

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

In the Matter of)
KM LPTV of Milwaukee, LLC1) Facility ID No. 35091
Licensee of Station WMKE-CD) NAL/Acct. No.: 201341420066
Milwaukee, Wisconsin) FRN: 0005014725

ORDER ON RECONSIDERATION

Adopted: May 12, 2015

Released: May 12, 2015

By the Chief, Video Division, Media Bureau:

1. The Video Division, pursuant to delegated authority, has before it a Petition for Reconsideration2 filed by KM LPTV of Milwaukee, LLC ("KM of Milwaukee"), former licensee of Station WMKE-CD, Milwaukee, Wisconsin (the "Station") seeking reconsideration of the Commission's October 20, 2014 Memorandum Order and Opinion dismissing in part and otherwise denying KM of Milwaukee's June 25, 2014 Application for Review ("AFR").3 We dismiss the Petition as repetitious.

2. Background. On December 23, 2013, the Video Division ("Division") issued a Notice of Apparent Liability for Forfeiture proposing a monetary forfeiture of \$20,000 for KM of Milwaukee's apparent willful and repeated violations of sections 73.3526(e)(11)(i) & (iii) of the Commission's rules ("Rules") for failure to file issues/programs lists and Children's Television Programming Reports, as well as section 73.3514(a) for failure to report some of those violations in its license renewal application for the Station.4 KM of Milwaukee filed a timely response on January 31, 2014 arguing that the forfeiture should be cancelled or reduced.5 In a February 20, 2014 Forfeiture Order, the Video Division rejected

1 The Video Division granted the assignment of station WMKE-CD from KM LPTV of Milwaukee, LLC to Locuspoint WMKE License, LLC on Dec. 17, 2014. File No. BALTV-20140728AAW. The transaction was consummated on March 19, 2015.

2 KM LPTV of Milwaukee, LLC, Petition for Reconsideration (Nov. 14, 2014) ("Petition").

3 KM LPTV of Milwaukee, LLC, Memorandum Opinion and Order, 29 FCC Rcd 13271 (2014) (holding that the Division properly decided the matters raised in KM of Milwaukee's June 25, 2014 Application for Review and dismissing as untimely KM of Milwaukee's contention that the Division's use of gross revenue to evaluate inability to pay is inconsistent with its use of cash flow in failing station waiver proceedings) ("Commission MO&O").

4 KM LPTV of Milwaukee, LLC, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17052 (Vid. Div. 2013) ("NAL").

5 KM LPTV of Milwaukee, LLC, Response to Notice of Apparent Liability (Jan. 31, 2014) ("Licensee NAL Response").

KM of Milwaukee's arguments and declined to reduce the forfeiture.⁶ KM of Milwaukee filed a Petition for Reconsideration of the Forfeiture Order on March 24, 2014. On May 28, 2014, the Video Division denied reconsideration of the Forfeiture Order.⁷ KM of Milwaukee filed an Application for Review of the Division's denial on June 25, 2014 with the Commission.⁸ The Commission dismissed in part and otherwise denied the AFR,⁹ which KM of Milwaukee now seeks reconsideration.

3. KM of Milwaukee raises three issues on reconsideration that it argued verbatim previously: (1) that the Division should not have combined KM of Milwaukee's revenues with those of KM of Chicago-13, L.L.C. in its analysis of its inability to pay; (2) that the Division did not provide a reasoned basis for its use of gross revenues as the primary means by which to evaluate KM of Milwaukee's ability to pay the forfeiture;¹⁰ and (3) that the Division did not provide a reasoned explanation for denying a reduction in the forfeiture amount based on KM of Milwaukee's claimed inability to pay. It does not dispute the Division's findings that it committed the violations.

4. *Discussion.* Commission rules prescribe limited circumstances under which a party may seek reconsideration of a Commission denial of an application for review. 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: (i) 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 (ii) the petition relies on facts unknown to petitioner until his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.¹¹ Section 1.106(b)(3) authorizes the staff to dismiss as repetitious "[a] petition for reconsideration of an order denying an application for review which fails to rely on new facts or changed circumstances."¹² Section 1.106(p)(3) authorizes staff to dismiss or deny any petition for reconsideration of Commission action that "plainly does not warrant Commission consideration," for example, because the petition relies "on arguments that have been fully considered and rejected by the Commission within the same proceeding."

5. Upon consideration of the KM of Milwaukee's Petition for Reconsideration and the entire record, we dismiss KM of Milwaukee's Petition as repetitious. KM of Milwaukee reiterates its earlier arguments verbatim, and the Commission has already fully considered and rejected KM of Milwaukee's same arguments within this proceeding. Moreover, KM of Milwaukee does not offer facts that relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters, nor does it rely on facts unknown to it until its last opportunity to present such

⁶ *KM LPTV of Milwaukee, LLC*, Forfeiture Order, 29 FCC Rcd 1767 (Vid. Div. 2014) ("Forfeiture Order").

⁷ *KM LPTV of Milwaukee, LLC*, Memorandum Opinion and Order, 29 FCC Rcd 5741 (Vid. Div. 2014) ("Division MO&O").

⁸ *KM LPTV of Milwaukee, LLC*, Application for Review (June 25, 2014) ("AFR").

⁹ *Commission MO&O*, 29 FCC Rcd 13271.

¹⁰ KM of Milwaukee maintains, as it did in its AFR, that the Division's use of gross revenues to evaluate its inability to pay argument is inconsistent with the Division's use of cash flow in ruling on requests for waiver of the media ownership rules based on the failing station waiver standard. Petition at 7. The Commission dismissed this argument in the *Commission MO&O*, stating that KM of Milwaukee had failed to raise this contention before the Division, thereby depriving the Division the opportunity to pass on this argument. *Commission MO&O*, 29 FCC Rcd 13271 at n.3 (citing 47 C.F.R. § 1.115(c)). KM of Milwaukee now submits that the Commission's dismissal of this issue "is the type made when the Commission does not have a substantive answer," and it is "odd" that the Commission did not attempt to address the issue on the merits. We disagree with KM of Milwaukee and dismiss KM of Milwaukee's argument as repetitious. 47 C.F.R. § 1.106(b)(3).

¹¹ 47 C.F.R. § 1.106(b)(2).

¹² *Id.* at § 1.106(b)(3); *see also id.* at § 1.106(p)(3).

matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.¹³

6. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 1.106(b) and 1.106(p) of the Commission's rules, 47 C.F.R. §§ 1.106(b),(p), the Petition for Reconsideration filed by KM LPTV Milwaukee, LLC IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹³*Id.* at § 1.106(b)(2).