



Federal Communications Commission  
Washington, D.C. 20554

March 17, 2023

In Reply Refer to:  
1800B3-TSN

**DA 23-231**

Released: March 17, 2023

William Johnson, Managing Member  
Urban One Broadcasting Network, LLC  
414 SW 140<sup>th</sup> Terrace, Suite 120  
Newberry, FL 32669

**In re:**            **DWURB(FM), Cross City, FL**  
                         Facility ID No. 189555  
                         File No. BNPH-20110524AHQ

**Petition for Reconsideration**

Dear Mr. Johnson:

We have before us a Petition for Reconsideration (Petition) filed by Urban One Broadcasting Network, LLC (Urban One), on January 14, 2022. In the Petition, Urban One seeks reconsideration of the Media Bureau's (Bureau) letter decision denying its June 17, 2021, Petition for Declaratory Ruling.<sup>1</sup> In the Petition for Declaratory Ruling Urban One sought to amend its December 13, 2016, "Petition for Reinstatement of Construction Permit," in which Urban One requested reinstatement of its forfeited permit to construct an FM radio station at Cross City, Florida (Station) and to grant an 18-month construction period. Urban One further sought to remove from the Auction 109 inventory the allotment for Channel 249C3 at Cross City, Florida, which was previously assigned to Urban One's now-forfeited construction permit. We dismiss and, in the alternative, deny the Petition.

**Background.**<sup>2</sup> In 2013 Urban One acquired the construction permit for Channel 249 at Cross City, Florida, with an expiration date of July 21, 2014.<sup>3</sup> While Urban One identified itself in the

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<sup>1</sup> *William Johnson, Managing Member, Urban One Broadcasting Network, LLC*, Letter Decision, DA 21-1561 (MB Dec. 15, 2021) (*Declaratory Ruling Decision*).

<sup>2</sup> The procedural history of the above-referenced facility is complex. See File No. BNPH-20110524AHQ. It is recounted in greater detail in the *Declaratory Ruling Decision*. *Declaratory Ruling Decision* at 1-5.

<sup>3</sup> Alex Media, Inc. (Alex Media) was the winning bidder for the construction permit (Station) in FM Auction 91. See *Auction of FM Broadcast Construction Permits Closes; Winning Bidders Announced for Auction 91*, Public Notice, 26 FCC Rcd 7541, Attachment A (MB/WTB 2011). We granted Alex Media's post-auction construction permit application on July 21, 2011, which was set to expire on July 21, 2014. Public Notice, Broadcast Actions, Report No. 47536 (July 26, 2011). On March 1, 2013, Urban One acquired the construction permit from Alex Media. File No. BAPH-20120917AGZ (Assignment Application) (assignment approved December 26, 2012, and

assignment application as an “eligible entity” under the definition set forth in the Commission’s *Promoting Diversity of Ownership in the Broadcasting Services* Report and Order,<sup>4</sup> at all times relevant to Urban One’s ownership of and attempt to license the Station, which began in 2013, the eligible entity policy was not in effect, having been vacated in 2011 by the United States Court of Appeals for the Third Circuit and thereafter suspended by the Commission.<sup>5</sup> Thus, despite Urban One’s May 19, 2014, application to modify the construction permit,<sup>6</sup> and its June 23, 2014, request for tolling of the construction period, the Station construction permit automatically expired and was forfeit by its own terms on July 21, 2014.<sup>7</sup>

Urban One filed petitions for reconsideration of the adverse decisions on its Modification Application and its request to have the construction period tolled. The Media Bureau denied both petitions for reconsideration.<sup>8</sup> The Commission denied review of those decisions,<sup>9</sup> and the Bureau then dismissed Urban One’s petition for reconsideration of the Commission’s denial of review.<sup>10</sup> Urban One next sought review from the United States Court of Appeals for the District of Columbia Circuit, which dismissed its Petition for Review for lack of prosecution on August 11, 2017.<sup>11</sup> Thus, the Commission’s denial of Urban One’s Modification Application and its request to toll the expiration date of the construction permit and obtain additional time to construct was final as of August 11, 2017. The allotment for the Station, Channel 249C3 at Cross City, Florida, remained in the Table of FM Allotments,<sup>12</sup> and was eventually included in the inventory for Auction 109.<sup>13</sup>

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consummated March 1, 2013). Urban One certified in the Assignment Application that it qualified as an eligible entity.

<sup>4</sup> *Promoting Diversity of Ownership in the Broadcasting Services*, MB Docket Nos. 07-294, 06-121, 02-277, 01-235, 01-317, 00-244, 04-228, Report and Order and Third Further Notice of Proposed Rule Making, 23 FCC Rcd 5922, 5925-27 (2008) (*2008 Diversity Order*).

<sup>5</sup> *Prometheus Radio Project v. FCC*, 652 F.3d 431, 437 (3d Cir. 2011) (*Prometheus II*); *Media Bureau Provides Notice of Suspension of Eligible Entity Rule Changes and Guidance on the Assignment of Broadcast Station Construction Permits to Eligible Entities*, Public Notice, 26 FCC Rcd 10370 (MB 2011).

<sup>6</sup> File No. BMPH-20140519ABG (Modification Application).

<sup>7</sup> *William Johnson*, Letter Decision, 30 FCC Rcd 2015, 2021 (MB 2015) (*Reconsideration Decision*).

<sup>8</sup> *Id.*

<sup>9</sup> *Urban One Broadcasting Network, LLC*, Memorandum Opinion and Order, 31 FCC Rcd 4186 (2016) (*Urban One MO&O*).

<sup>10</sup> *Urban One Broadcasting Network, LLC*, Order on Reconsideration, 31 FCC Rcd 7680 (MB 2016) (*Reconsideration Dismissal*).

<sup>11</sup> *Urban One Broadcasting Network, LLC v. FCC*, Order, Document No. 1688385 (D.C. Cir. Aug. 11, 2017). Additionally, since release of the *Declaratory Ruling Decision*, Urban One filed an action in the United States District Court for the District of Columbia, seeking an injunction prohibiting the Commission from offering the Cross City permit in Auction 109 and returning the permit to Urban One. The court dismissed that action on November 29, 2022, finding that it lacked subject matter jurisdiction. *William Johnson, et al. v. FCC*, Memorandum Opinion, Civil Action No. 1:21-cv-2050 (CKK), at 5-9 (D.D.C. Nov. 29, 2022).

<sup>12</sup> 47 CFR § 73.202.

<sup>13</sup> *Public Notice Auction of AM and FM Broadcast Construction Permits Scheduled for July 27, 2021; Comment Sought on Competitive Bidding Procedures for Auction 109*, AU Docket No. 21-39, Public Notice, 36 FCC Rcd 1409, 1410, para. 3 (OEA/MB 2021) (*Auction 109 Comment Public Notice*). The Cross City permit had previously been offered in the inventory for Auction 106, which was canceled due to the COVID-19 pandemic, and the

In its Petition for Declaratory Ruling, Urban One argued that the Commission must reinstate its construction permit and provide an additional 18 months in which to construct the Station, based on the Bureau's 2021 reinstatement of the eligible entity policy pursuant to *FCC v. Prometheus Radio Project*.<sup>14</sup> Urban One also demanded that the Commission remove the vacant Cross City allotment from the Auction 109 inventory. Because Urban One's construction permit was automatically forfeited on July 21, 2014,<sup>15</sup> and the dismissal of its appeals of the Commission's denial of the Modification Application and the tolling request became final in 2017, the Bureau denied the Petition for Declaratory Ruling.<sup>16</sup>

Urban One now seeks reconsideration of the *Declaratory Ruling Decision*. It argues, first, that the Bureau erred by not putting its Petition for Declaratory Ruling on public notice, pursuant to section 1.2(b) of the Commission's rules,<sup>17</sup> and seeking public comment. Second, Urban One contends that the Bureau should apply the eligible entity policy, and specifically the rule provision that gives an eligible entity acquiring an expiring construction permit up to an additional 18 months in which to construct the facilities,<sup>18</sup> retroactively to Urban One. It asserts that the Bureau's 2021 reinstatement of the rule, which the court had first vacated in 2011, before Urban One acquired the Cross City permit in 2013, would have applied to it had the Commission not suspended the rule after the court of appeals vacated it. Finally, Urban One asserts that equity and fairness compel application of the eligible entity definition and construction period extension rule.

**Discussion.** We dismiss the Petition as defective for failing to meet the requirements for reconsideration of a decision on delegated authority and, on alternative and independent grounds, we deny the Petition on the merits.

*Procedural Dismissal.* A party may seek reconsideration of a Commission denial of an action by a designated authority only on the basis of either changed circumstances or newly discovered facts, or

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inventory offered in Auction 109. *Auction of FM Broadcast Construction Permits Scheduled for April 28, 2020; Comment Sought on Competitive Bidding Procedures for Auction 106*, AU Docket No. 19-290, Public Notice, DA 19-1027, 34 FCC Rcd 9375 (OEA/MB 2019) (*Auction 106 Comment Public Notice*). As noted in the *Declaratory Ruling Decision*, Urban One did not protest the inclusion of the Cross City permit in response to either the *Auction 106 Comment Public Notice* or the *Auction 109 Comment Public Notice*. *Declaratory Ruling Decision* at 4-5.

<sup>14</sup> *FCC v. Prometheus Radio Project*, 141 S.Ct. 1150, 209 L.Ed.2d 287 (2021) (*Prometheus Supreme Court Decision*). In June 2021, the Media Bureau announced that the eligible entity rules would be reinstated pursuant to the *Prometheus Supreme Court Decision*. *2014 Quadrennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket Nos. 14-50, 09-182, 07-294, 04-256, 17-289, Order, DA 21-656, at 1-2, para. 1 (MB June 4, 2021). Subsequently on July 1, 2021, the Media Bureau announced by public notice that the summary of the Order had been published in the *Federal Register* and that the reinstated rules became effective on June 30, 2021. *Media Bureau Announces June 30, 2021 Effective Date of Reinstated Media Ownership Rules*, Public Notice, DA 21-783 (MB July 1, 2021); *Media Bureau Reinstates Commission's Prior Rule Changes Regarding Media Ownership Consistent with the U.S. Supreme Court's Decision*, 86 Fed. Reg. 34627 (June 30, 2021).

<sup>15</sup> Section 319(b) of the Communications Act of 1934, as amended (Act) and section 73.3598(e) of the Rules provide that a station's construction permit forfeits automatically if the station is not ready for operation by the construction deadline. See 47 U.S.C. § 319(b); 47 CFR § 73.3598(e).

<sup>16</sup> See *Declaratory Ruling Decision*, *supra* note 1.

<sup>17</sup> 47 CFR § 1.2(b).

<sup>18</sup> See 47 CFR § 73.3598(a).

when the designated authority determines that consideration of the facts or arguments relied on is required in the public interest.<sup>19</sup> In the Petition, however, Urban One does not allege any change in circumstances or offer any newly discovered facts. Instead, it repeats the arguments it made in its Petition for Declaratory Ruling, as well as arguments it previously raised in pleadings contemporaneous with its attempts to license the Station, and petitions for reconsideration of adverse decisions on those pleadings.<sup>20</sup> We reaffirm that “[i]t is settled Commission Policy that petitions for reconsideration are not to be used for the mere reargument of points previously advanced and rejected.”<sup>21</sup> We further note that the evidence presented in Exhibits A and B to the Petition consists of documents either generated or received by Urban One in 2014, indicating that they do not constitute facts “unknown to petitioner until after [its] last opportunity to present them to the Commission,” or that it “could not through the exercise of ordinary diligence have learned of . . . prior to such opportunity.”<sup>22</sup> Accordingly we dismiss the Petition as procedurally defective.

*Denial on the Merits.* On alternative and independent grounds, we deny the Petition on the merits. We find that Urban One may not use the mechanism of a Petition for Declaratory Ruling to challenge unambiguous Commission and staff orders. Additionally, we find that Urban One may not retroactively apply the Supreme Court’s 2021 revival of the eligible entity definition and related rules to its construction permit, which had expired by its own terms at a point in time during which the Commission had suspended that definition and attendant rules. Finally, we disagree with Urban One’s attempt to relitigate its arguments surrounding the Modification Application by labeling those arguments as an appeal to “equity and fairness.”

Section 1.2(b) of the rules. We find the Bureau was not obligated by section 1.2(b) of the rules to seek public comment on the Petition for Declaratory Ruling,<sup>23</sup> and that Urban One had multiple opportunities to provide input on the inclusion of the Cross City allotment in the Auction 109 inventory.

As noted above, in the Petition for Declaratory Ruling Urban One had first sought to amend its December 13, 2016, “Petition for Reinstatement of Construction Permit,” asking the Commission to reinstate Urban One’s forfeited permit to construct an FM radio station at Cross City, Florida, and to grant an additional 18-month construction period. Second, Urban One asked to remove from the Auction 109 inventory the allotment for Channel 249C3 at Cross City, Florida, which previously covered Urban One’s now-forfeited construction permit. Neither of these requests for relief is appropriate for a petition for declaratory ruling. According to section 1.2(a) of the rules, a declaratory ruling is designed for “terminating a controversy or removing uncertainty.”<sup>24</sup> The expiration of the Cross City construction

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<sup>19</sup> 47 CFR § 1.106(c).

<sup>20</sup> See generally *Declaratory Ruling Decision* at 2-4 nn.4-18. See also *Reconsideration Decision, Urban One MO&O*, and *Reconsideration Dismissal*, *supra* notes 7-10.

<sup>21</sup> See *S&L Teen Hospital Shuttle*, Order on Reconsideration, 17 FCC Rcd 7899, 7900-01, para. 3 (2002) (citing *Mandeville Broad. Corp. and Infinity Broad. of Los Angeles*, Order, 3 FCC Rcd 1667, para. 2 (1988)).

<sup>22</sup> See 47 CFR § 1.106(b)(2)(ii) (referenced in 47 CFR § 1.106(c)(1)).

<sup>23</sup> Section 1.2(b) (47 CFR § 1.2(b)) states that the Bureau “should docket such a petition [for declaratory ruling] within an existing or current proceeding, depending on whether the issues raised within the petition substantially relate to an existing proceeding. The bureau or office then should seek comment on the petition via public notice.”

<sup>24</sup> See 47 CFR § 1.2(a).

permit was neither controversial nor uncertain,<sup>25</sup> and the consequence of automatic forfeiture was unambiguously set forth in the authorization itself, as well as in section 319(b) of the Act and section 73.3598(e) of the rules.<sup>26</sup> Moreover, a party's recourse when disagreeing with a clear and non-controversial Commission or staff action is to seek reconsideration or review, not to file a petition for declaratory ruling. As the Commission has stated, "[a]n interested person who believes an unambiguous Commission decision is incorrect, however, should either file a timely petition for reconsideration with this Commission or a timely appeal or petition for review with an appropriate Court of Appeals. Such persons should not attempt to use a petition for declaratory ruling as a substitute for a petition for reconsideration."<sup>27</sup>

Neither of the specific requests for relief raised in the Petition for Declaratory Ruling was so complicated as to require additional analysis and extended time for non-parties to file comments.<sup>28</sup> The fact that Urban One disagreed with the staff's unambiguous decisions not to grant the Modification Application or the tolling request does not render either a matter of such complexity or of such public interest that it must be docketed for public comment.<sup>29</sup>

Although we disagree that section 1.2(b) required that we seek comment on Urban One's request to remove the Cross City allotment from Auction 109, as pointed out in the *Declaratory Ruling Decision*, nevertheless the public had multiple opportunities to comment on the entire proposed Auction 106/109 inventory, including the Cross City allotment.<sup>30</sup> Urban One offers no explanation for why those opportunities were not sufficient nor does it explain why it did not avail itself of those opportunities to provide timely input about the Cross City allotment.<sup>31</sup> In the Petition, it neglects to acknowledge that it had ample opportunity to comment on the inclusion of the Cross City allotment in Auctions 106 and 109, but did not do so. Urban One has mis-read the framework of section 1.2(b), and we reject its argument in this regard.

Retroactive application of eligible entity definition and section 73.3598(a). We disagree with Urban One and find the Bureau's 2021 reinstatement of the eligible entity policy cannot be retroactively

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<sup>25</sup> In adopting section 1.2(b), the Commission intended to make the process for petitions for declaratory rulings "similar" to that for petitions for rule making, meant for matters so complex that extra response time is warranted. *Part I Amendment R&O*, 26 FCC Rcd at 1598-99, para. 12.

<sup>26</sup> See *Declaratory Ruling Decision* at 1 n.1; 47 U.S.C. § 319(b); 47 CFR § 73.3598(e).

<sup>27</sup> *Public Service Commission of Maryland and Maryland People's Counsel Applications for Review of a Memorandum Opinion and Order By the Chief, Common Carrier Bureau Denying The Public Service Commission of Maryland Petition for Declaratory Ruling Regarding Billing and Collection Services*, Memorandum Opinion and Order, 4 FCC Rcd 4000, 4004, para. 30 (1989).

<sup>28</sup> We also point out that, to the extent in-depth analysis was needed in considering Urban One's contentions, the staff wrote a seven-page letter decision in the *Declaratory Ruling Decision*, in which it exhaustively responded to Urban One's contentions. It is unclear what benefit Urban One thinks would have accrued by opening its arguments up to public comment. Also, as discussed below, the public was invited to comment on the inclusion of the Cross City permit in the Auction 106 and Auction 109 inventories—an invitation that Urban One itself declined.

<sup>29</sup> We reiterate that the mere re-labeling of a straightforward request for relief as a "petition for declaratory ruling" does not of itself justify the extended deadlines and other treatment accorded such petitions under 47 CFR § 1.2.

<sup>30</sup> *Declaratory Ruling Decision* at 4-5. See *Auction 106 Comment Public Notice, Auction 109 Comment Public Notice*, *supra* note 13.

<sup>31</sup> *Id.*

applied to the Urban One construction permit, which expired and was automatically forfeited on July 21, 2014. Throughout this protracted proceeding, Urban One has claimed to be an “eligible entity,” and that it is therefore unequivocally entitled to an additional 18 months in which to construct the Station.<sup>32</sup> It argues that the Commission’s eligible entity definition should be retroactively applied to it because the rule “went into effect in 2008.”<sup>33</sup> Urban One further argues that the eligible entity definition and rules applying that definition, which were reinstated by the United States Supreme Court in 2021,<sup>34</sup> should be considered to be of “retroactive effect . . . appropriate for new applications of existing law, clarifications, and additions.”<sup>35</sup> Further, citing certain specific aspects of its prior 2014 attempt to modify the Station construction permit, Urban One contends that “equity and fairness” must now be applied and should dictate that the Cross City construction permit be returned to it.<sup>36</sup>

As noted, the revenue-based eligible entity definition, as well as the revision to section 73.3598 of the rules allowing an eligible entity acquiring an expiring construction permit up to an additional 18 months to construct the facility, were first adopted in the Commission’s *2008 Diversity Order*.<sup>37</sup> The United States Court of Appeals for the Third Circuit vacated the eligible entity definition, and the rules reliant on that definition in 2011,<sup>38</sup> before Urban One acquired the Cross City construction permit in 2013. The eligible entity definition, and correlating rules, were subsequently addressed and re-adopted by the Commission in August 2016, in the *2014/2010 Quadrennial Second R&O*.<sup>39</sup> When that re-adopted definition became effective in December 2016, the Cross City construction permit had already expired and been forfeited by its terms, and Urban One had exhausted its remedies before the Commission.<sup>40</sup>

It is thus undisputed that the eligible entity definition, and the specific rule relying on that definition that gave certain eligible entities additional time to build out their facilities,<sup>41</sup> were not in effect at any time from the date when Urban One first acquired the Cross City construction permit, through the date when that permit expired and was forfeited by its terms, and through the date when the Commission

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<sup>32</sup> See 47 CFR § 73.3598(a).

<sup>33</sup> Petition at 2.

<sup>34</sup> See *supra* note 14.

<sup>35</sup> Petition at 3.

<sup>36</sup> *Id.* at 2-3.

<sup>37</sup> See *2008 Diversity Order*, *supra* note 4, 23 FCC Rcd at 5925-26, 5928-31, paras. 6-7, 10-16.

<sup>38</sup> *Prometheus Radio Project v. FCC*, 652 F.3d 431, 437 (3d Cir. 2011) (*Prometheus II*).

<sup>39</sup> *2014 Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket Nos. 14-50, 09-182, 07-294, 04-256, Second Report and Order, 31 FCC Rcd 9864, 9985-87, para. 285-286 (2016) (*2014/2010 Quadrennial Second R&O*). See also *Prometheus Supreme Court Decision*, 141 S.Ct. at 1160 n.4.

<sup>40</sup> See *2014 Quadrennial Regulatory Review*, 81 Fed. Reg. 76220-01 (Nov. 1, 2016) (announcing December 1, 2016, effective date of reinstated eligible entity policy); *Reconsideration Dismissal*, *supra* note 10, 31 FCC Rcd 7680 (MB 2016) (exhausting Urban One’s remedies before the Commission). Following release of the *Reconsideration Dismissal*, on August 15, 2016, Urban One filed a Petition for Review with the United States Court of Appeals for the District of Columbia Circuit.

<sup>41</sup> See 47 CFR § 73.3598(a) (“An eligible entity that acquires an issued and outstanding construction permit for a station in any of the services listed in this paragraph shall have the time remaining on the construction permit or eighteen months from the consummation of the assignment or transfer of control, whichever is longer, within which to complete construction and file an application for license.”).

finally rejected Urban One's attempts to revive the construction permit. Urban One itself states in its Petition that "an agency that fails to comply with its own regulations is fatal to the deviant action."<sup>42</sup> It is true that, as a general matter, an administrative agency must apply the law in effect at the time it renders its decision unless there is some indication to the contrary in the statute or its legislative history or unless the new statute or rule would have retroactive effect.<sup>43</sup> What Urban One fails to recognize is that, at the time the Bureau and the Commission released their decisions regarding the Station construction permit, the rule in effect did not include the eligible entity definition, nor did it include the allowance for an additional 18 months to construct that Urban One now demands. In rejecting Urban One's arguments and demands for extra time to construct, the Bureau and Commission correctly applied the law in effect at the time.

We therefore reject Urban One's argument that the 2021 *Prometheus Supreme Court Decision* invalidates the entire administrative history of the eligible entity definition and the rules employing that definition. Urban One seems to contend that the *Prometheus Supreme Court Decision* effectively nullified the entire intervening record of the eligible entity definition from 2008 to the present, including the two prior vacatur and remands of the definition by a court of appeals, ensuing suspensions of that definition and related rules by the Commission, and the ultimate lifting of the suspension upon reinstatement of the definition pursuant to a Supreme Court reversal.<sup>44</sup> As noted above, the Commission is bound by the law as it exists at the time a given case is decided, and that body of law included all court and Commission decisions pertaining to the eligible entity definition. Those valid legal actions did not cease to exist on the day the Supreme Court reversed the court of appeals decision, such that parties affected by those earlier actions—legally correct when made—may now come before us to demand that we retroactively render the definition and correlating rules applicable during the time periods when the regulations were not actually in effect. We know of no precedent, and Urban One cites none, to support this novel proposition.<sup>45</sup>

Moreover, Urban One ignores the fact that the procedural history of the eligible entity policy includes Commission public notices, published in accordance with section 552(a) of the Administrative Procedure Act,<sup>46</sup> announcing the effective dates of both rule suspensions and rule reinstatements.<sup>47</sup> This includes notice of the effective date of those rules post-*Prometheus Supreme Court Decision*.<sup>48</sup> Urban

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<sup>42</sup> Petition at 2 (citing *Way of Life Television Network, Inc. v. FCC*, 593 F.2d 1356 (D.C. Cir. 1979)).

<sup>43</sup> *Petition for Modification of Dayton, Ohio, Designated Market Area with Regard to Television Station WHIO-TV, Dayton, Ohio*, MB Docket No. 13-201, Memorandum Opinion and Order, 33 FCC Rcd 8943, 8948, para. 14 (2018).

<sup>44</sup> See *supra* notes 5, 14.

<sup>45</sup> To hold otherwise would require an agency to revisit virtually any case that might have been impacted by a previously vacated and suspended rule. Indeed, given that any rule is subject to attack when it is first applied to a party (see, e.g., *Functional Music v. FCC*, 274 F.2d 543, 546-47 (D.C. Cir. 1958), *cert. denied*, 361 U.S. 813 (1959); *Geller v. FCC*, 610 F.2d 973, 978 (D.C. Cir. 1979)), we could essentially never reach a final decision were we to accept Urban One's novel interpretation of retroactivity: a subsequent litigant could successfully attack a rule and, in theory, unravel all previous decisions that relied on the rule.

<sup>46</sup> 5 U.S.C. § 552(a)(D), (E).

<sup>47</sup> See *Media Bureau Provides Notice of Suspension of Eligible Entity Rule Changes and Guidance on the Assignment of Broadcast Station Construction Permits to Eligible Entities*, Public Notice, 26 FCC Rcd 10370 (MB 2011); *2014/2010 Quadrennial Second R&O*, 31 FCC Rcd at 9979-84, paras. 279-286.

<sup>48</sup> See *Media Bureau Announces June 30, 2021 Effective Date of Reinstated Media Ownership Rules*, Public Notice, DA 21-783 (MB July 1, 2021), cited *supra* note 14.

One would have us eradicate these published effective date notices in order to substitute its own preferred effective date for the previously vacated rules. Again, however, Urban One may not re-write the record in order to sidestep the Cross City permit's expiration at a time when the eligible entity definition, and the construction permit extension provisions of section 73.3598, had been suspended. We therefore reject Urban One's attempt to argue that the eligible entity definition and related rule should be applied *post hoc* in order to resurrect the forfeited Cross City permit.

Equity arguments. We also reject Urban One's claim that we must reinstate its construction permit based on "equity and fairness." Apart from contradicting the history of Urban One's Cross City construction permit,<sup>49</sup> its appeals to "equity and fairness" are nothing more than an attempt to relitigate the Modification Application, the Commission's denial of which has been final for years.

As discussed in the Background section above, Urban One has extensively pleaded, and the Commission has rejected, its arguments regarding the Modification Application it filed for the Cross City construction permit.<sup>50</sup> Having unsuccessfully sought Commission and court review of these contentions, Urban One may not simply re-argue the points, years later, by labeling them an appeal to "equity and fairness." This is especially true where, as here, Urban One attempts to use a petition for reconsideration of a what we have already determined to be an invalid Petition for Declaratory Ruling to introduce new arguments in matters that have already been argued, decided, and dismissed. We thus dismiss Urban One's "equity and fairness" arguments as untimely.<sup>51</sup>

**Conclusion.** Because Urban One has not presented us with new facts or circumstances justifying reconsideration of the *Declaratory Ruling Decision*, we dismiss the Petition. As discussed above, on alternative and independent grounds, we find no merit in Urban One's various arguments in support of its Petition, and on that basis the January 14, 2022, Petition for Reconsideration is denied.

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>49</sup> For example, Urban One states that the Bureau should have granted a request for special temporary authorization (STA) to operate the Cross City facility that it insists it submitted. Urban One attaches to its Petition as Exhibit A a bare copy of an STA request, but this does not bear an Office of the Secretary stamp or any other indication that it was received or accepted for filing by the Commission, and there is no record of such a request in the Commission's filing databases. Without a record of the filing, or a date-stamped copy, we have no basis to conclude that such request was ever filed.

<sup>50</sup> See *supra* notes 7-11 and accompanying text.

<sup>51</sup> Even were we to consider the substance of Urban One's arguments, we would have rejected them. Given the protracted history of this matter, however, we see no value in discussing contentions that, as noted in the text, should not have been presented in the first place.