

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

In the Matter of
Assignment of Call Sign KCTI-FM
Sun Radio Foundation, Licensee of
KCTI-FM, Gonzales, Texas
Facility No. 91220

MEMORANDUM OPINION AND ORDER

Adopted: October 25, 2017

Released: October 25, 2017

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. We have before us a petition for reconsideration (Petition), filed by Texas Public Radio (TPR), licensee of radio station KCTI(AM) (KCTI), Gonzales, Texas. The Petitioner seeks reconsideration of the Division's decision to dismiss, as a late-filed petition for reconsideration, TPR's request to rescind call sign KCTI-FM from the above-captioned radio station (Station), licensed to Sun Radio Foundation (Sun Radio), and TPR's subsequent arguments contained in the record (collectively, Rescission Request). Sun Radio filed an Opposition to the Petition (Opposition) on May 24, 2017. For the following reasons, we dismiss TPR's Petition on procedural grounds, and, in any event, deny the substantive arguments contained therein.

II. BACKGROUND

2. On May 10, 2017, TPR filed the above-referenced Petition raising identical arguments contained in its Rescission Request. First, TPR argues that the Video Division (Division) should not have granted call sign KCTI-FM to the Station because neither TPR nor Gonzales Communications, LLP (Gonzales), the former licensee of KCTI, provided "authorized consent" to use call sign KCTI-FM to Sun Radio or Maranatha Church of Laredo Incorporated (Maranatha), the previous licensee of the Station. TPR alleges that Steven Oakes, the General Manager of KCTI when it was controlled by Gonzales, did not have the authority to grant Maranatha consent to use call sign KCTI-FM. Second, TPR argues that call sign assignments and changes are not subject to petitions for reconsideration because they are not "Commission actions." According to TPR, the Commission's call sign clearing house is a "ministerial processing system that does not involve any 'action' by the Commission." TPR further claims that the

1 Texas Public Radio, Petition for Reconsideration (Petition) (dated May 10, 2017).
2 Sun Radio Foundation, Opposition to Petition for Reconsideration (accepted for filing on May 24, 2017) (Opposition).
3 See supra notes 1 and 2.
4 Petition at 1-2.
5 Petition at 2; Sun Radio Foundation, Letter Responding to TPR (Response to Request), pg. 2, Attachment 1 (dated Jan. 19, 2017).
6 Petition at 2.

Commission's Report and Order implementing the digitization of the Commission's call sign clearinghouse does not provide for the use of petitions for reconsideration when challenging an unauthorized call sign assignment or change, and, instead, "explicitly directs licensees to 'notify' the Commission" when primary call sign holders become aware of unauthorized assignments or changes.<sup>7</sup> Moreover, TPR asserts that Section 73.3550(g) of the Commission's rules (Rules) makes clear that call sign assignments and changes are not Commission actions, and that its Rescission Request was nothing more than a request to correct a "ministerial error."<sup>8</sup>

3. In its Opposition, Sun Radio refutes TPR's allegation that Maranatha did not have consent to use call sign KCTI-FM.<sup>9</sup> According to Sun Radio, Maranatha, at the request of Sun Radio, contacted Steven Oakes to obtain consent to use call sign KCTI-FM, which Steven Oakes granted.<sup>10</sup> Second, Sun Radio refutes TPR's argument that call sign assignments and changes are not "Commission actions." Sun Radio argues that TPR failed to provide a basis for its claim, and TPR "ignores the fact that actual Commission personnel, *i.e.*, human beings, are, in fact, assigned the duty of overseeing and granting call sign requests."<sup>11</sup> Moreover, Sun Radio notes that the public notice granting the call sign change was titled "Media Bureau *Call Sign Actions*."<sup>12</sup> Last, Sun Radio refutes TPR's argument that the call sign assignment was a "ministerial error" that could be "'corrected' at this date." According to Sun Radio, the Commission would not be correcting a "ministerial error" because the "Commission granted exactly, and accurately, that which was requested by Maranatha Church of Laredo and consented to by Gonzales Communications."<sup>13</sup>

### III. DISCUSSION

4. We dismiss TPR's Petition on procedural grounds, and, in any event, deny the substantive arguments contained therein. Pursuant to Section 405(a) of the Communications Act (Act), as amended, and Section 1.106 of the Commission's rules (Rules), an interested party may file a petition for reconsideration within 30 days after the Commission issues public notice of a Commission action.<sup>14</sup> As it relates here, Section 1.106(k)(3) of the Commission's Rules authorizes us to dismiss, at our discretion, a petition for reconsideration as "repetitious" if a previous petition for reconsideration of the same order has already been denied.<sup>15</sup> After reviewing all of the pleadings TPR has submitted, we find that TPR's Petition raises the same arguments contained in its Rescission Request. Although our dismissal of TPR's Rescission Request was primarily based on procedure, our review took into consideration all of the arguments TPR raised therein.<sup>16</sup> Despite our procedural dismissal, we will address the arguments raised

<sup>7</sup> Petition at 2-3.

<sup>8</sup> Petition at 3 (citing 47 CFR § 73.3550(g) ("Objections to the assignment of requested call signs will not be entertained at the FCC")).

<sup>9</sup> Opposition at 2.

<sup>10</sup> Opposition at n. 2 (citing Response to Request, pg. 2, Attachment 1).

<sup>11</sup> Opposition at 3.

<sup>12</sup> *Id.*

<sup>13</sup> Opposition at 4-5.

<sup>14</sup> 47 U.S.C. §405(a); 47 CFR § 1.106(f)(1).

<sup>15</sup> 47 CFR § 1.106(k)(3).

<sup>16</sup> Division staff determined that TPR's Rescission Request was best treated as a late-filed petition for reconsideration because the Division provided public notice of the call sign change, and TPR filed its Rescission Request approximately 227 days late without a showing that extraordinary circumstances justified the late filing. *See Gardner v. FCC*, 530 F.2d 1086, 1091 (D.C. Cir 1976) (the Commission may only act on late-filed petitions for reconsideration when "extraordinary circumstances indicate that justice would thus be served").

in TPR's Petition to reach administrative finality.

**A. Consent to use Call Sign KCTI-FM**

5. We reject TPR's assertion that we improperly assigned call sign KCTI-FM to the Station. Section 73.3550(m) of the Rules requires applicants using the Commission's on-line call sign reservation and authorization system to certify that "consent to use of [a] secondary call sign has been obtained from the holder of the primary call sign."<sup>17</sup> Here, we would not have assigned call sign KCTI-FM to the Station had we found that Maranatha failed to receive consent from Gonzales. Our review of the record reveals that Gonzales, by and through Steven Oakes, provided such consent to Maranatha via an email dated February 29, 2016.<sup>18</sup>

6. Furthermore, Section 73.3550(g) of the Rules states that the Commission will not entertain objections to a call sign assignment, and a party objecting to an assignment may assert its rights "under private law in some other forum."<sup>19</sup> Because we had already assigned call sign KCTI-FM to the Station, we would be acting contrary to Section 73.3550(g) of Rules by entertaining TPR's Petition. Moreover, we cannot resolve the underlying issue of whether Steven Oakes had the authority to grant Maranatha consent to use call sign KCTI-FM. Such an analysis would require the Commission to resolve a factual dispute akin to that raised in agency and contract law – both of which are outside of the Commission's jurisdiction.<sup>20</sup> Accordingly, TPR should have sought relief for its grievance in a court of competent jurisdiction over the matter and not the Commission.<sup>21</sup>

**B. Commission Actions Subject to Petitions for Reconsideration**

7. We reject TPR's argument that call sign assignments are not "Commission actions" subject to petitions for reconsideration. Section 303 of the Act provides the Commission with the authority to regulate broadcast call signs.<sup>22</sup> Pursuant to Section 73.3550(a) of the Rules, all requests for new or modified call sign assignments for radio and television broadcast stations must be made via the FCC's on-line call sign reservation and authorization system.<sup>23</sup> Although the Commission's call sign clearinghouse is an automated and digitized application system, the act of applying for a call sign assignment or modification, regardless of the medium the Commission uses to receive such applications, is a request for the Commission's approval of that application - an "action" of the Commission. Furthermore, we have always considered call sign assignments and changes as "Commission actions."<sup>24</sup> Once we grant a call sign assignment or change, we release a public notice that clearly indicates that the

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<sup>17</sup> 47 CFR § 73.3550(m).

<sup>18</sup> Response to Request, pg. 2, Attachment 1.

<sup>19</sup> 47 CFR § 73.3550(g).

<sup>20</sup> See e.g., *KMYA-DT, KMYA-LP*, Memorandum Opinion and Order, 32 FCC Rcd 5015 (Vid. Div. 2017) (analyzing whether Licensee had the authority to assign Commission licenses to a third party after entering an asset purchase agreement with another party).

<sup>21</sup> See e.g., *Id.* (finding that the Commission was not the proper jurisdiction to resolve contractual disputes).

<sup>22</sup> 47 U.S.C. § 303.

<sup>23</sup> 47 CFR § 73.3550(a).

<sup>24</sup> Under the Administrative Procedures Act, the Commission is required to provide public notice of all call sign actions. 5 U.S.C. § 552(a)(2)(A) ("Each agency, in accordance with published rules, shall make available for public inspection in an electronic format . . . orders, made in the adjudication of cases"); See 5 U.S.C. § 551(7) (defining "adjudication" as "the agency process for the formation of an order"); 5 U.S.C. § 551(6) (defining "order" as "the whole or part of a final disposition . . . of an agency in a matter other than rule making but including licensing"); Call sign assignments and changes fit into the APA's definition of "licensing." 5 U.S.C. § 551(9) (defining "licensing" as "the whole or part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission").

call sign assignment or change is a “Commission action.”<sup>25</sup> For example, we announced our grant of the above-referenced call sign change in a public notice titled “Media Bureau Call Sign *Actions*.”<sup>26</sup>

8. Furthermore, Section 1.113(a) of the Rules states, “[w]ithin 30 days after public notice has been given of any action taken pursuant to delegated authority, the person, panel, or board taking the action may modify or set it aside on its own motion.”<sup>27</sup> Beyond 30 days, we may only revisit a final action under limited circumstances.<sup>28</sup> In *County of San Mateo*, the Commission stated that its authority to revisit a final action is limited to “the correction of clerical or administrative errors that underlie or occur in the process of taking an action” – otherwise known as “ministerial errors.”<sup>29</sup> Here, we did not make a “ministerial error” when assigning secondary call sign KCTI-FM to the Station. As shown by the record, Maranatha, at Sun Radio’s request, filed an application to change the Station’s call sign from KITG(FM) to KCTI-FM, which we granted.<sup>30</sup> Therefore, by entertaining TPR’s Petition, the Division would not have been correcting a “ministerial error” – e.g. changing “KCIT-FM” to “KCTI-FM.” Instead, we would be rescinding a properly granted call sign change – a final Commission action that is subject to a petition for reconsideration and its procedural filing requirements.

### III. ORDERING CLAUSE

9. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) of the Communications Act of 1934, as amended,<sup>31</sup> and by the authority delegated by Sections 0.61 and 0.283 of the Commission’s rules,<sup>32</sup> that the Petition for Reconsideration, filed by Texas Public Radio, is **DISMISSED IN PART AND DENIED IN ALL OTHER RESPECTS**.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

<sup>25</sup> *Id.*; See e.g. *Media Call Sign Actions*, Public Notice, Report No. 529 (MB 2011); See also e.g. *Media Call Sign Actions*, Public Notice, Report No. 394 (MB 2000).

<sup>26</sup> *Media Call Sign Actions*, Public Notice, Report No. 589 (MB 2016) (emphasis added).

<sup>27</sup> 47 CFR § 1.113(a).

<sup>28</sup> *County of San Mateo, California*, Memorandum Opinion and Order, 16 FCC Rcd 16501, 16503-504 (2001).

<sup>29</sup> *Id.* (“Administrative agencies have the authority to correct inadvertent, ministerial errors.’ This authority to revisit final actions is limited. It extends only to the correction of clerical or administrative errors that underlie or occur in the process of taking an action, such as a mathematical miscalculation, or a license that omits or misstates a frequency, or a document that omits an intended party or provision”).

<sup>30</sup> See *Supra* n. 26.

<sup>31</sup> 47 U.S.C. § 154(i).

<sup>32</sup> 47 CFR §§ 0.61, 0.283.