



Federal Communications Commission  
Washington, D.C. 20554

February 19, 2009

**DA 09-405**

*In Reply Refer to:*

1800B3-ATS

Released: February 19, 2009

Dan J. Alpert, Esq.  
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In re: WESO(AM), Southbridge, MA  
Facility ID No. 18309  
File No. BLSTA-20070904ABZ  
Petition for Reconsideration

Dear Mr. Alpert:

We have before us the Petition for Reconsideration ("Petition") filed on January 20, 2008, by Money Matters Radio, Inc. ("MMR") directed to the action of the Audio Division staff denying its September 4, 2007, request for Special Temporary Authorization ("STA") for Station WESO(AM), Southbridge, Massachusetts to rebroadcast WESO(AM)'s signal on an as-yet-unauthorized FM translator station.<sup>1</sup> For the reasons set forth below, we deny the Petition.

**Background.** On September 4, 2007, MMR requested an STA to allow it to construct a new FM translator to rebroadcast the signal of WESO(AM). MMR sought the waiver in order to provide improved nighttime service to its community of license.

The staff denied the STA by letter on December 31, 2007. In the Letter, that staff noted that MMR did not currently hold an authorization for the FM translator station specified in the STA request and that there were no open windows for filing of new FM translator applications. The staff's decision to deny the STA was based on Footnote 19 of a Notice of Proposed Rule Making regarding FM translator operation,<sup>2</sup> which limits the Bureau's ability to entertain STAs to situations where the FM translator is "already authorized." The staff further stated that MMR had not provided any unique or compelling reasons justifying a waiver of the processing rules for new FM translator applications.

MMR filed the Petition on January 20, 2008, arguing that the staff incorrectly denied its application for an STA. MMR states that the staff incorrectly interpreted Footnote 19 as limiting its ability to issue STAs to rebroadcast AM stations to only cases of already-authorized FM translators. MMR also states that granting the STA would be in the public interest as it would allow for the nighttime broadcast of high school sporting events and other local programming.

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<sup>1</sup> See *Letter to Money Matters Radio, Inc., from James D. Bradshaw, Deputy Chief, Audio Division, Media Bureau* (December 31, 2007) ("Letter").

<sup>2</sup> See *Notice of Proposal Rulemaking, Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, 22 FCC Red 15890 (2007) ("Notice").

**Discussion.** Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters. MMR has not made any such showing.<sup>3</sup>

The core of MMR's Petition is its challenge to the staff's understanding of Footnote 19. The complete Footnote 19 states:

The Media Bureau has granted rule waivers to allow FM translators to rebroadcast AM station signals in 11 cases. The Bureau may continue to waive the rules and issue special temporary authorizations on a case-by-case basis to permit the rebroadcast of AM station signals on *already-authorized FM translators* consistent with the parameters of the Petition discussed herein. Any authorizations issued pursuant to these procedures will be subject to the outcome of this proceeding.<sup>4</sup>

MMR suggests, first, that this Footnote affirms the delegated authority of the Media Bureau to issue FM translator waivers. However, MMR further suggests that the Footnote is a "floor" and not a "ceiling," and argues it does not limit the Bureau's authority to issue waivers to cases where there are already-authorized FM translators. Specifically, MMR states "[t]he Commission nowhere *prejudges* the types of STA requests that may be considered and nowhere 'restricts' waiver to simply 'authorized translators.'"<sup>5</sup>

We disagree with MMR's unsupported interpretation of Footnote 19, as it contradicts the plain and unambiguous wording of the Notice. We find that the Commission's use of the term "already-authorized FM translators" to be dispositive. The plain meaning of the phrase indicates that the Commission granted the Bureau the authority to issue STAs in cases where there are "already-authorized FM translators." Nothing in Footnote 19 suggests that the Commission authorized the Bureau to issue STAs where there was not an already-authorized FM translator. MMR does not suggest that the phrase is ambiguous; instead, it proposes that we extrapolate from the clear language of the text a meaning which is unsupported by the Notice and which, by its own admission, "goes beyond that considered under the Commission's rules."<sup>6</sup> Doing so is beyond the Bureau's delegated authority.

MMR suggests that if the Bureau does lack the delegated authority to consider its proposal, then it should have referred the matter to the full Commission for consideration.<sup>7</sup> MMR has not provided any authority to support this proposition. The Commission's rules provide four situations in which the Bureau is required to refer a matter to the Commission en banc.<sup>8</sup> MMR's request does not fall under any of those four categories. Thus, Section 0.283 does not grant MMR any right to have this matter referred to the full Commission.

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<sup>3</sup> See 47 C.F.R. § 1.106; *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom.*, *Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966); *National Ass'n of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

<sup>4</sup> Notice, 22 FCC Rcd at 15893, n.19 (emphasis supplied).

<sup>5</sup> Petition at 5 (emphasis in original).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 5-6

<sup>8</sup> See 47 C.F.R. § 0.283. See also *R&S Media*, Memorandum, Opinion and Order and Order to Show Cause, 19 FCC Rcd 6300 (2004) (holding that the Bureau did not need to refer a matter to the Commission en banc where there was existing Commission-level precedent for the Bureau to follow).

The matter before us was easily and appropriately resolved by applying existing Commission rules and policies. FM translators are prohibited from rebroadcasting AM stations' signals.<sup>9</sup> Footnote 19 provides that while the Commission is considering modifying that rule, the Bureau may grant STAs to allow *existing* FM translators to rebroadcast AM signals in limited instances. There is no provision for the type of STA sought by MMR and there is no need to refer the matter to the Commission for en banc consideration.

MMR also cites as authority for granting reconsideration the staff's January 28, 2007 grant of a request for STA to operate a new low power FM station in Goldfield, Nevada.<sup>10</sup> Although the matter was publicized as MMR notes, it was nonetheless an unpublished decision and is without precedential weight.<sup>11</sup> The action therefore does not offer any support for MMR's argument and the staff declines to extend that action to the present request, which involves different facts and a clear policy directive from the Commission not to take the action requested by MMR. MMR cites no other authority or precedent for which the staff would be able to issue such an STA.

We also decline to give any weight to MMR's public interest argument. As discussed above, the staff is only able to issue STAs where there is an already-authorized FM translator. Insofar as MMR does not have an already-authorized FM translator, our consideration of MMR's argument ends at that point.

**Conclusion/Actions.** Accordingly, IT IS ORDERED, that the January 3, 2008, Petition for Reconsideration of Money Matters Radio, Inc., IS HEREBY DENIED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Money Matters Radio, Inc.

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<sup>9</sup> See 47 C.F.R. § 74.1231

<sup>10</sup> See BSTA-20061206AFZ.

<sup>11</sup> See 47 C.F.R. § 0.445(e).