

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

In the Matter of)	
)	
JET FUEL BROADCASTING)	File No. BNP-20040130AQP
)	Facility ID No. 161341
Application for a New AM Broadcast Station at Orchard Homes, Montana)	
)	
and)	
)	
BOTT COMMUNICATIONS, INC.)	File No. BNP-20040130ARV
)	File No. BNP-20071221ACG
Application for a New AM Broadcast Station at Black Hawk, South Dakota)	Facility ID No. 160981
)	

MEMORANDUM OPINION AND ORDER

Adopted: February 20, 2014

Released: February 20, 2014

By the Commission:

1. In this *Memorandum Opinion and Order*, we address the December 7, 2009, Application for Review (“AFR”) filed by Jet Fuel Broadcasting (“JFB”), applicant for a new AM broadcast station at Orchard Homes, Montana.¹ JFB seeks review of the Media Bureau’s (“Bureau”) November 6, 2009, order dismissing JFB’s Petition for Reconsideration of the Bureau’s grant of a preference under Section 307(b) of the Communications Act of 1934, as amended,² to Bott Communications, Inc. (“Bott”).³ Bott filed an application for a new AM broadcast station at Black Hawk, South Dakota, that is mutually exclusive with JFB’s Orchard Homes application.⁴

2. Upon review of the Application for Review and the entire record, we conclude that JFB has not demonstrated that the Bureau erred. The Bureau dismissed JFB’s Petition for Reconsideration on the ground that a determination under Section 307(b) is not a final decision, and Section 1.106(a)(1) of the Rules states that petitions for reconsideration of interlocutory actions generally will not be entertained.⁵ An interlocutory action by definition is non-final, one that neither denies nor dismisses an application nor terminates an applicant’s right to participate in the proceeding.⁶ For an agency action to

¹ File No. BNP-20040130AQP.

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

³ *Mr. Dave Garey and Harry C. Martin, Esq.*, 24 FCC Rcd 13668 (MB 2009) (“*Staff Decision*”), dismissing Petition for Reconsideration of *Bott Communications, Inc. and Jet Fuel Broadcasting*, Letter, Ref. No. 1800B3-LAS/JP (MB Oct. 31, 2007) (“*Letter Decision*”).

⁴ File No. BNP-20040130ARV.

⁵ 47 C.F.R. § 1.106(a)(1).

⁶ *Cf. Fresno FM Limited Partnership, et al.*, Memorandum Opinion and Order, 5 FCC Rcd 7261, 7261 (1990) (former 47 C.F.R. § 1.115(e)(1) specifically provided that applications for review of interlocutory Review Board

(continued....)

be “final,” first, the action must mark the “consummation” of the agency’s decision making process, and not be merely of a tentative or interlocutory nature; and second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow.⁷

3. In the instant case, Jet Fuel sought reconsideration of a *Letter Decision* that was not final. The application process is consummated only when an authorization, such as a construction permit, is issued, or when an application is dismissed or denied. The Bureau, in the *Letter Decision*, neither awarded Bott an authorization nor denied or dismissed JFB’s application. Instead, the Bureau stated that it would conduct a complete legal and technical analysis of the Bott application after issuing a public notice announcing the application’s acceptance for filing and soliciting petitions to deny the application. The Bureau noted further that the staff would dismiss the competing Jet Fuel application “upon action taken on the application filed by Bott.”⁸ Moreover, as pointed out by the Bureau in the *Staff Decision*, our Rules provide clear procedures by which a competing applicant may challenge the Form 301 application filed by a party receiving a dispositive Section 307(b) preference.⁹ Thus, it is inaccurate for JFB to assert that its right to challenge Bott’s Section 307(b) preference has been compromised, given that JFB had the ability to present its arguments challenging the Bureau’s Section 307(b) determination before any authorization could be awarded to Bott.¹⁰ The Media Bureau properly decided the matters raised, and we uphold its action for the reasons stated in the *Staff Decision*.¹¹

4. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,¹² and Section 1.115(g) of the Commission’s rules,¹³ the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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rulings could only be filed as part of an application for review of the Board’s final decision; Memorandum Opinion and Order from which applicant sought review was interlocutory, as it neither terminated applicant’s right to participate in the proceeding nor denied applicant’s application, thus Motion for Leave to File Application for Review was denied, and accompanying Application for Review dismissed).

⁷ *Bennett v. Spear*, 520 U.S. 154, 177-78, 117 S.Ct. 1154, 1168 (1997).

⁸ *Letter Decision supra* at n. 11.

⁹ *Staff Decision*, 24 FCC Rcd at 13670; see 47 C.F.R. §§ 1.2108, 73.5006.

¹⁰ See *Sharon Berlin Ingles, Powell Meredith Communications Company, and TELNS Broadcasting Company, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 8815 (2008) (dispositive Section 307(b) preference for one of three members of MX group overturned on grant of petitions to deny; all members of group designated for auction). In fact, Bott’s long-form application was accepted for filing on May 16, 2012. See *Broadcast Applications*, Public Notice, Report No. 27739, at 32 (MB May 16, 2012). However, despite the Bureau’s notation of JFB’s opportunity to file a petition to deny Bott’s FCC Form 301 application upon acceptance for filing (consistent with statements in other contemporaneous Bureau actions; see, e.g., *George M. Arroyo and Dennis J. Kelly, Esq.*, Letter, 24 FCC Rcd 11010, 11012-13 (MB 2009)), JFB failed to so file.

¹¹ Although JFB, in its Application for Review, makes several arguments regarding the merits of the staff’s Section 307(b) decision, we decline to entertain those arguments here, as our review is limited to the Bureau’s dismissal of the Petition for Reconsideration as interlocutory.

¹² 47 U.S.C. § 155(c)(5).

¹³ 47 C.F.R. § 1.115(g).