

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

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| In the Matter of |) | |
| |) | |
| JET FUEL BROADCASTING |) | File No. BNP-20040130AQO |
| |) | Facility ID No. 161337 |
| Application for a New AM Broadcast Station at Cutten, California |) | |
| |) | |

MEMORANDUM OPINION AND ORDER

Adopted: April 11, 2013

Released: April 12, 2013

By the Commission: Commissioner McDowell not participating.

1. The Commission has before it the “Application for Reviewing: Request for Full Reinstatement of Jet Fuel Broadcasting Application for a New Radio Service at Cutten, California, with Consideration of Application on Prospective Service Merits, and Rescinding of Any Conflicting Frequency Awards That May Have Been Made Heretofore” (“AFR”), filed by Jet Fuel Broadcasting (“JFB”), applicant for a new AM broadcast station at Cutten, California. JFB seeks review of the Media Bureau’s July 27, 2009, decision denying JFB’s request for waiver of the deadline for submitting a showing under Section 307(b) of the Communications Act,¹ and consequently dismissing JFB’s Form 175 “tech box” application for a new station at Cutten,² filed during the filing window for AM Auction 84 (“Auction 84”).

2. Upon review of the AFR and the entire record, we conclude that JFB has failed to demonstrate that the Bureau erred. To the extent that JFB has raised, for the first time on review, additional facts and arguments to support its request for waiver of the Section 307(b) submission deadline,³ such new facts and arguments cannot form the basis for grant of the AFR.⁴ To the extent that JFB argues on review that it was denied the opportunity to “comment” upon the Bureau’s disposition of

¹ 47 U.S.C. § 307(b) (“Section 307(b”).

² *Mr. Dave Garey*, Letter, Ref. No. 1800B3-BSH/LAS (MB July 27, 2009) (“*Staff Decision*”). The *Staff Decision* was superseded by *Mr. Dave Garey*, Letter, Ref. No. 1800B3-TSN/LAS (MB Sept. 25, 2009), which was identical to the *Staff Decision* in terms of the analysis and conclusion, but which clarified JFB’s service obligations under the Commission’s *ex parte* rules, 47 C.F.R. §§ 1.1200 – 1.1216.

³ On review, JFB states for the first time that on the October 31, 2005, filing deadline, “JFB witnessed . . . first-hand” documents being accepted at the Commission’s facility for hand-delivered submissions after the “7 pm filing deadline,” and that an unnamed “contractor employee” informed JFB that submissions brought by “established couriers” the following morning would be stamped as having been received on October 31 “as a courtesy to couriers used by the major Washington DC law firms.” Thus, JFB contends, “as an independent, pro se filer,” it had no access to the “deadline extension” provided such couriers and their firms, and therefore the Commission’s refusal to accept its Cutten Section 307(b) showing, submitted a week after the deadline, was “purely arbitrary.” AFR at 3-4.

⁴ 47 C.F.R. § 1.115(c). *See also, e.g., NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008) (citing *BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1184 (D.C. Cir. 2003), quoting *21st Century Telesis Joint Venture v. FCC*, 318 F.3d 192, 200 (D.C. Cir. 2003)) (discouraging the Commission from entertaining late-filed pleadings in the absence of extremely unusual circumstances).

applications that had been mutually exclusive with JFB's Cutten application prior to its dismissal,⁵ this argument lacks merit. For services subject to competitive bidding, mutually exclusive applicants are not parties with regard to each other's auction applications merely because of the fact of mutual exclusivity,⁶ and JFB has not shown that it filed any petitions or other pleadings that would require that it be given notice of Commission action on those other applications, action that in any event took place after JFB's Cutten application was dismissed on procedural grounds. Thus, the action taken with regard to applications mutually exclusive with JFB's has no relevance to the issue before us, namely, the propriety of dismissing JFB's application for its tardy Section 307(b) submission. Finally, to the extent JFB contends that the Bureau's action was "untimely,"⁷ it fails to articulate any specific prejudice it has suffered as a result of any delay in the Bureau's action, arguing only generally that it should have been allowed to submit a late Section 307(b) showing because of the length of time it took the Bureau to evaluate the hundreds of applications filed during the Auction 84 window. We likewise find this argument unpersuasive.

3. We find, therefore, that the Media Bureau, in the *Staff Decision*, properly decided the matters raised, and we uphold its decision for the reasons stated therein.

4. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,⁸ and Section 1.115(g) of the Commission's Rules,⁹ the AFR IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵ AFR at 1-2.

⁶ 47 C.F.R. § 1.1202(d)(1) Note 1.

⁷ AFR AT 2-3.

⁸ 47 U.S.C. § 155(c)(5).

⁹ 47 C.F.R. § 1.115(g).