

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

In the Matter of)	
)	
Pamplin Broadcasting, Inc.)	File No. BNP-20001020AAZ
)	
For a Permit to Construct a New)	
AM Station at Reno, Nevada)	Facility ID No. 129251

MEMORANDUM OPINION AND ORDER

Adopted: February 13, 2008

Released: February 14, 2008

By the Commission:

I. BACKGROUND

1. On January 17, 2008, the Commission released a Memorandum Opinion and Order in this application proceeding¹ affirming the Media Bureau's (the "Bureau") grant of the above-captioned application of Pamplin Broadcasting, Inc. ("Pamplin") for a construction permit for a new AM station in Reno, Nevada (the "Reno Permit").² It has come to the Commission's attention that there is a factual error in the analysis of a Petition for Reconsideration filed by Americom Las Vegas, Limited Partnership ("Americom"). We, therefore, set aside on our own motion³ the portion of the *Pamplin MO&O* addressing Americom's arguments. For the reasons discussed below, we dismiss Americom's Petition for Reconsideration of the Permit Decision.

II. DISCUSSION

2. Americom, which did not participate earlier in this proceeding, filed a Petition for Reconsideration ("Petition") on October 9, 2003. Americom argues that Pamplin's proposed new station would interfere with Americom Station KPLY(AM), Reno, Nevada (Facility ID No. 202). Subsequent to the filing of the Petition, Americom changed the station's call sign to KJFK(AM). The *Pamplin MO&O* erroneously analyzed the potential interference impact on a different station which currently uses this call sign, KPLY(AM), also licensed to Reno, Nevada (Facility Id No. 50304). Americom states that it was not aware of the potential for interference to KJFK(AM) until the staff issued the Reno Permit, which was conditioned on site users executing an agreement for the installation of traps and filters. Americom contends that the Reno Permit condition reflects a clear potential for interference to KJFK(AM). Pamplin responds that Americom fails to show good cause for failing to participate earlier and that it

¹ *Pamplin Broadcasting, Inc.*, Memorandum Opinion and Order (rel. Jan. 17, 2008) (FCC 08-20) ("*Pamplin MO&O*").

² See *Letter to Natalie G. Roisman, Esq. et al.* (MB Sept. 3, 2003) (the "Permit Decision").

³ See 47 C.F.R. § 1.108.

lacks standing to challenge the Permit Decision.⁴ It also argues that Americom's interference claim is based on conjecture.⁵

3. A non-party may file a petition for reconsideration if it demonstrates that its interests are adversely affected and that it was not possible for it to have participated earlier.⁶ A petition for reconsideration that relies on facts not previously presented may be granted if consideration of the facts is required in the public interest.⁷ Americom claims that its interests are affected because the outcome of this proceeding could affect KJFK(AM). However, Americom has not shown good reason for its not having participated earlier or that consideration of its arguments is required in the public interest. There were numerous public notices in the course of this proceeding. A would-be petitioner's lack of actual notice of the pendency of an application proceeding does not establish good cause for its failure to participate.⁸ We therefore dismiss Americom's Petition. In any event, even aside from this procedural bar to Americom's participation and even accepting, *arguendo*, Americom's claim that the Permit Decision directly affects KJFK(AM) in light of the condition discussed above, it has not shown that operation of the new Reno station could have an *adverse* affect. The staff routinely places a site user coordination condition on permits that, like the instant permit, authorize facility co-location with existing facilities. Contrary to Americom's assertion, the condition is not based on a finding that the new station would likely cause interference to an existing station. Moreover, the engineering statement that Americom submits with its Petition contains no measurements or other support for its interference claims, only an assertion that the facilities of KJFK(AM) and the proposed station are "very near."⁹ Thus, were we to consider Americom's Petition on the merits, we would deny it.

4. Finally, we note that both our Rules and licensing processes include safeguards to protect nearby AM transmission facilities. For example, conditions designed to prevent intermodulation and spurious emissions are imposed on a permittee which proposes to co-locate with another AM station. In

⁴ We need not resolve the standing dispute because, even if we accorded standing, for the reasons stated *infra*, we would not find Americom's arguments against the issuance of the Reno Permit persuasive. See *Nextel Communications*, Memorandum Opinion and Order, 20 FCC Rcd 13967, 14021 n.335 (2005); *WBBK Broadcasting, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 5906, 5907 n.3 (2000).

⁵ Americom also claims that Pamplin lacked reasonable assurance of site availability, because the land owner, the University of Nevada, had not discussed site use with Pamplin. In response, Pamplin produced a lease between Pamplin and Thomas Aquinas School (the "School"), the licensee of an existing radio station on the site. In view of the School's representations of authority to enter into the lease, we find that Pamplin received reasonable assurance of site availability prior to filing its application. See *Linda E. Krook*, Initial Decision, 2 FCC Rcd 3511, 3514 (ALJ 1987) (reasonable assurance found based on good faith sublease negotiated prior to application, despite post-application protest by the site's land owner). Moreover, on September 1, 2005, Pamplin submitted a signed Declaration dated July 8, 2005, of Ronald S. Pardini, Associate Director of the Nevada Agriculture Experimental Station, a division of the University of Nevada, Reno. Mr. Pardini states that he has been authorized by the University of Nevada, Reno to express the University's willingness to lease the transmitter site to Pamplin.

⁶ See 47 C.F.R. § 1.106(b)(1). See also 47 U.S.C. § 405(a).

⁷ See 47 C.F.R. § 1.106(c)(2).

⁸ See, e.g., *Texas Telecasting, Inc.*, Memorandum Opinion and Order, 52 RR 2d 150 (1982). Of primary importance among the Commission's notice requirements is the Commission's own issuance of a public notice, which provides sufficient constructive notice to enable timely participation. See *Northwest Broadcasting, Inc.*, Memorandum Opinion and Order, 6 Comm. Reg. (P&F) 685 (1997).

⁹ See 47 C.F.R. § 1.106(e) (requirements for petitions for reconsideration alleging electrical interference).

the event that KJFK(AM) does experience interference from the new Reno station, as Americom predicts, KJFK(AM) may file a complaint with appropriate supporting documentation.

III. ORDERING CLAUSES

5. Accordingly, IT IS ORDERED that the portion of the *Pamplin MO&O* (FCC 08-20) addressing the arguments of Americom Las Vegas Limited Partnership IS SET ASIDE on the Commission's own motion.¹⁰

6. IT IS FURTHER ORDERED that the Petition for Reconsideration filed on October 9, 2003, by Americom Las Vegas Limited Partnership IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁰ See 47 C.F.R. § 1.108.