

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

In the Matter of)	
)	
Sunburst Media-Louisiana, LLC)	
)	
Application for a Construction Permit for a Minor Change to a Licensed Facility)	File No. BPH-20070119ABG
)	
Station KXMG(FM), Jean Lafitte, Louisiana)	Facility ID No. 25520
)	

MEMORANDUM OPINION AND ORDER

Adopted: August 6, 2014

Released: August 7, 2014

By the Commission:

1. In this Memorandum Opinion and Order, we deny the Application for Review filed by William B. Clay (“Clay”) on September 22, 2008.¹ Clay seeks review of an August 21, 2008, action by the Media Bureau (“Bureau”)² dismissing Clay’s Petition for Reconsideration of the Bureau’s May 14, 2007, grant of the above-captioned minor change application (“Application”) of Sunburst Media-

¹ On the same day, September 22, 2008, Clay filed a Motion for Stay requesting that the Commission stay the effectiveness of the grant of the Application pending resolution of the Application for Review. *See* 47 C.F.R. § 1.102(b)(3) (“If an application for review of [an action] is filed . . . the Commission may in its discretion stay the effectiveness of any such action until its review of the matters at issue has been completed.”). In light of the action taken herein, we dismiss Clay’s Motion for Stay and any related pleadings as moot. On October 6, 2008, Sunburst filed an Opposition to Application for Review. On October 17, 2008, Clay filed a Reply to Opposition to Application for Review. On May 9, 2012, Clay filed a Supplement to Application for Review. The Supplement is an unauthorized pleading, being both untimely under Section 1.115(d) and procedurally impermissible under Section 1.115(c) of the Rules. *See* 47 C.F.R. § 1.115(d) (“[T]he application for review and any supplemental thereto shall be filed within 30 days of public notice of such action . . .”); 47 C.F.R. § 1.115(c) (“No application for review will be granted if it relies on factual questions upon which the designated authority has been afforded no opportunity to pass”); *see also, e.g., Manahawkin Communications Corp.*, Memorandum Opinion and Order, 17 FCC Rcd 342, n.16 (2001); *Global Broadcasting Group, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 5437, 5439-40 (1995). Therefore, the Supplement and related pleadings will not be accepted or considered by the Commission. Moreover, the substantive issue raised by the Supplement—whether the revised procedures adopted by the Commission fourteen months earlier in the 2011 *Rural Radio Order* should apply to the Application—was resolved by the Commission in *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Order on Reconsideration, 27 FCC Rcd 12829, 12843 (2012) (“*Rural Radio Reconsideration Order*”) (holding that the revised Section 307(b) procedures do not apply to any pending community of license change application in which a decision on the application was released prior to March 3, 2011). *See Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order On Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556 (2011) (“*Rural Radio Order*”). Because the Application was granted on May 14, 2007, the revised procedures do not apply to the Application.

² *William B. Clay*, Letter, 23 FCC Rcd 12732 (MB 2008) (“*Reconsideration Decision*”).

Louisiana, LLC (“Sunburst”) approving a change in the community of license of Station KXMG(FM), Jean Lafitte, Louisiana (“Station”).³

2. Clay raises two objections to the *Reconsideration Decision*. First, Clay argues that the Bureau erred in dismissing the Petition for Reconsideration on procedural grounds. Specifically, Clay claims standing to oppose the grant of the Application because:

[Grant of the Application established] binding precedent that would then make it that much harder for Clay, or anyone, to raise similar substantial and serious public interest objections to other grants of this nature, where Clay resides or where others reside. It is just such a *procedural* nexus that the Supreme Court recognizes as deserving a relaxed standard of immediacy in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), n.7.⁴

3. Second, Clay restates his earlier substantive Section 307(b) objections to the grant of the Application: “The process and policies prescribed by the Commission in its [2006 *Community of License Order*], utterly failed to ensure that the facility authorized here has a reasonable probability of providing its community of license, Lafitte, Louisiana, with an ‘outlet for local self-expression,’ the Commission’s only stated objective for its first local service allotment preference, which was dispositive in this case.”⁵

4. Upon review of the Application for Review and the entire record, we conclude that Clay has not demonstrated that the Bureau erred. We uphold the Bureau’s finding that Clay lacked standing to file the Petition for Reconsideration and did not comply with the procedural requirements of Section 1.106(b)(1), for the reasons stated in the *Reconsideration Decision*.⁶

5. We also hold that Clay lacks standing to challenge the substantive discussion in the *Reconsideration Decision*. Under Section 5(c)(4) of the Communications Act of 1934, as amended, and Section 1.115(a) of the Rules, an applicant for review must be a “person aggrieved” by an action taken pursuant to delegated authority.⁷ To show that he is “aggrieved” by an action, Clay must demonstrate a direct causal link between the challenged action and his alleged injury, and show that the injury would be prevented or redressed by the relief requested.⁸ In the broadcast regulatory context, standing is generally

³ The grant of the Application was placed on public notice on May 17, 2007. See *Broadcast Actions*, Public Notice, Report No. 46488 (May 17, 2007).

⁴ Application for Review at 4 (emphasis in original). Clay also objects to the Bureau’s finding that he failed to participate earlier in the proceeding and thus did not comply with Section 1.106(b)(1) of the Rules (“Section 1.106(b)(1)”). *Id.*; 47 C.F.R. § 1.106(b)(1) (petition for reconsideration subject to dismissal when petitioner does not “show good reason why it was not possible for him to participate in the earlier stages of the proceeding”). We agree with the Bureau’s rejection of Clay’s explanation that he did not participate to avoid wasting Commission resources. *Reconsideration Decision*, 23 FCC Rcd at 12734.

⁵ Application for Review at 3 (emphasis in original); see *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212 (2006) (authorizing community of license changes through the minor modification application process) (“*Community of License Order*”); *Faye & Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374, 5376 (1988) (“The need for service concerns both the number of stations that can be received in a given area (reception service) and the availability of local outlets for self-expression in the community (transmission service).”).

⁶ *Reconsideration Decision*, 23 FCC Rcd at 12734; See also *Chapin Enterprises, LLC*, Memorandum Opinion and Order, FCC 14-46 (rel. Apr. 18, 2014) (“*Chapin*”) (finding that Clay lacked standing and did not comply with Section 1.106(b)(1) in a similar set of circumstances).

⁷ 47 U.S.C. § 155(c)(4); 47 C.F.R. § 1.115(a) (“Any person aggrieved by any action taken pursuant to delegated authority may file an application requesting review of that action by the Commission . . . Any application for review which fails to make an adequate showing in this respect will be dismissed.”).

⁸ See, e.g., *Applications of AT&T Inc. and Deutsche Telecom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 27 FCC Rcd 4423, 4425 (2012); *Applications of*

(continued....)

obtained in one of three ways: (1) as a competitor in the market suffering signal interference; (2) as a competitor in the market suffering economic harm; or (3) as a resident of the station's service area or regular listener of the station.⁹ In this regard, as the Bureau explained in the *Reconsideration Decision*, Clay's "procedural injury" arguments relying on *Lujan* are misplaced. In *Lujan*, the Supreme Court stated that a "procedural right" accrues only if there is an associated concrete harm to the person asserting the right.¹⁰ Here, Clay fails to show any concrete harm accruing to him as a resident of Charlotte, North Carolina, a community located over 650 miles from both Houma and Jean Lafitte, from the grant of the Application.¹¹ He does not allege competitive harm or signal interference, nor does he allege to be a listener of the Station. Clay cites no case in which standing has been granted on the basis that the legal precedent set by one case could affect future, similar, cases. Moreover, Clay has failed to demonstrate a causal link between the claimed injury and the grant at issue. In granting the Application, the Bureau *applied* the processing rules adopted in the *Community of License Order*; it did not create them.¹² Therefore, the relevant rules would apply to any future applications notwithstanding grant of the Application. Finally, the relief Clay requests would no more directly and tangibly benefit him as an individual than it would the national public at large.¹³ For all of these reasons, Clay fails to identify a direct economic or other connection between his interests and grant of the Application. Therefore, we dismiss, for lack of standing, the Application for Review to the extent that it challenges the Bureau's substantive conclusions.

6. For these reasons, we conclude that the Bureau, in the *Reconsideration Decision*, properly decided the matters raised, and we uphold its decision for the reasons stated therein.

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WINV, Inc. and WGUL-FM, Inc. for Renewal and Assignment of License of WINV(AM), Inverness, Florida, Memorandum Opinion and Order, 14 FCC Rcd 2032, 2033 (1998).

⁹ See *Applications of Clarke Broadcasting Corporation*, Memorandum Opinion and Order, 11 FCC Rcd 3057 (1996) (holding that where there is no nexus between the challenged application and an applicant for review, the applicant is not "aggrieved" for purposes of 47 C.F.R. § 1.115(a)); *Chet-5 Broadcasting, L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041, 13042 (1999) ("[W]e will accord party-in-interest status to a petitioner who demonstrates either residence in the station's service area or that the petitioner listens to or views the station regularly, and that such listening or viewing is not the result of transient contacts with the station"); *Office of Communications of the United Church of Christ v. FCC*, 359 F.2d 994, 1000-1006 (1966) (expanding standing from traditional categories of electrical interference or economic injury to station listeners).

¹⁰ *Lujan v. Defenders of Wildlife*, 504 U.S. 555, n.8 (1992) ("*Lujan*") ("We do not hold that an individual cannot enforce procedural rights; he assuredly can, so long as the procedures in question are designed to protect some threatened concrete interest of his that is the ultimate basis of his standing.").

¹¹ The information on record in this proceeding establishes Charlotte as Clay's residence. However, it appears that Clay may have moved to Italy, according to a letter in another proceeding dated June 9, 2011. *William B. Clay*, Letter, (MB Oct. 13, 2011) at n.8 (granting application File No. BMPH-20070119AGG). Clearly, under our analysis, Clay would equally lack standing as a resident of Italy.

¹² The proper forum for Clay's arguments was the proceeding leading to the 2006 *Community of License Order*, in which Clay did participate. Ultimately, Clay's concerns regarding our Section 307(b) procedures were further addressed in the *Rural Radio* proceeding, which, *inter alia*, established a rebuttable presumption that when a proposed community is located, as here, in an urbanized area (or could, through a minor modification, cover 50 percent of an urbanized area) the Commission will treat the application, for Section 307(b) purposes, as proposing to serve the entire urbanized area. See *Rural Radio Order*, 26 FCC Rcd at 2567; *Rural Radio Reconsideration Order*, 27 FCC Rcd at 12840.

¹³ See, e.g., *Lujan*, 504 U.S. at 573-574 ("We have consistently held that a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy.").

7. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(4) and (5) of the Communications Act of 1934, as amended,¹⁴ and Section 1.115(a) and (g) of the Commission's rules,¹⁵ the Application for Review IS DISMISSED for the reasons stated in paragraph 5 above and otherwise IS DENIED.

8. It is FURTHER ORDERED that the Motion for Stay filed by Clay on September 22, 2008, is DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁴ 47 U.S.C. § 155(c)(4),(5).

¹⁵ 47 C.F.R. § 1.115(a),(g).