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**In re: Calvary Chapel of Redlands d/b/a
Packinghouse Christian FWP
KHSH-LP, Redlands, CA**
Facility ID No. 195609
File No. BLL-20160617AAJ

Petition for Reconsideration

Dear Counsel:

We have before us a petition for reconsideration (Petition) filed on July 25, 2016, by Vida Abundante (Abundante), licensee of Station KJVA-LP, San Bernardino, California. Abundante seeks reconsideration of the Media Bureau's (Bureau) grant of the referenced covering license application (License Application) for low power FM (LPFM) station KHSH-LP, San Bernardino (Station), filed by Calvary Chapel of Redlands d/b/a Packinghouse Christian FWP ("Calvary Chapel").¹ As discussed below, we dismiss the Petition.

Background. The Bureau granted Calvary Chapel's application for a construction permit for a new LPFM Station in Redlands, California, on December 12, 2014,² and issued Calvary Chapel a construction permit (Permit). On June 19, 2015, Calvary Chapel filed an application for a minor modification to lower its tower height from 72 feet to 50 feet AGL at its current site.³ The Bureau granted this uncontested application on June 30, 2015.⁴ On June 17, 2016, Calvary Chapel filed the License Application to cover the modified KHSH-LP permit,⁵ which the Bureau granted on June 20, 2016.⁶

¹ Calvary Chapel filed an Opposition to the Petition on August 12, 2016.

² File No. BNPL-20131113BFV (2013 Modification Application). *See Broadcast Actions*, Public Notice, Report No. 48388 (MB Dec. 17, 2014).

³ *See* File No. BMPL-20150619AAB (2015 Modification Application).

⁴ *Broadcast Actions*, Public Notice, Report No. 4824 (MB June 30, 2015).

⁵ *See* File No. BLL-20160617AAJ.

On July 25, 2016, Abundante filed a petition for reconsideration of the grant of the License Application, arguing that the Station is causing interference to co-channel LPFM Station KJVA-LP. In its Opposition, Calvary argues Abundante's Petition is procedurally deficient for a number of reasons. First, Calvary notes the minor nature of the technical changes proposed in the 2015 Modification Application, which resulted in a decreased signal in the direction of KJVA-LP. Thus, on this basis, Calvary contends that the Petition is an "untimely collateral attack" on the 2013 Modification Application. It argues that Abundante had up to two and a half years to challenge that application and "did nothing."⁷ Second, Calvary Chapel argues that the Petition was incomplete because a petition for reconsideration claiming electrical interference to an existing station must be accompanied by an affidavit of a qualified radio engineer, which Abundante's Petition did not present.⁸ Calvary further argues the Petition did not sufficiently demonstrate a material error or omission in granting KSHH-LP a permit or license, because Abundante never argued that the staff erred in granting the construction permit or license to cover.⁹ Calvary also opposes the Petition on substantive grounds, noting that KSHH-LP is fully spaced in compliance with Section 73.807 of the Commission's Rules (Rules).¹⁰

Discussion. Reconsideration is appropriate where an applicant demonstrates new facts or an error in the original decision.¹¹ Additionally, according to Section 1.106(e) of the Commission's rules, "[w]here a petition for reconsideration is based upon a claim of electrical interference, under appropriate rules in this chapter, to an existing station for which a construction permit is outstanding, such petition, in addition to meeting the other requirements of this section, *must* be accompanied by an affidavit of a qualified radio engineer."¹² In 1979, the Commission relocated the broadcast technical rules from Part 1 to Part 73.¹³ Although a literal reading of Section 1.106(e) would limit the affidavit requirement to Part 1 services, it is apparent that the failure to contemporaneously modify this rule was a drafting error and that this filing requirement should continue to apply to electrical interference claims relating to services transferred to Part 73.¹⁴ The Commission has applied this requirement in the broadcast context following the rule recodification.¹⁵ Abundante's Petition was not accompanied by an affidavit of a qualified radio

⁶ *Broadcast Actions*, Public Notice, Report No. 48762 (June 23, 2016). Calvary Chapel subsequently filed an application to modify the Station's then licensed facilities, correcting the Station's coordinates after the antenna site location was remeasured, and a further covering license application. See File Nos. BPL-20160803AAL, BLL-20160805AAS. The Bureau granted these uncontested applications on August 4, 2016, and August 8, 2016, respectively.

⁷ See Opposition at 1-2.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 3, citing 47 CFR § 73.807.

¹¹ See 47 CFR § 1.106(c).

¹² *Id.* § 1.106(e) (emphasis added). See also *C.L. Tadlock*, Memorandum Opinion and Order, 8 F.C.C. 2d 197 (1967) (finding a petition defective because "[p]aragraph (e) of section 1.106 requires that a claim of electrical interference in support of a petition for reconsideration be accompanied by an affidavit of a qualified radio engineer showing [...] that such interference will be caused to petitioner's station within its normally protected contour.").

¹³ *Reregulation of Radio and TV Broad.*, Order, 72 F.C.C. 2d 635 (1979).

¹⁴ See *Franklin Comm'n Partners, L.P. Assignor*, Memorandum Opinion and Order, 8 FCC Rcd 4909, 4911 (1993) (finding that the Commission still intended to evaluate audience share based on "the most recent published" survey data, despite the rule drafting error omitting this language when it moved broadcasting rules to Part 73).

¹⁵ See *R.L. Mohr d/b/a Radiocall Corp.*, Memorandum Opinion and Order, 85 F.C.C. 2d 596, 612 n.32 (1981) (dismissing petition for reconsideration because application failed to include an affidavit by an engineer); see also

engineer, and thus fails to meet the requirements of Section 1.106(e). Accordingly, Abundante's Petition is procedurally defective and is dismissed.

Even were we to consider the merits of Abundante's Petition, we would deny it. KHSH-LP met and still meets the spacing requirements set out in Section 73.807 of the Commission's rules.¹⁶ Abundante's Petition even acknowledges that KHSH-LP meets the LPFM spacing rules.¹⁷

Although Petitioner argues that the grant of the License Application is contrary to public interest because of the interference to KJVA-LP's listenership, we note that when the Commission created LPFM services, it specifically chose to use spacing requirements to establish interference protections in order to "preserve the integrity and technical excellence of existing FM radio service."¹⁸ While KHSH-LP and KJVA-LP operate on the same channel, the stations are fully spaced. Abundante has neither alleged nor shown that KHSH-LP is operating with unauthorized facilities. Accordingly, Abundante has not presented an actionable claim of interference to KJVA-LP.

Conclusion/Action. In light of the above discussion, the petition for reconsideration of the Bureau's grant of the license to Station KHSH-LP, San Bernardino IS DISMISSED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

New NCE-FM, Bishop, California, Letter Decision, 25 FCC Rcd 4474, 4476 (MB 2010) (dismissing petition for reconsideration procedurally defective because it was filed without a qualified radio engineer's affidavit).

¹⁶ 47 CFR § 73.807, which requires a minimum distance of 24 kilometers for co-channels stations. KHSH-LP is considered to be fully spaced at 23.7 kilometers. *See* 47 CFR § 73.208(c)(8) (rounding distances to the nearest kilometer).

¹⁷ Petition at 3.

¹⁸ *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2223-33, paras. 2, 70-71 (2000). In addition to the general minimum distance separations set forth in Sections 73.807(a) and (b), 47 C.F.R. § 73.807(a)-(b), three Commission Rules protect listeners from actual interference allegedly caused by an LPFM station otherwise operating in compliance with its authorization: (1) Section 73.807(e)(2), which is limited to cases involving second-adjacent channel stations operating pursuant to waivers of the spacing rules; (2) Section 73.809, which is limited to situations involving full-service FM stations operating on the same or first-adjacent channel; and (3) Section 73.810, which is limited to cases involving third-adjacent channels that do not meet the minimum spacing requirements. 47 C.F.R. §§ 73.807(e)(2), 73.809, 73.810. These requirements are designed to provide the "same degree of interference protection that full-service stations provide each other." *Creation of Low Power Radio Service*, 15 FCC Rcd at 2231, para. 64.