



Federal Communications Commission
Washington, D.C. 20554

August 18, 2023

DA 23-721
In Reply Refer to:
1800B3-ATS
Released: August 18, 2023

Albuquerque Board of Education
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In re: **Gillian Sutton**
Station DKRSN(AM),
Los Alamos, New Mexico
Facility ID No. 49128
Application File No. BL-19990611AE

FM Translator DK296GI,
Los Alamos, New Mexico
Facility ID No. 154369
Application File No. BLFT-20130819AGC

“Emergency Petition for Extraordinary Relief”

Dear Counsel:

We have before us a pleading styled “Emergency Petition for Extraordinary Relief” (Petition) filed on August 2, 2023,¹ by Albuquerque Board of Education (ABE) requesting that the Commission reinstate the cancelled licenses of Station DKRSN(AM), Los Alamos, New Mexico (Station) and FM Translator Station DK296GI, Los Alamos, New Mexico (Translator), which were formerly licensed to Gillian Sutton (Sutton). ABE, which appears to have no relationship to Sutton, the Station, or the Translator, proposes to take over operation of the Station and Translator. For the reasons discussed below, we dismiss the Petition as procedurally defective pursuant to section 405 of the Communications Acts of 1934, as amended (Act) and section 1.106(f) of the Commission’s rules (Rules),² and, on a separate and independent basis, dismiss the Petition because ABE lacks standing to file it, as required by section 405 of the Act and section 1.106(b)(1) of the Rules.³

Background. On May 1, 2023, Sutton voluntarily surrendered the licenses for the Station and the Translator,⁴ and the Media Bureau published public notice of that cancellation on May 5, 2023.⁵

¹ Although the pleading is dated August 1, 2023, it was emailed to the staff on August 2, 2023. Email from Ernest T. Sanchez, Esq., to Albert Shuldiner, Audio Division, FCC Media Bureau (August 2, 2023 2:48 PM EDT) (explaining that the Commission’s broadcast database, LMS, would not accept the Petition through electronic filing). Accordingly, we will consider it filed as of August 2, 2023.

² 47 U.S.C. § 405; 47 CFR § 1.106(f).

³ 47 U.S.C. § 405; 47 CFR § 1.106(b)(1).

⁴ Letter from Lauren Lynch Flick, Esq., to Son Nguyen, Audio Division, FCC Media Bureau (May 1, 2023) (cancellation notice for Station); Application File No. 0000214473 (filed May 2, 2023) (cancellation notice for Translator).

Three months later, ABE submitted the Petition, seeking reinstatement of the licenses for the Station and Translator so that ABE can serve as the “temporary trustee of these licenses, so that the facilities can resume operating on an emergency basis.”⁶ ABE explains that “[t]he FCC cancellation leaves Los Alamos County with no local, licensed AM broadcast service whatsoever.”⁷ The Petition includes a letter from Sutton stating that she supports the reinstatement request.⁸

Discussion. Although the Petition is styled as an “Emergency Petition for Extraordinary Relief,” such a pleading is not contemplated by our Rules, and we will treat it as a petition for reconsideration because it seeks reconsideration of the cancellation of the licenses for the Station and the Translator. Section 405 of the Act and section 1.106(f) of the Rules require any petition for reconsideration to be filed within thirty days of the date upon which the Commission gives public notice of the decision.⁹ In this case, the *Cancellation Public Notice* was released on May 4, 2023, and any petition for reconsideration of that Public Notice was due on Monday, June 5, 2023.¹⁰ However, the Petition was not filed until August 2, 2023, almost two months after the filing deadline. The Petition is therefore untimely. Moreover, the Commission has held that “[a] petitioner cannot avoid filing deadlines by calling its petition something other than a petition for reconsideration when it, in effect, seeks reconsideration or review.”¹¹ Accordingly, we dismiss the Petition.

As a separate and independent basis for dismissing the Petition, we find that ABE lacks standing to file it.¹² In the broadcast regulatory context, a non-party attempting to establish standing as someone aggrieved or whose interests were adversely affected generally must show it in one of three ways: (1) as a competitor in the market subject to signal interference; (2) as a competitor in the market subject to economic harm; or (3) as a resident of the station’s service area or regular listener of the station.¹³ A petitioner claiming its interest is adversely affected must demonstrate a direct causal link between the challenged action and its alleged injury, and show that the injury would be prevented or redressed by the relief requested.¹⁴

ABE was not a party to Sutton’s surrender of the licenses for the Station or the Translator and has not demonstrated what alleged injury it has suffered, or how grant of the Petition would redress that injury. Moreover, the Commission has previously held that a third party (*i.e.*, someone with no attributable interest in the former station or stations) lacks standing to seek reinstatement of a surrendered

⁵ *Actions*, Public Notice, Report No. PM-2-230504-01 (MB May 4, 2023) (*Cancellation Public Notice*).

⁶ Petition at 1.

⁷ *Id.*

⁸ *Id.* at 4.

⁹ 47 U.S.C. § 405(a); 47 CFR § 1.106(f); 47 CFR § 1.4(b)(2) (“For non-rulemaking documents released by the Commission or staff . . . the release date” is the date of public notice).

¹⁰ Because the 30-day period ran on Saturday, June 3, 2023, the filing deadline was the next business day, which was Monday, June 5, 2023. *See* 47 § CFR 1.4(e).

¹¹ *Holy Family Oratory of St. Philip Neri*, Memorandum Opinion and Order, 29 FCC Rcd 13273, 13274, para. 5 (2014).

¹² 47 U.S.C. § 405; 47 CFR § 1.106(b)(1).

¹³ *See Punjabi American Media, LLC*, Memorandum Opinion and Order, 35 FCC Rcd 6869, 6872, n.26 (2020) (citing *Tribune Media Co.*, Memorandum Opinion and Order, 34 FCC Rcd 8436, 8448, para. 23 (2019)).

¹⁴ *Susquehanna Radio Corp.*, Memorandum Opinion and Order, 29 FCC Rcd 13276, 13277, para. 3 (2014) (*Susquehanna MO&O*), *recon. denied*, Memorandum Opinion and Order, 30 FCC Rcd 13978 (2015).

Commission authorization, even if the third party seeks to obtain that authorization for itself.¹⁵ We would thus dismiss the Petition even it were timely filed.

Conclusion/Action. Accordingly, **IT IS ORDERED** that the “Emergency Petition for Extraordinary Relief” filed by Albuquerque Board of Education on August 2, 2023, treated as a Petition for Reconsideration, **IS DISMISSED**.¹⁶

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

¹⁵ *Id.* (affirming dismissal of petition for reconsideration of a license cancellation based on petitioners’ lack of standing where petitioner sought to reinstate and obtain license for itself).

¹⁶ 47 U.S.C. § 405; 47 CFR § 1.106(f).