

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

In the Matter of)	
)	
Delta Radio Network, LLC)	
)	
Application for Minor Modification of Licensed)	Facility ID No. 59971
Facilities of WNLA(AM), Indianola, MS)	File No. BP-20140507AEB

MEMORANDUM OPINION AND ORDER

Adopted: February 22, 2017

Released: February 23, 2017

By the Commission:

1. The Commission has before it an application for review (AFR) filed by Delta Radio Network, LLC (DRN) on December 15, 2016.¹ DRN seeks review of a Media Bureau (Bureau) decision that upheld the dismissal of the captioned facilities modification application (Application) based on DRN's failure to have the "red light" status of the Application removed.² For the reasons stated below, we dismiss the AFR.

2. After the Bureau's initial dismissal of the Application, DRN filed a Petition for Reconsideration of that action. The Petition for Reconsideration argued that the dismissal of the Application based on its longstanding "red light" status violated the automatic stay provisions of the United States Bankruptcy Code because DRN was a debtor in possession pursuant to the Bankruptcy Code. In response, the *Order* stated that DRN's bankruptcy petition had been dismissed and therefore the Petition for Reconsideration was moot.³

3. In its AFR, DRN first argues that the Commission should grant waivers of the "red light" rules when "a broadcast station is losing money in its operations and therefore lacks the resources to pay [regulatory] fees."⁴ This is a new legal argument that was not presented to the Bureau. Under Section 1.115(c) of the Commission's rules (Rules), an application for review may not present new questions of

¹ The AFR was entitled "Petition for Reconsideration" but was filed pursuant to 47 CFR §1.115 and in response to a staff-level decision denying reconsideration of a staff dismissal letter. Accordingly, we are treating it as an application for review.

² *Delta Radio Network, LLC*, Letter Order (MB Nov. 9, 2016) (*Order*), dismissing as moot DRN's Petition for Reconsideration of *Delta Radio Network, LLC*, Letter Order (MB Mar. 7, 2016). Under its "red light" policy, the Commission examines each application to determine if the applicant is delinquent in a debt owed to the Commission (including but not limited to the payment of regulatory fees), withholds action on the application if there is such a delinquency, and dismisses the application if the delinquency is not cured after notice is given to the applicant. See 47 CFR § 1.1910(b).

³ See *Broadcast Actions*, Public Notice, Report No. 48861 at 10-11 (MB Nov. 15, 2016) (noting the Bureau's dismissal, on November 9, 2016, of an involuntary assignment of license application to assign WNLA and co-owned stations to Delta Radio Network, LLC, Debtor-in-Possession "due to termination of bankruptcy proceeding"). That action was not appealed and is now final.

⁴ AFR at 3. DRN analogizes the Commission's policy on "red light" holds and dismissals of applications to the abandoned practice of "debtor's prison." AFR at 3-5.

fact or law upon which the Bureau has not had an opportunity to pass.⁵ We therefore dismiss this portion of the AFR.

4. DRN next reprises its argument to the Bureau concerning the propriety of Commission debt enforcement actions against a debtor in possession. DRN argues that “the Commission should make clear to the staff that where a licensee is a debtor in possession [under the Bankruptcy Code] subject to the automatic stay, debt enforcement actions—including the dismissal of needed facilities modification applications—should be suspended.”⁶ With the dismissal of its bankruptcy petition on September 24, 2016, DRN is no longer a debtor in possession. Accordingly, we dismiss this argument in the AFR as moot.

5. ACCORDINGLY, IT IS ORDERED that the Application for Review filed by Delta Radio Network, LLC on December 15, 2016, IS DISMISSED pursuant to Section 5(c)(4) of the Communications Act of 1934, as amended, and Sections 1.115(a) and (c) of the FCC’s rules.⁷

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵ 47 CFR §1.115(c). The AFR seeks to incorporate by reference “related requests for waiver of regulatory fees” (AFR at 1), but at no point in this proceeding did DRN present to the Bureau an argument concerning waivers of regulatory fees, nor did it amend the Application or otherwise file any information as to any action taken by the Office of the Managing Director involving any waiver request related to the Application. *See* 47 CFR § 1.65 (obligation to report substantial changes in information that may be of decisional significance).

⁶ AFR at 5-6.

⁷ 47 U.S.C. § 155(c)(4); 47 CFR §§ 1.115(a) and (c).