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

In the Matter of	)	
	)	
Urban One Broadcasting Network, LLC	)	
	)	
Application for Construction Permit for New FM Station WURB(FM), at Cross City, Florida	)	File No. BMPH-20140519ABG Facility ID No. 189555
	)	
Application for a Construction Permit for Minor Modification to WURB(FM), Cross City, Florida	)	File No. BNPH-20110524AHQ Facility ID No. 189555

ORDER ON RECONSIDERATION

Adopted: July 18, 2016 **Released: July 18, 2016**

By the Chief, Media Bureau:

I. INTROUDUCTION

1. We have before us a Petition for Reconsideration (Petition), filed on April 29, 2016, by Urban One Broadcasting Network, LLC (Urban One). The Petition seeks reconsideration of the Commission's April 5, 2016, Memorandum Opinion and Order (*MO&O*)[1] that dismissed in part and otherwise denied Urban One's Application for Review of a March 3, 2015, Media Bureau (Bureau) decision.[2] For the reasons set forth below, pursuant to Section 1.106(p) of the FCC's rules (Rules),[3] we dismiss the Petition.

II. BACKGROUND

2. On May 19, 2014, with about two months left on its construction permit for a new FM station on Channel 249 at Cross City, Florida (Station), Urban One filed the above-captioned modification application proposing a new antenna site, citing difficulties obtaining access to the permitted site.[4] In a letter dated July 17, 2014, the Bureau found that the Modification Application failed to comply with the Commission's environmental rules and thus withheld action for thirty days to provide time for Urban One to amend the Application.[5] The *Deficiency Letter* also reminded Urban One that this action did not extend the expiration date on the existing Construction Permit.[6] On July 18, 2014, Urban One submitted a request for special temporary authority (STA Request) for operation at the site specified in

[1] *Urban One Broad. Network, LLC*, Memorandum Opinion and Order, 31 FCC Rcd 4186 (2016) (*MO&O*).

[2] *William Johnson*, Letter Order, 30 FCC Rcd 2015 (MB Nov. 17, 2015) (*Reconsideration Decision*).

[3] 47 CFR § 1.106(p) ("Petitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s).").

[4] File No. BMPH-20140519ABG (Modification Application).

[5] *Letter to Mr. William Johnson, Urban One Broad., LLC*, Letter Order, Ref. 1800B3-AED (MB July 17, 2014) (*Deficiency Letter*).

[6] *Id.*

the Modification Application. Three days later, with the STA Request pending, Urban One submitted a license to cover application (License Application) specifying the proposed STA facilities.

3. In the *Reconsideration Decision*, the Bureau concluded that Urban One failed to construct as authorized by the Construction Permit. It therefore upheld the staff's determination that the Construction Permit had automatically expired and was forfeit by its own terms pursuant to Section 73.3598(e) of the Rules on July 21, 2014, notwithstanding Urban One's pending STA Request and License Application.[7] In the *MO&O*, the Commission upheld the *Reconsideration Decision*, finding, *inter alia*, that there were no grounds for Urban One's assertion that the Bureau had treated it differently than other applicants and noting that "neither special temporary authority nor program test authority typically associated with a 'license to cover' application would modify the terms of the Construction Permit or extend its expiration date."[8]

4. In its Petition, Urban One argues that the Commission was required to grant the STA Request under Section 309(f) of the Communications Act of 1934, as amended (Act), because loss of access to the permitted tower site was an "extraordinary circumstance" warranting temporary operations.[9] Urban One also claims that the Commission's failure to grant the STA Request "wrongfully deprived" the African-American community in Cross City, Florida of "the voice that would have been afforded to them by [the Station]."[10] Finally, Urban One argues that the failure to grant its STA "clearly shows the agency's bias against the [P]etitioner," because the Commission granted an STA to Radio Goldfield Broadcast, "a pirate radio station operator."[11] According to Urban One, the Commission's refusal to grant the STA Request was therefore an arbitrary and capricious action.[12]

5. Additionally, Urban One argues that, pursuant to Section 557(a) of the Administrative Procedure Act (APA), the Commission was required to "furnish the petitioner with a copy of its proposed tentative decision in the instant matter, before issuing its tentative decision as the final public decision."[13] Thus, Urban One argues that the Commission acted arbitrarily and capriciously, abused its discretion, and committed a prejudicial procedural error when it "deprived the lay [P]etitioner a reasonable opportunity to submit its exceptions to the [Commission's] tentative decision."[14] According to Urban One, these violations "establish a bias[ed] pattern of violating the rights of the petitioner, who happens to be an African-American permittee."[15] Urban One contends that the Commission should have provided a copy of its tentative decision prior to the release of the *MO&O* and therefore that the Petition is its first opportunity to raise this issue.

III. DISCUSSION

6. Section 1.106(p) of the Rules provides that "[p]etitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s)."[16] Section 1.106(p)(3) of the Rules specifies that a petition

[7] *Reconsideration Decision,* 30 FCC Rcd at 2021.

[8] *MO&O,* 31 FCC Rcd at 4188-89, para. 6.

[9] Petition at 3.

[10] *Id*. at 4.

[11] *Id*. at 8.

[12] *Id*.

[13] *Id*. at 4, quoting 5 U.S.C. § 557 (Section 557).

[14] Petition 6-7.

[15] *Id*. at 6.

[16] 47 CFR § 1.106(p); *see, e.g., LPFM MX Group 198*, Order on Reconsideration, 30 FCC Rcd 14317, 14320, para. 9 (MB 2015) (dismissing new arguments that plainly did not warrant consideration by the Commission because

(continued….)

for reconsideration that relies on "arguments that have been fully considered and rejected by the Commission within the same proceeding" does not warrant reconsideration.[17] It is axiomatic that reconsideration will not be granted for the purpose of debating matters on which the Commission has deliberated and spoken.[18] In the *MO&O*, the Commission considered and rejected Urban One's arguments that the STA Request should have been accepted for filing and granted, that other applicants have been treated more favorably, and that the staff's actions were discriminatory against Urban One.[19] Moreover, to the extent that Urban One introduces new facts or arguments not previously presented to the Commission, we find that these facts and arguments could have been presented earlier but were not, and are therefore subject to dismissal under Sections 1.106(p)(2) and 1.106(b)(2) of the Rules.[20] Therefore, we dismiss the Petition to the extent that it relies upon impermissible facts and arguments. We once again note, however, that even if the STA Request had been granted, the terms of the Construction Permit would not have changed nor would the expiration date for the construction of the permitted facilities have been extended.[21] Therefore, the disposal of Urban One's STA Request is irrelevant to the outcome of this case.

7. Additionally, Section 1.106(p)(1) of the Rules provides for the dismissal of petitions for reconsideration of Commission action that "[f]ail to identify any material error, omission, or reason warranting reconsideration."[22] Section 557 of the APA is inapplicable here, because that section only applies when a hearing is required to be conducted.[23] In the instant case, no hearing was required, and Urban One therefore was not entitled to submit exceptions to a tentative decision pursuant to Section 557(c).[24] Accordingly, we dismiss the Petition to the extent that it relies upon this argument.[25]

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petitioner could have presented them before, but did not); *see also Able Radio Corp.*, Order on Reconsideration, 29 FCC Rcd 9126, 9128, para. 5 (MB 2014).

[17] 47 CFR § 1.106(p)(3) (Section 1.106(p)(3)); *see, e.g., Shaw Commc'ns*, Letter Order, 27 FCC Rcd 6995, 6996, para. 5 (MB 2012) (dismissing petition for reconsideration and finding that the public interest did not compel reconsideration where petition relied on facts and arguments that were fully considered and rejected by the Commission previously in the proceeding).

[18] *See, e.g.*, *WWIZ, Inc*., Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

[19] *MO&O*, 31 FCC Rcd at 4186, para. 4.

[20] 47 CFR §§ 1.106(b)(2), 1.106(p)(2). These new facts and arguments concern: (a) whether the Commission was required to grant the STA pursuant to Section 309(f) of the Act; and (b) whether the treatment afforded Radio Goldfield Broadcast and Urban One with regard to their respective STA applications established bias in this proceeding.

[21] *MO&O*, 31 FCC Rcd at 4186, para. 6.

[22] 47 CFR § 1.106(p)(1).

[23] *See* 5 U.S.C. § 557(a) ("This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.").

[24] 5 U.S.C. § 557(c). The Commission's rules for hearing proceedings, including the rule concerning exceptions to an administrative law judge's initial decision, are set forth in 47 CFR §§ 1.201-1.364 and apply to cases in which a hearing designation order is issued pursuant to 47 U.S.C. § 309(e). The instant proceeding was never designated for hearing, and instead was adjudicated pursuant to rules applicable to non-hearing cases, set forth in 47 CFR §§ 1.101-1.115 and 73.3566(a).

[25] *Royce Int'l Broad. Co.*, Order on Reconsideration, 31 FCC Rcd 214, 217, para. 10 (MB 2016) (dismissing petition for reconsideration of Commission action pursuant to 47 CFR § 1.106(p)(1) because petition failed to identify any material error, omission, or reason warranting reconsideration); *aff'd Royce Int'l Broad. Co.*, Memorandum Opinion and Order, FCC 16-76 (June 20, 2016).

IV. ORDERING CLAUSE

8. ACCORDINGLY, IT IS ORDERED that the Petition for Reconsideration filed by Urban One on April 29, 2016, IS DISMISSED pursuant to Section 1.106(p) of the FCC's Rules.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau