as repetitious.³ In its petition, A-O states that the primary purpose of Section 312(g) is to encourage stations to go back on the air and does not specify that "broadcasts" be authorized "in every aspect." A-O states that the *Order* both, trivializes the Station's transmissions, in that, they were "absolutely capable" of reaching the general public, and attempts to negate A-O's efforts to re-establish DKTMN(FM) as a viable facility. A-O asserts that the *Order* disregards the wishes of the public and local officials in disallowing DKTMN(FM)'s continued operation, and rejects the equity and fairness treatment contemplated by the revisions to Section 312(g).

¹ 47 U.S.C. § 312(g).

² *A-O Broadcasting Corporation*, 23 FCC Rcd 603 (2008) (the "*Order*").

³ 47 C.F.R. § 1.106(b)(3). *See Regents of the University of California*, Order, 17 FCC Rcd 12891, 12892 (WTB 2002) ("*Regents*") (staff dismisses petition for reconsideration of Commission Order as repetitious under Section 1.106(b)(3)).

In the Petition, A-O reiterates arguments already considered and rejected by the Commission in denying 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.⁴ Reconsideration will not be granted merely for the purpose of again debating matters on which the Commission has already deliberated and decided.⁵ A-O has attempted to reargue, and merely repeats, statements it offered previously in its application for review. It offers neither new facts nor changed circumstances⁶ and we find that A-O's Petition is defective as filed. Therefore, we dismiss A-O's Petition as repetitious.⁷

Accordingly, IT IS ORDERED that pursuant to Sections 154(i) and 405(a) of the Communications Act of 1934, as amended,⁸ and Sections 0.61, 1.106(b)(2), and 1.106(b)(3) of the Commission's Rules,⁹ the petition for reconsideration filed by A-O Broadcasting Company IS DISMISSED as repetitious.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

⁴ See *Regents*, 17 FCC Rcd at 12892, citing *Mandeville Broadcasting Corp. and Infinity Broadcasting of Los Angeles*, Order, 3 FCC Rcd 1667, 1667 (1988) (“*Mandeville*”); *M&M Communications, Inc.*, Memorandum Opinion and Order, 2 FCC Rcd 5100, 5100 (1987) (“*M&M Communications*”).

⁵ See *Regents*, 17 FCC Rcd at 12892 (citing *M&M Communications*). See also *Petition of Thomas Rockler*, Second Memorandum Opinion and Order, 2 FCC Rcd 1629 (1987); *Knoxville Broadcasting Corp.*, Memorandum Opinion and Order, 87 FCC 2d 1103, 1107 (1981); and *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965) *cert. denied*, 383 U.S. 967 (1966), *petition for rehearing denied*, 384 U.S. 947 (1966).

⁶ See, e.g., *S&L Teen Hospital Shuttle*, Order on Reconsideration, 17 FCC Rcd 7899, 7899-90 (2002) (“*S<HS*”).

⁷ 47 C.F.R. § 1.106(b)(3). We also note that A-O has failed to meet the Commission's procedural requirements for reconsideration, See, e.g., *S<HS*, 17 FCC Rcd at 7899. Section 1.106(b)(2) of the Commission's Rules provides that where the Commission has denied an application for review, a petition for reconsideration will be entertained only if one or more of the following circumstances is present: (1) 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 (2) 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. 47 C.F.R. §1.106(b)(2). A-O has neither presented new facts nor facts that were unknown to it previously.

⁸ 47 U.S.C. §§ 154(i) and 405(a).

⁹ 47 C.F.R. §§ 0.61, 1.106(b)(2), (3).