



Federal Communications Commission
Washington, D.C. 20554

January 29, 2013

DA 13-113

In Reply Refer to:

1800B3-SS

Released: January 29, 2013

Donald E. Martin, Esq.
P.O. Box 8433
Falls Church, VA 22041

Harry C. Martin, Esq.
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209

In re: **Lake City Lighthouse, Inc.**
NEW LPFM Application, Lake City, ID
Facility ID No. 132369
File No. BNPL-20010122AGW

Petition for Reconsideration

Dear Counsel:

We have before us a March 10, 2008, Petition for Reconsideration (“Petition”) submitted by Hayden Christian Broadcasting Corporation (“Hayden”) and various responsive pleadings.¹ Hayden seeks reconsideration of a February 8, 2008, decision² in which the Commission granted the referenced application of Lake City Lighthouse, Inc. (formerly Calvary Chapel Lake City (“CCLC”)) for a new low power FM (“LPFM”) station at Lake City, Idaho (the “Application”), and dismissed Hayden’s mutually-exclusive application for a new LPFM station at Hayden, Idaho.³ For the reasons discussed below, we dismiss the Petition.

Background. As initially filed, the Application specified “Lake City, Idaho,” as the proposed station’s community of license. Hayden challenged this specification, arguing that “Lake City” did not have any of the indicia of a “community” necessary for the allotment of an FM channel. On March 17, 2004, CCLC filed an amendment to the Application to specify Coeur d’Alene, Idaho, as its community of license. In the *MO&O*, the Commission found that the “specification of Lake City provides an identifiable geographic population grouping sufficient for LPFM purposes,”⁴ rejected Hayden’s contention that Lake City is not a *bona fide* community, and dismissed Lake City’s amendment.

In its Petition, Hayden challenges the Commission’s finding that “Lake City” is a licensable

¹ Specifically, we have: (1) an Opposition to Petition for Reconsideration, filed April 8, 2008 by Lake City Lighthouse, Inc.; and (2) a Reply filed by Hayden on April 21, 2008.

² See *Calvary Chapel Lake City, Hayden Christian Broadcasting Corporation, et. al.*, Memorandum Opinion and Order, 23 FCC Rcd 2466 (2008) (the “*MO&O*”). The two applications comprise LPFM Mutually Exclusive Group No. 38.

³ File No. BNPL-20010119ADW.

⁴ See *MO&O*, 23 FCC Rcd at 2471 (¶ 16).

community. It also claims that, in the intervening years since it filed the Application, CCLC lost its proposed transmitter site, has undergone a complete change in its governing board, and failed to notify the Commission of these developments.

On April 8, 2008, CCLC filed an application for a minor modification of its construction permit to specify a new frequency and a new transmitter site.⁵ Also on April 8, 2008, CCLC filed an FCC Form 316 reporting the current composition of its board and indicating that the name of the permittee was officially changed from “Calvary Chapel Lake City” to “Lake City Lighthouse, Inc.” in December of 2007.⁶ The staff granted the uncontested Transfer Application on April 16, 2008.⁷

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.⁸ A petition for reconsideration that reiterates arguments that were previously considered and rejected will be denied.⁹ Additionally, under Section 1.106(p)(2) and (3) of the Commission’s Rules (the “Rules”),¹⁰ the staff may dismiss or deny a reconsideration petition on the basis that it “plainly does not warrant consideration by the full Commission.”¹¹

Several arguments Hayden presents in its reconsideration petition, such as its claims that the designated community of license, “Lake City, Idaho,” does not qualify as a community for purposes of broadcast allotments and that CCLC’s attempt to change the proposed community of license constitutes an improper major amendment filed outside an LPFM filing window, are duplicative of arguments that Hayden raised in its February 27, 2004, Petition to Deny the Application. Section 1.106(p)(3) specifies that issues that “[r]ely on facts or arguments which have been fully considered and rejected by the Commission within the same proceeding” do not merit agency consideration.¹²

Additionally, Hayden raises several new arguments in its Petition, *viz.*, that CCLC is not qualified to be an LPFM applicant because it does not have “reasonable assurance of the availability of a viable antenna site . . .”¹³ and that since the filing of the Application, CCLC has undergone a complete transformation of ownership and that none of the ownership information reported in the Application

⁵ See File No. BMPL-20080408AER (the “Modification Application”). The staff dismissed the Modification Application on June 19, 2009, for failure to comply with the second-adjacent channel spacing requirements in 47 C.F.R. 73.807. See *Letter to Lake City Lighthouse, Inc.*, Ref. 1800B3 (MB rel. Jun. 19, 2009).

⁶ See File No. BTCL-20080408AEP (the “Transfer Application”). The staff granted that uncontested application on April 16, 2008.

⁷ See *Broadcast Actions*, Public Notice, Report No. 46719 (rel. Apr. 21, 2008).

⁸ See 47 C.F.R. § 1.106(c), (d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964) (“*WWIZ*”), *aff’d sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

⁹ See *WWIZ*, 37 FCC at 686.

¹⁰ 47 C.F.R. § 1.106(p)(2) and (3).

¹¹ See *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Reorganization*, Report and Order, 26 FCC Rcd 1594, 1606 ¶ 28 (2011).

¹² 47 C.F.R. § 1.106(p)(3).

¹³ *Id.* Specifically, Hayden contends that through a series of transactions effective January 1, 2006, CCLC sold the property that included its antenna site.

remains accurate.¹⁴ Each of those new issues involve matters that Hayden could have raised previously upon the exercise of reasonable diligence: the transmitter site loss allegedly occurred two years prior to action on the Application, and similarly, CCLC's governing board underwent a complete change prior to action on the Application.¹⁵ Section 1.106(p)(2) provides for summary dismissal of "arguments that could have been presented previously to the Commission or its staff but were not."¹⁶ We therefore dismiss Hayden's Petition under Section 1.106(p).

Moreover, even were we to consider those arguments on the merits, they would not occasion a different result. With respect to the site availability argument, in its Opposition, CCLC argues that it did have reasonable site assurance at the time it filed the Application in 2001, as the original site was on land that it actually owned until the property was sold in 2006.¹⁷ Hayden does not contest this representation. The Commission does not require (and has never required) a noncommercial educational broadcast applicant to certify the availability of the transmitter site in its application procedures.¹⁸ Nonetheless, when an LPFM applicant proposes a site, it must do so with reasonable assurance in good faith that the site will be available.¹⁹ Based on the undisputed facts of this case, we find that CCLC had reasonable site assurance at the time it filed the Application. Accordingly, Lake City Lighthouse, Inc., will be permitted to file a modification application specifying a new transmitter site.²⁰

With respect to Hayden's board change allegation, the Commission addressed the issue of LPFM board changes in its *Third Report and Order and Second Further Notice of Proposed Rulemaking* regarding the LPFM radio service.²¹ Frequent elections and changes in governing board membership are common among volunteer organizations and other types of entities that operate LPFM stations. Therefore, the Commission modified the Rules to treat as a "minor" change a transfer of control of a governing board's membership, including a sudden change in the majority of a board's membership, so

¹⁴ Petition at 8. Hayden alleges that CCLC has experienced a complete turn-over of its board of directors and has changed its name to Lake City Lighthouse, Inc. Thus, it contends that the Commission unwittingly granted a construction permit to a corporation with "an unknown name whose board consists [of] complete strangers to the agency."¹⁴ Petition at 9.

¹⁵ See, e.g., Transfer Application, Exhibit 2 ("between the date of filing of [the Application] and the date the [A]pplication was granted, February 6, 2008, a 100% change in the composition of its board occurred.").

¹⁶ See 47 C.F.R. § 1.106(p)(2); see also *Royce International Broadcasting Co.*, Memorandum Opinion and Order, 26 FCC Rcd 9249 ¶ 2 (MB 2011) (The Commission's "[r]ules and precedent clearly provide that [the agency] will not consider petitions for reconsideration which rely on facts or theories that could have been presented earlier in the proceeding.").

¹⁷ Opposition at 3.

¹⁸ See, e.g., *Carnegie-Mellon Student Government Corp.*, Hearing Designation Order, 7 FCC Rcd 3914 (MB 1992).

¹⁹ See, e.g., *Rock'n'Roll Preservation Society*, Letter, 23 FCC Rcd 16630, 16633 (MB 2008) (LPFM applicants must have reasonable assurance of site availability), citing *Midland Educational Broadcasting Foundation*, Hearing Designation Order, 4 FCC Rcd 5207 (MB 1989) (holding that applicant for noncommercial educational FM station had reasonable assurance of site availability because it paid for a lease option on transmitter site).

²⁰ See, e.g., *Able Radio Corporation*, Letter, 26 FCC Rcd 16161 (MB 2011), *recon. denied*, DA 12-1971 (MB Dec. 7, 2012) (applicant with reasonable assurance of original site permitted to amend to specify a new site); see also *Great Lakes Broadcasting, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 4331 (1991), *aff'd*, Memorandum Opinion and Order, 8 FCC Rcd 4007, 4008 (1993) (applicant permitted to amend to a new site even in instance where it only reasonably believed that it had assurance of the proposed site when it certified).

²¹ See *Creation of a Low Power Radio Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 21912 (2007) ("*Third R&O and FNPRM*").

long as the overall mission of the organization remains unchanged.²² Moreover, we note that although the composition of CCLC's board has changed, the same corporate structure and same basic statement of educational purpose remains in place.²³

Nevertheless, pursuant to Section 1.65(a) of the Rules,²⁴ CCLC was required to amend the Application when it sold the property to report the loss of site and to report the changes in its governing board. Based on the totality of facts, we do not believe that the sanction of dismissal is warranted. Accordingly, we admonish CCLC for these Section 1.65 reporting violations.²⁵

Conclusion/Actions. Accordingly, for the reasons set forth above and pursuant to Section 1.106(p) of the Commission's rules, IT IS ORDERED, that the Petition for Reconsideration filed on March 10, 2008, by Hayden Christian Broadcasting Corporation, IS DISMISSED.

IT IS FURTHER ORDERED, that Lake City Lighthouse, Inc., IS ADMONISHED for its violations of Section 1.65 of the Commission's Rules during the pendency of Application No. BNPL-20010122AGW.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Hayden Christian Broadcasting Corporation
Lake City Lighthouse, Inc.

²² See *Third R&O and FNPRM*, 22 FCC Rcd at 21918; 47 C.F.R. § 73.865(e) (transfers of control involving even a sudden change of more than 50 per cent of an LPFM licensee's governing board shall not be deemed "a substantial change in ownership and control").

²³ Compare File Nos. BMPL-20080408AER at Attachment 2 and BNPL-20010122AGW at Attachment 2. See, e.g., *Creation of Low Power Radio Service*, Second Report and Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 6763, 6772 (2005) (waiving Section 73.865 of the Rules to allow change in majority of a LPFM station's governing board as long as there is no change in the organization's mission).

²⁴ 47 C.F.R. § 1.65(a) states that all applicants are responsible for "the continuing accuracy and completeness" of information furnished in an application and requires applicants to amend within 30 days whenever the information furnished in the pending application is no longer substantially accurate and complete.

²⁵ See, e.g., *Mary Harris Foundation*, Letter, 22 FCC Rcd 16948, 16951 (MB 2007) (admonishment issued for failing to file any amendments disclosing additional ownership interests, as required by Section 1.65 of the Rules); *KWQJ(FM), Anchorage, Alaska*, Memorandum Opinion and Order, 10 FCC Rcd 8774, 8775 (1995) (admonishing applicant for failing to meet its obligations under Section 1.65); *Sky Way Broadcasting Corp.*, Memorandum Opinion and Order, 42 RR 2d 1343 (1978) (licensee admonished for its failure to timely notify the Commission of an action pertaining to the accuracy and completeness of its renewal applications, as required by Section 1.65).