

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

In the Matter of)	
)	
POWELL MEREDITH COMMUNICATIONS COMPANY)	File No. BNP-20000128ACC
)	Facility ID No. 122509
)	
For a Construction Permit for a New AM Station at Las Vegas, Nevada)	
)	
VICTOR A. MICHAEL)	File No. BNP-20000201AEM
)	Facility ID No. 122459
)	
For a Construction Permit for a New AM Station at Cheyenne, Wyoming)	
)	
ALVIN LOU MEDIA, INC.)	File No. BNP-20000201ADR
)	Facility ID No. 122419
)	
For a Construction Permit for a New AM Station at Spring Valley, Nevada)	

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

Adopted: January 15, 2008

Released: January 17, 2008

By the Commission:

I. INTRODUCTION

1. We have before us a “Petition for Reconsideration of MO&O Under FCC 04-148: Alvin Lou Media, Inc. Must Lawfully Be Awarded the Right to File for a Construction Permit to Build the 1590 kHz Station in Spring Valley, NV – With Rescinding of the Illegal FCC Award to Powell Meredith Communications Company of the Right to Said Frequency, Rescinding of the Illegal 307(b) Determination and Result of the Improper ‘Cash-Bid Auction’ Stemming From Said 307(b) Order, and Rescinding of Any and All of Powell Meredith’s Pending 301 Application(s) Stemming From its Original Application in AM Auction 32/MX Group 38; With Strong Protest Against the MO&O’s Lack of Candor and Endorsement of an Illegal, Fraudulent Result” (“Petition”), filed July 30, 2004, by Alvin Lou Media, Inc. (“ALM”). ALM seeks reconsideration of the Commission’s decision in *Powell Meredith Communications Company, Victor A. Michael, and Alvin Lou Media, Inc.*,¹ in which the Commission denied ALM’s application for review of the Media Bureau’s denial of reconsideration of its decision not to dismiss the mutually exclusive application of Powell Meredith Communications Company (“PMCC”) for a new AM station at Las Vegas, Nevada, and directed ALM and PMCC to proceed to auction. For the reasons set forth below, we deny the Petition.

¹ Memorandum Opinion and Order, 19 FCC Rcd 12672 (2004) (“*Powell Meredith*”).

II. BACKGROUND

2. ALM, PMCC, and Victor A. Michael (“Michael”) filed applications for new AM broadcast stations during the filing window for AM Broadcast Auction No. 32.² ALM filed for a new AM station at Spring Valley, Nevada; PMCC filed for a new AM station at Las Vegas, Nevada; and Michael filed for a new AM station at Cheyenne, Wyoming. ALM and PMCC’s applications were mutually exclusive with each other, and PMCC’s proposal was mutually exclusive with Michael’s Cheyenne proposal. In its April 11, 2002, decision (“Staff Decision”), the Media Bureau (“Bureau”) determined that Spring Valley was located within the Las Vegas Urbanized Area, and that ALM’s proposal would place a principal community signal over more than 50 percent of the Las Vegas Urbanized Area.³ The Bureau also found that differences in areas and populations to be served between the ALM and PMCC proposals were *de minimis*, and thus that both were considered to be applications to serve the Las Vegas Urbanized Area. Because ALM and PMCC’s Las Vegas area proposals would serve significantly greater areas and populations than Michael’s Cheyenne proposal, the Bureau found that Las Vegas was entitled to a dispositive Section 307(b) preference over Cheyenne. Accordingly, the Bureau directed that ALM’s and PMCC’s applications proceed to auction. The Bureau denied Michael’s petition for reconsideration, and ALM’s petition for reconsideration and for stay of the auction, by letter dated August 15, 2002.⁴ The ALM and PMCC applications proceeded to auction, which commenced December 10, 2002, and was completed December 12, 2002.⁵ ALM was determined not qualified to bid at auction because it did not make a timely upfront payment.⁶ PMCC was the winning bidder at auction for the AM broadcast construction permit at Las Vegas, Nevada, in MX Group AM 38.⁷ As noted above, the Commission denied ALM’s application for review in *Powell Meredith*.⁸

III. DISCUSSION

3. The Commission’s rules prescribe limited circumstances under which a party may seek reconsideration of Commission denial of an application for review. A petition for reconsideration will only be entertained if one or more of the following circumstances is present:

² See *AM Auction Filing Window and Application Freeze*, Public Notice 14 FCC Rcd 19490 (MMB/WTB 1999).

³ See *Darien, Rincon, and Statesboro, Georgia; Screven, Rincon, and Statesboro, Georgia and Palatka and Middleburg, Florida*, Report and Order, 17 FCC Rcd 20485, 20486 (MMB 2002) (showing under *Faye & Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374, 5377-79 (1988), is required when a station located outside an urbanized area proposes to place a principal community signal over 50 percent or more of the urbanized area).

⁴ *Mr. Dave Garey, Lee J. Peltzman, Esq., and A. Wray Fitch, III, Esq.*, Letter, Ref. No. 1800B3-TSN (MB Aug. 15, 2002).

⁵ *New AM Broadcast Stations Auction Closes*, Public Notice, 17 FCC Rcd 25122 (WTB/MB 2002) (“*Auction 32 Closing Public Notice*”).

⁶ 47 C.F.R. § 1.2106(c) (applicant not submitting at least the minimum upfront payment will be ineligible to bid and its application dismissed). See *Auction of Construction Permits for New AM Broadcast Stations – 5 Qualified Bidders*, Public Notice, 17 FCC Rcd 23665, 23675 (MB/WTB 2002) (ALM listed as non-qualified bidder).

⁷ *Auction 32 Closing Public Notice* at 25129. PMCC submitted a gross bid equal to its upfront payment of \$50,000. Because it claimed a 25 percent new entrant bidding credit, PMCC’s net winning bid was \$37,500. PMCC timely filed its complete Form 301 long form application January 17, 2003 (File No. BNP-20030117AAB).

⁸ See *supra* note 1. Michael filed a Voluntary Request for Dismissal of Pending Application for Review on January 29, 2004, and his application for review was accordingly dismissed. *Powell Meredith*, 19 FCC Rcd 12672 n.2.

- (i) The petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or
- (ii) The petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.⁹

4. With one exception discussed below, in its Petition ALM does not cite to facts or events that occurred or circumstances that have changed since ALM's last opportunity to present such matters, or that were unknown to ALM and could not have been learned through the exercise of ordinary diligence. Indeed, most of the exhibits ALM attaches to its Petition could have been brought to the Commission's attention before the June 30, 2004, release of *Powell Meredith* (e.g., an engineering report filed with Michael's September 19, 2002, Application for Review, records from the Bureau's Consolidated Data Base System).

5. ALM does attach a copy of an e-mail from Amy Meredith, one of PMCC's principals, to Rep. Charles Stenholm of Texas.¹⁰ In the e-mail, Ms. Meredith requests the Congressman's assistance with PMCC's pending Las Vegas application, and references engineering amendments to PMCC's post-auction Form 301 application, some in response to Commission deficiency letters.¹¹ According to ALM, this provides additional evidence of the Commission's "covering up its knowledge from the get-go of [PMCC's] illegal technical proposal."¹² However, the alleged deficiencies in PMCC's technical proposal, and their consequent effect on PMCC's ability to participate in an auction, were the crux of ALM's Application for Review, and were addressed in *Powell Meredith*. The Commission held that what ALM terms "illegality" is in fact a question regarding the acceptability or grantability of the PMCC technical proposal, and found that the Bureau properly did not consider such questions prior to auction.¹³ As such, ALM only presents additional evidence to bolster an argument that the Commission in *Powell Meredith* deemed irrelevant to its analysis, and thus ALM's evidence does not constitute new decisional facts or changed circumstances. Rather, ALM merely criticizes the Commission's holding in *Powell Meredith* and re-asserts the arguments raised in its Application for Review. "It is settled Commission policy that petitions for reconsideration are not to be used for the mere reargument of points previously advanced and rejected."¹⁴

⁹ 47 C.F.R. § 1.106(b)(2).

¹⁰ Exhibit D to Petition. Rep. Stenholm forwarded this e-mail to the Bureau without serving ALM. Accordingly, the Commission's Office of General Counsel returned the documents to Rep. Stenholm's office in mid-June of 2004, shortly before *Powell Meredith* was released. As is Commission policy, a copy of the documents was concurrently sent to ALM. 47 C.F.R. § 1.1212(e).

¹¹ *Id.*

¹² Petition at 15.

¹³ 47 U.S.C. § 307(b). See *Powell Meredith*, 19 FCC Rcd at 12673-74.

¹⁴ *S&L Teen Hospital Shuttle*, Order on Reconsideration, 17 FCC Rcd 7899, 7900 (2002).

IV. CONCLUSION

6. For the reasons stated above, and pursuant to the Communications Act of 1934, as amended, and our Rules, ALM's Petition IS DENIED.¹⁵

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁵ See 47 U.S.C. § 405; 47 C.F.R. § 1.106.