



Federal Communications Commission
Washington, D.C. 20554

February 22, 2013

DA 13-256
Released: February 22, 2013

LocalOne Texas, Ltd.
c/o A. Wray Fitch III, Esq.
Gammon & Grange, P.C.
8280 Greensboro Drive, 7th Floor
McLean, Virginia 22102-3807

The School Board of Broward County, Florida
c/o Paul H. Brown, Esq.
Wood, Maines & Brown, Chartered
1827 Jefferson Place, N.W.
Washington, D.C. 20036

Re: Second Petition for Reconsideration, Application to
Convert WFUN-LP to Class A Television Status,
File No. BLTTA-20001208AEF
Facility ID No. 60542

Counsel:

We have before us a second Petition for Reconsideration filed by LocalOne Texas, Ltd. ("LocalOne") regarding dismissal of its application for a Class A license for low power television station WFUN-LP, Miami, Florida. For the reasons set forth below, we will deny the petition.

Background. The Community Broadcasters Protection Act ("CBPA") instructed the Commission to make Class A licenses available to "qualifying low-power television stations."¹ An applicant was a "qualifying low-power television station" if the station (among other requirements) "from and after the date of its application for a Class A license . . . [wa]s in compliance with the Commission's operating rules for full-power television stations."² In the regulations implementing the CBPA, released in April 2000, the Commission made clear that all regulations that apply to full-power television stations would apply to Class A licensees except for those which could not apply for technical or other reasons.³

Maintenance of a main studio was among those full-power station requirements.⁴ The primary function of a main studio is to serve the needs and interests of the residents of the station's community of license.⁵ As set forth in the Commission's rules, precedent, and the above-captioned application, all full-power stations must have a main studio, which must: (i) be equipped with production and transmission

¹ 47 USC § 336(f)(A).

² 47 USC § 336(f)(A)(ii).

³ *Establishment of a Class A Television Service*, Report and Order, ("Report and Order") 15 FCC Rcd 6355, 6365, 6369 (2000).

⁴ *Id.* at 6366.

⁵ See *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, 15692 and n.3 (1998), *modified*, 14 FCC Rcd 11113 (1999) (Serving the needs and interests of its community is a "bedrock obligation of every broadcast licensee.").

facilities that meet applicable standards; (ii) maintain continuous program transmission capability; and (iii) maintain a meaningful management and staff presence, which requires staffing the studio with at least one management-level employee and one staff-level employee at all times during regular business hours.⁶

LocalOne filed its application for a Class A license on December 8, 2000. In its application, LocalOne certified compliance with the main studio rule.⁷ The Commission initially granted LocalOne's application.

The School Board of Broward County and Sherjan Broadcasting Company filed timely petitions for reconsideration.⁸ Upon review of the evidence, the staff concluded that LocalOne had falsely certified its eligibility and rescinded the grant.⁹ The staff found that, first, LocalOne failed to staff the site with at least one management-level employee and one staff-level employee at all times during regular business hours.¹⁰ LocalOne's employees admitted that they did not meet this requirement.¹¹ Second, contrary to an earlier claim,¹² the station admitted that its local telephone number was not publicly available until May 2002.¹³ Third, LocalOne did not maintain adequate production equipment at the main studio location.¹⁴ Fourth, the station's local public inspection file was not "available for public inspection *at any time* during regular business hours," as evidenced by the reconsideration petitioners' repeated unsuccessful attempts to inspect the file at the site.¹⁵ The staff concluded that "LocalOne failed to comply with [the requirements of full-power stations] at the time it filed [the] license application, and we see no compelling or equitable circumstances that would otherwise warrant a grant of Class A status."¹⁶

On August 27, 2004, LocalOne filed a Petition for Reconsideration.¹⁷ First, LocalOne argued that the Commission's rescission of its grant of Class A status to the station was arbitrary and capricious because the Commission had previously assessed only forfeitures, rather than grant reversals, against parties that LocalOne asserts were similarly situated.¹⁸ Second, LocalOne argued the Commission's reversal of the grant of Class A status to the Station was not consistent with the standard practice of assessing forfeitures against full power television stations that committed main studio violations at the

⁶ *B&C Kentucky*, 16 FCC Rcd. 9305 ¶ 7; *see also* FCC Form 302-CA, Instruction II.F; *Establishment of a Class A Television Service*, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 8244 (2001) ¶¶ 27-29; *Jones Eastern of the Outer Banks, Inc.*, 7 FCC Rcd 6800 (1992).

⁷ LocalOne was on notice of the implications of a false certification, as the *Report and Order* implementing the Class A service clearly stated that "a Class A application could be denied if a certification of eligibility [was] later determined to be incorrect." *Report and Order*, 15 FCC Rcd at 6372, ¶ 40.

⁸ Sherjan Broadcasting Company is no longer participating in this proceeding.

⁹ *Letter from Barbara A. Kreisman, Chief, Video Division, to A. Wray Fitch III, Esq.* (July 23, 2004) at 7 ("2004 Decision").

¹⁰ 2004 Decision at 8.

¹¹ *Id.* at 9.

¹² *Local One Opposition to Petition for Reconsideration* (April 4, 2001) at 5.

¹³ 2004 Decision at 7 (citing LocalOne July 15, 2002 Response at 3).

¹⁴ *Id.* at 7 (citing LocalOne July 15, 2002 Response at 2).

¹⁵ *Id.* (quoting 47 § CFR 73.3526(c)(1)).

¹⁶ *Id.* at 10.

¹⁷ *Id.* at 7.

¹⁸ *LocalOne Petition for Reconsideration* (Aug. 27, 2004) at 2-6 ("First Petition for Reconsideration").

time they filed and during the pendency of their license applications.¹⁹ Third, LocalOne contended that the grant rescission was contrary to the public interest because the Station was purportedly in compliance with the eligibility requirements during the 90 days preceding enactment of the CBPA.²⁰

On August 4, 2005, the Commission denied the Petition for Reconsideration in a letter decision, addressing and rejecting each of LocalOne's arguments.²¹ On September 6, 2005, LocalOne filed a second Petition for Reconsideration.²² LocalOne argues that "[f]urther reconsideration is warranted pursuant to Rule 1.106(b)(3)(c) due to new case precedent since LocalOne filed its First Petition for Reconsideration and is also warranted due to important policy implications concerning maintaining and obtaining Class A status."²³

Discussion. Section 1.106(k)(3) of the Commission's rules allows the staff to dismiss as "repetitious" any petition for reconsideration of an order which has previously been denied on reconsideration.²⁴ "Absent extraordinary circumstances, if the tacking of petitions were permitted, Commission actions might never become final and the rule would become nugatory."²⁵ LocalOne neither cites to any intervening decisions that compel a different result nor presents any compelling circumstances to persuade us to allow the second Petition for Reconsideration in this case. Although we have the authority to dismiss the pleading as repetitious, we nevertheless consider the new arguments raised by the second Petition for Reconsideration and deny them for the reasons set forth below.

LocalOne argues that it was in full compliance by the deadline for submission of Class A applications, which was July 12, 2001.²⁶ However, the CBPA requires the applicant to be in compliance "from and after the date of *its* application" to convert to Class A status, regardless of whether the application was filed before the statutory deadline.²⁷ LocalOne was not in compliance with the main studio rule as of the date of its application.²⁸

LocalOne also argues that the scope of the main studio requirement did not become clear until the issuance of the Class A Reconsideration Order.²⁹ But LocalOne itself acknowledges in its Petition that

¹⁹ *Id.* at 6-9.

²⁰ *Id.* at 9-11.

²¹ *LocalOne Texas, Ltd.*, Letter, 20 FCC Rcd 13521 (M.B. 2005) ("*2005 Decision*").

²² *LocalOne Petition for Reconsideration and Reinstatement of Application Nunc Pro Tunc* (September 6, 2005) ("*Second Petition for Reconsideration*").

²³ *Second Petition for Reconsideration* at 1 n.1.

²⁴ *In re Application of Great Lakes Broadcasting Academy, Inc.*, 19 FCC Rcd. 11655, 11656 (June 21, 2004).

²⁵ *Id.* (quoting *Brainerd Broadcasting Company*, 25 R.R. 297, 298 (1963); *see also Iola Broadcasting Company*, 2 F.C.C.2d 439, 439 (1966) (stating "it is not in the interests of orderly procedure to permit repeated petitions for reconsideration").

²⁶ *Second Petition for Reconsideration* at 10-11.

²⁷ 47 U.S.C. § 336(f)(2)(A).

²⁸ LocalOne also argues that the statutory eligibility requirements relevant here require a less stringent level of compliance than certain other requirements in the CBPA. *Second Petition for Reconsideration* at 8-9. We reject this distinction and conclude that the Commission intended the policy to apply to all of the requirements, including the main studio rule. We further conclude that, even if the policy only applied to the requirements of 336(f)(2)(A)(i), LocalOne's deficiencies were so significant that the result would be the same.

²⁹ *Second Petition for Reconsideration* at 12-14.

the Class A *Report and Order* “contains the form of [the] Class A license application,”³⁰ which, as noted above, required an applicant to certify that its main studio was compliant. The main studio staffing requirement was clear at the time when LocalOne filed the application. The rules adopted in the *Report and Order* were final 30 days after the May 10, 2000 publication in the Federal Register, and applied to LocalOne at the time it filed its license application.

Finally, LocalOne claims in a footnote that “[t]he Commission’s factual basis for its conclusions on WFUN’s rule violations are[sic] not correct.”³¹ LocalOne disputes the accuracy of the vehicle logs that showed that station personnel infrequently visited the main studio.³² But the staff’s decision relied on the totality of the evidence, including LocalOne’s objections to the reliability of the vehicle logs and the admissions of LocalOne’s management regarding their infrequent visits to the site, in concluding that LocalOne did not comply with the rule.³³ LocalOne also states that the main studio was not open to the public,³⁴ apparently because “[t]he entire transmitter site and building is locked and guarded, not specifically the main studio. . . .”³⁵ LocalOne thus admits that the main studio was not fully accessible to the public.

Having already denied LocalOne’s Petition for Reconsideration on August 4, 2005, we will, though legally entitled to dismiss the instant pleading, deny it. Contrary to the implication of its pleading, LocalOne has not cited any new case precedent or compelling circumstances that would cause the Commission to reconsider its decision. Moreover, for the reasons stated above, we conclude that LocalOne’s arguments are without merit.

Accordingly, **IT IS ORDERED**, that the Second Petition for Reconsideration filed by LocalOne Texas, Ltd. seeking reversal of the July 23, 2004, staff decision dismissing the application of Station WFUN-LP, Miami, Florida, for a Class A license is **DENIED**.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

³⁰ *Id.* at 12.

³¹ *Second Petition for Reconsideration* at 3-4 n.3.

³² *Id.* at 3 n.3.

³³ *See 2004 Decision* at 8-9.

³⁴ *Second Petition for Reconsideration* at 4 n.3 (citing *2005 Decision*, 20 FCC Rcd at 13522).

³⁵ *Id.*