

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Application of Radio One Licenses, LLC for a
License to Cover the Modified Facilities of
WOLB(AM), Baltimore, Maryland
and
Application of WIOO Radio, Inc. for a Minor
Change to the Licensed Facilities of WIOO(AM),
Carlisle, Pennsylvania
File No. BL-20070220ADT
Facility ID No. 54711
File No. BP-20040809AAO
Facility ID No. 72985

ORDER ON RECONSIDERATION

Adopted: February 20, 2015

Released: February 20, 2015

By the Chief, Media Bureau:

I. INTRODUCTION

1. We have before us a Petition for Reconsideration ("Petition") filed by Radio One Licenses, LLC ("Radio One") on January 12, 2015. Radio One seeks reconsideration of a Memorandum Opinion and Order released by the Commission on December 11, 2014. Therein, the Commission denied two Applications for Review ("AFRs") filed by Radio One. In so doing, it affirmed the Media Bureau's ("Bureau") grant of Radio One's application for a license to cover a construction permit authorizing the modification of the facilities of its station WOLB(AM), Baltimore, Maryland ("WOLB License Application"). It also affirmed the Bureau's reinstatement nunc pro tunc and grant of an application filed by WIOO Radio, Inc. ("WIOO") for a construction permit authorizing it to change the frequency and operating power of its station WIOO(AM), Carlisle, Pennsylvania ("WIOO Application"). For the reasons discussed below, we dismiss the Petition pursuant to Sections 1.106(b)(3) and (p) of the Commission's rules ("Rules").

II. BACKGROUND

1. WIOO filed the WIOO Application on August 9, 2004. At the time it was filed, the WIOO Application failed to provide daytime protection to the licensed facilities of WOLB(AM), in violation of Section 73.37 of the Rules. Radio One, though, held a construction permit to operate WOLB(AM) from a new site. The WIOO Application did not present the same Section 73.37 issue with respect to the facilities authorized in that construction permit. WIOO, however, was required to protect WOLB(AM)'s licensed facilities until such time as Radio One sought and

1 WIOO Radio, Inc. opposed the Petition on January 26, 2015. Radio One replied on February 5, 2015.
2 Radio One Licenses, LLC, Memorandum Opinion and Order, FCC 14-196, __ FCC Rcd __ (2014) ("Order").
3 47 C.F.R. §§ 1.106(b)(3) & (p).
4 47 C.F.R. § 73.37.

received a license to cover its new facilities.⁵

2. In 2005, Radio One filed an application to increase WOLB(AM)'s power at the site specified in its construction permit ("WOLB Upgrade Application"). This application conflicted with the earlier-filed WIOO Application. Then, on February 20, 2007, Radio One filed the WOLB License Application, which sought a license to cover WOLB(AM)'s new facilities ("WOLB License Application").

3. Shortly thereafter, on March 19, 2007, the Bureau dismissed the WIOO Application as defective.⁶ The Bureau noted that the WIOO Application failed to provide daytime protection to the licensed facilities of WOLB(AM), in violation of Section 73.37 of the Rules.⁷ WIOO timely submitted a petition for reconsideration requesting reinstatement of the WIOO Application *nunc pro tunc*. WIOO argued that Radio One had abandoned WOLB(AM)'s then-licensed site and filed an application for a license to cover the station's new facilities.⁸

4. On May 14, 2008, the Bureau granted the WOLB License Application. This grant made grant of the WIOO Application possible.⁹ Thus, the Bureau granted WIOO's petition for reconsideration, reinstated the WIOO Application *nunc pro tunc* and granted it. Grant of the WIOO Application, though, rendered the later-filed WOLB Upgrade Application ungrantable. It is for this reason that Radio One filed petitions for reconsideration of both the Bureau's grant of the WOLB License Application and its reinstatement and grant of the WIOO Application.

5. On reconsideration, the Bureau affirmed its decision to reinstate and grant the WIOO Application.¹⁰ It noted that grant of the WOLB License Application "mooted the issue of protection of WOLB's previously-licensed site."¹¹ The Bureau also dismissed as repetitious Radio One's arguments related to manipulation of the Commission's processes.¹²

6. Radio One then filed its AFRs, which the Commission denied in the *Order*. The Commission noted that the AFRs repeated the same arguments that Radio One made in its petitions for reconsideration.¹³ The Commission found that Radio One has failed to demonstrate that the Bureau erred and upheld the Bureau's decision for the reasons stated therein.¹⁴ In a footnote, the Commission noted

⁵ See *Application of the State of Oregon*, Memorandum Opinion and Order, 15 FCC Rcd 15456, 15457 ¶ 6 (2000).

⁶ Letter from Susan N. Crawford, Assistant Chief, Audio Division, Media Bureau, to Jerrold Miller Esq. and Richard J. Bodorff, Esq. (dated March 19, 2007).

⁷ *Id.* at 1 n.2. The Bureau focused the bulk of the letter on the WIOO Application's failure to provide the same protection to WCST(AM), Berkeley Springs, West Virginia. WIOO had requested a waiver of Section 73.37 concerning the "prohibited contour overlap with WCST." The Bureau denied that waiver. *Id.* at 2.

⁸ WIOO also submitted signal strength measurements for WCST(AM). It argued that these measurements established that the WIOO Application fully satisfied the requirements of Section 73.37 with respect to WCST(AM). The Bureau ultimately agreed. See *WIOO(AM)*, Letter, 23 FCC Rcd 9362, 9364 (MB 2008) ("2008 Staff Decision").

⁹ 2008 Staff Decision, 23 FCC Rcd at 9364.

¹⁰ Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, to Mark Lipp, Esq. and Jerrold Miller, Esq. (dated April 9, 2013) ("2013 Staff Decision")

¹¹ 2013 Staff Decision at 3.

¹² *Id.*

¹³ *Order* at ¶ 3.

¹⁴ *Id.*

that Radio One did seek to make one additional argument related to purported gamesmanship on WIOO's part.¹⁵ The Commission explained that, while Radio One discussed the facts upon which it based this argument in a footnote to one of the AFRs, it first made the actual argument on reply. Citing Section 1.115(c) of the Rules, the Commission stated that it would not consider the argument.¹⁶ Radio One then filed the Petition.

III. DISCUSSION

7. Sections 1.106(b)(3) and 1.106(p) of the Rules provide that the Bureau may dismiss a petition for reconsideration of a Commission decision affirming a prior Bureau decision in the case if the petition fails to rely on new facts or changed circumstances.¹⁷ Radio One does not submit any new facts or document any changed circumstances in the Petition. Accordingly, we will dismiss it.

8. We also take this opportunity to address an additional matter. To the extent that Radio One asserts that the Commission stated it would not consider new facts that it proffered in the AFR,¹⁸ we reject this characterization. The Commission simply explained that it would not consider an argument that Radio One made based on these facts because Radio One made that argument for the first time on reply.¹⁹ In any event, even if the Commission had announced that it would not consider the new facts, that determination would have been consistent with Section 1.115(c) of the Rules.²⁰

IV. ORDERING CLAUSE

9. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 1.106(b)(3) and (p) of the Commission's Rules,²¹ the Petition for Reconsideration filed by Radio One Licenses, LLC, on January 12, 2015, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

¹⁵ *Id.* at n. 5.

¹⁶ *Id.*

¹⁷ 47 C.F.R. §§ 1.106(b)(3) & (p).

¹⁸ Petition at 1.

¹⁹ *Order* at n. 5.

²⁰ 47 C.F.R. § 1.115(c) (barring applications for review from relying on “questions of fact or law upon which the designated authority has been afforded no opportunity to pass”). We note that the new facts were not relevant to our analysis. Radio One cited statements made by WIOO in an application filed years after grant of the WIOO Application. These statements suggest WIOO has decided not to construct the facilities authorized in the construction permit issued as a result of the grant of the WIOO Application. These statements – which were made in 2012 – are not relevant to an analysis of whether the Bureau erred in reinstating and granting that application in 2008.

²¹ 47 C.F.R. §§ 1.106(b)(3) & (p).