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

In the Matter of	)	
	)	
WKMJ Radio Live The People Station, Inc.	)	File No. BNPL-20131107AAI
	)	Facility ID No. 194483
Application for a Construction Permit for a new	)	
LPFM Station at Pinellas Park, Florida	)	

MEMORANDUM OPINION AND ORDER

Adopted: April 27, 2016 **Released: April 28, 2016**

By the Commission:

1. We have before us a December 18, 2015 Petition for Reconsideration[1] filed by WKMJ Radio Live The People Station, Inc. (WKMJ) in response to the Commission's denial of its Application for Review.[2] The Commission affirmed a Media Bureau (Bureau) finding that WKMJ is, by statute, ineligible to hold a Low Power FM (LPFM) authorization because WKMJ's Chief Executive Officer operated an unauthorized radio station from WKMJ's address, in violation of Section 301 of the Communications Act of 1934, as amended.[3] The Commission, therefore, upheld the Bureau's dismissal of WKMJ's above-referenced application to construct a new LPFM station. For the reasons discussed below, we dismiss the Petition as repetitious.

2. Where the Commission has denied an application for review, it will entertain a petition for reconsideration only if the petition relies on (1) events which have occurred or circumstances which have changed since the last opportunity to present such matters; or (2) facts or arguments previously unknown, of which the petitioner could not have learned through ordinary diligence.[4] It is well settled that a petition for reconsideration is not to be used to reargue points to which the agency has already spoken or to raise new arguments that could have been made previously.[5] Accordingly, the Commission will dismiss a petition as repetitious if it fails to introduce relevant new facts or changed circumstances.[6] WKMJ states that it could not have anticipated the Decision's allegedly incorrect statement that WKMJ did not contest the underlying facts.[7] WKMJ also argues that, after its last opportunity to present

[1] *See WKMJ Radio Live the People Station, Inc*. Petition for Reconsideration (filed Dec. 18, 2015) (Petition).

[2] *See WKMJ Radio Live the People Station, Inc.,* Memorandum Opinion and Order, 30 FCC Rcd 13779 (2015) (Decision).

[3] *Id.*, 30 FCC Rcd at 13779-80, paras. 1 and 3, *citing LPFM MX Group 108,* Letter Order, Ref. No. 1800B3-ATS (MB Mar. 16, 2015), 47 U.S.C. § 301, 47 CFR § 73.854, *Making Appropriations for the Government of the District of Columbia for Fiscal Year 2001 Act,* Pub. L. No. 106-553, 114 Stat. 2762, Section 632(a)(1)(B) (2000), and *Creation of a Low Power Radio Service*, Second Report and Order, 16 FCC Rcd 8026, 8030 (2001).

[4] *See* 47 CFR § 1.106(b)(2).

[5] *See Knoxville Broad. Corp.,* Memorandum Opinion and Order, 87 FCC 2d 1103, 1107, para. 11 (1981).

[6] *See* 47 CFR § 1.106(b)(3); *see, e.g., California Ass'n for Research and Education, Inc.,* Order on Recon., 30 FCC Rcd 14914, 14915-16, para. 4 (2015).

[7] *See* Petition at 2-3, *citing* Decision, 30 FCC Rcd at 13779, para. 2. WKMJ had argued that the Bureau: (1) erred by relying on unsworn documents; (2) denied WKMJ due process; and (3) impermissibly disqualified WKMJ without any formal adjudication by a court or administrative tribunal. The Commission viewed those arguments as procedural and found them to be meritless. *See* Decision, 30 FCC Rcd at 13779-80, paras. 2-3. In particular, the

(continued….)

arguments, it learned of a Bureau action which allegedly demonstrates that the Bureau acts in an inconsistent and discriminatory manner by giving non-minority applicants opportunities to respond while denying such opportunities to minority-owned entities like WKMJ.[8]

3. Although WKMJ claims to raise new matters previously unknown, it does no more than repeat, re-characterize, or expand arguments already made, considered, and rejected. WKMJ's alleged "factual" dispute is merely a reframed presentation of its unsuccessful procedural arguments, *i.e.,* that the evidence leading to WKMJ's disqualification was unsworn and outside of any formal adjudication.[9] Similarly, WKMJ's allegation of recently discovered discriminatory Bureau practices violating WKMJ's due process rights, merely builds upon its rejected due process claims by adding an irrelevant discussion of Bureau action in an unrelated case involving different factual issues.[10] In conclusion, because the Chief Executive Officer of WKMJ illegally operated a radio station from WKMJ's address, WKMJ is prohibited, by statute, from obtaining the LPFM license that it seeks. Accordingly, as we concluded in the Decision, the Bureau's dismissal of its application was appropriate.

(Continued from previous page)
Commission stated that no formal Commission determination of illegal operation is necessary to disqualify an LPFM applicant and that the Bureau had not erred in taking official notice of (1) Commission enforcement records of unlicensed operations [*Kervenson Joseph*, Notice of Unlicensed Operation (EB Tampa Office, rel. Dec. 19, 2013) (NOUO)]; and (2) a police report, showing that local police working together with Commission field agents investigated unauthorized transmissions on 102.1 MHz; found WKMJ's CEO, Kervenson Joseph, operating without a license from 6251 Park Boulevard, Pinellas Park, Florida; and seized the antenna and transmitter. *See* Decision, 30 FCC Rcd at 13779-80, paras. 2-3; *Dennis Kelly, Esq.,* Letter Order, 30 FCC Rcd 7427, 7428 (MB 2015). It is these officially noticed facts, recited in the Bureau's Order, that WKMJ never contested.

[8] Petition at 4-5.

[9] Specifically, WKMJ repeats claims that the Bureau improperly relied on information in informal objections, the Enforcement Bureau's NOUO, and an unsworn police report. *See* Petition at 3. The Commission has already addressed each of these points. *See* Decision, 30 FCC Rcd at 13779-80, paras. 2-3.

[10] WKMJ previously maintained that it, a minority applicant, did not receive due process because it had no opportunity to respond to allegations of unlicensed operations. *See* Application for Review at 8-9 (filed Aug. 21, 2015). The Commission found this argument meritless because WKMJ and its principal had been provided numerous opportunities to respond, but failed to do so. *See* Decision, 30 FCC Rcd at 13780, para. 3. WKMJ now repeats the rejected argument but adds a claim that WKMJ was not given the opportunity to respond *because* it is a minority applicant. The entirety of WKMJ's support for its allegation of discrimination is its showing that the Bureau sent a letter of inquiry to an unrelated, allegedly non-minority, applicant in an unrelated Oregon LPFM proceeding, seeking information about an unrelated matter (concerning the applicant's corporate status). *See Leanna McKendree,* Letter of Inquiry, Ref. 1800B3-ATS (MB Jul. 21, 2015). This new allegation completely fails to address, much less refute, the Decision's statement that WKMJ was afforded multiple opportunities to respond. In contrast, the alleged non-minority applicant in the Oregon case cited by WKMJ was asked to respond because it had not previously had an opportunity to address the alleged facts. *See Tylor Stone,* Letter Order, DA 15-1452 (MB rel. Dec. 18, 2015) (subsequently dismissing the same Oregon application). In addition, WKMJ's argument fails to distinguish the numerous published decisions in which the Bureau has given known minority applicants opportunities to submit information in licensing cases. *See, e.g.*, *Tango Radio, LLC,* Memorandum Opinion and Order, 30 FCC Rcd 10564, 10565-66, para. 3 (2015) (FM applications dismissed following opportunity to provide information about construction); *Antonio Cesar Guel,* Letter Order, 29 FCC Rcd 5264 (MB 2014) (LPFM applications dismissed following opportunity to provide information about ownership and site availability). Thus, WKMJ's claim of disparate treatment of minorities is specious, and the proceeding cited by WKMJ is irrelevant.

4. ACCORDINGLY, IT IS ORDERED that the Petition for Reconsideration filed by Application for Review filed by WKMJ Radio Live The People Station, Inc., on December 18, 2015, IS DISMISSED, as repetitious, pursuant to Section 405 of the Communications Act of 1934, as amended,[11] and 47 CFR §§ 1.106(b)(2), (b)(3), and (j).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[11] 47 U.S.C. § 405.