

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

In the Matter of)
Continental Media Group, LLC) Facility ID No. 68182
Station WXYM(AM), Saltville, VA)
Application for Renewal of License) File No. BR-20110531ASH
Application for Consent to Transfer of Control) File No. BTC-20110222ACA
from Jeffrey Raynor to Wendy Raynor)
Application for Covering License) File No. BL-20111101ALT

MEMORANDUM OPINION AND ORDER

Adopted: May 8, 2017

Released: May 8, 2017

By the Commission:

1. By this Memorandum Opinion and Order, we deny the Application for Review (AFR) filed on November 25, 2016, by Holston Valley Broadcasting Corporation (Holston) relating to the above-captioned applications filed by Continental Media Group, LLC (Continental), licensee of Station WXYM(AM), Saltville, Virginia (Station).1 Holston seeks review of a Media Bureau (Bureau) decision2 dismissing its March 21, 2016 Petition for Reconsideration (Petition) as procedurally defective. The Petition challenged the Bureau’s grant of the captioned, unopposed pro forma transfer of control and renewal of license applications (Transfer Application and Renewal Application, respectively) as well as the Bureau’s concurrent grant of the also captioned application for a license to cover the Station’s modified facilities (License Application), to which Holston had filed an Informal Objection.3 For the following reasons, we affirm the Bureau’s dismissal of the Petition.

1 While the Petition’s caption referenced the License Application, that application was not discussed in the pleading itself. Rather, Holston challenged the Bureau’s grant of the Renewal Application in light of the Station’s extended periods of silence (Petition at 2-5) and the grant of the Transfer Application in light of the felony guilty pleas of Continental then-50 percent principal Jeffrey Raynor (Petition at 5-7).

2 Letter to Dan J. Alpert, Esq. and Dennis J. Kelley, Esq., Letter Decision, Reference 1800B3-HOD (MB Oct. 25, 2016) (Reconsideration Letter).

3 In the Informal Objection, Holston maintained that the License Application should be dismissed or denied because: (1) it was untimely filed after the October 23, 2011 construction deadline for the modification of the Station; (2) Continental had not constructed prior to that deadline; and (3) Continental’s then-principal Jeffrey Raynor had “been convicted” of two felonies. Informal Objection of Holston Valley Broadcasting Corporation (filed Dec. 7, 2011). In its January 12, 2012 Opposition, Continental provided the Declaration of William Boyd, its broadcast engineer who had supervised the construction of the Station modification, which he stated had been timely completed on October 21, 2011, at which time he prepared the engineering portion of the License Application. Continental Opposition, Att. 1. Continental explained further that, although it sent the License Application by express courier to the Commission the following day, due to a “fee-form problem,” the Commission returned the application, which Continental refiled on November 1, 2011. Id. at 1-3, Att. 2-4. With regard to the guilty pleas of Mr. Raynor, Continental argued that they did not require the dismissal or denial of the License Application that Holston had

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2. The AFR does not address the Petition's procedural deficiencies that were the basis for the Bureau's dismissal of the Petition. In the *Reconsideration Letter*, the Bureau found that, having failed to file a petition to deny or otherwise oppose either the Transfer Application or the Renewal Application, Holston had forfeited its right to seek reconsideration of the staff's grant of those applications. The Bureau also found that Holston had failed to make any argument in its Petition with respect to the License Application.⁴

3. We affirm the Bureau's dismissal of the Petition with respect to the License Application, which, as noted above, Holston did not discuss in its Petition. We also affirm the Bureau's dismissal, on procedural grounds, with regard to Holston's arguments in opposition to the Transfer and Renewal Applications⁵ because the Petition did not meet the grounds for reconsideration specified in Section 1.106(b)(1) of the Commission's Rules (Rules), which requires that a person seeking reconsideration of a Bureau action must have either earlier participated in the proceeding, making it a party, or, if not, must "show good reason why it was not possible . . . to participate in the earlier stages of the proceeding."⁶ The Petition reveals that, during the nearly five year pendency of the Transfer Application and the Renewal Application, Holston possessed the purportedly "new facts and circumstances" that it offers in its Petition as the basis for its untimely challenge of the Bureau's grant of those applications.⁷ Accordingly, the Bureau's dismissal of the Petition based on Holston's untimely challenges to the Bureau's grants of the Renewal Application and the Transfer Application was also appropriate.

4. With regard to the grant of the License Application, which Holston did oppose by Informal Objection, we note that Section 319(c) of the Communications Act of 1934, as amended (Act),⁸ imposes a stringent standard on challenges to the Commission's grant of license applications. So long as "all the terms, conditions, and obligations set forth in the application and permit have been fully met," which the record here indicates to have occurred, Continental has a protected interest in the grant of its License Application.⁹ It is entitled to a presumption that the public interest determination made in

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sought. *Id.* at 4. Holston did not respond to Continental's Opposition. By letter dated February 12, 2016, the Bureau denied the Informal Objection and granted the three applications. *Letter to Dan J. Alpert, Esq. and Dennis J. Kelley, Esq.*, Letter Decision, (MB Feb. 12, 2016) (*Informal Objection Letter*).

⁴ *Reconsideration Letter* at 2, n.6.

⁵ See Public Notice, Report No. 28673, "Broadcast Actions" (Feb. 18, 2016).

⁶ 47 CFR § 1.106(b)(1); see *United Church of Christ v. FCC*, 911 F.2d 803, 808 (D.C. Cir. 1990) (citations omitted).

⁷ The date of the Public Notice announcing the acceptance of the Transfer Application was February 28, 2011. See Public Notice, Report No. 27432, "Broadcast Applications" (Feb. 28, 2011). The deadline for filing petitions to deny the Renewal Application was September 1, 2011. See 47 CFR § 73.3516(e). Moreover, informal objections to either application could have been filed at any time prior to February 12, 2016, the date of the *Informal Objection Letter* granting those two applications and the License Application. See 47 CFR § 73.3587. Holston failed to so file. In its Petition, Holston claimed "new facts and circumstances" justifying its consideration, specifically that the Station had been off the air during extended periods from October 2012- October 2013 and again from February 2015 to February 2016. Petition at 2-5. Holston fails to explain why it could not have submitted its allegations in an opposition to the Transfer Application and/or the Renewal Application or by an informal objection to either filed prior to the February 12, 2016 date of the *Informal Objection Letter* granting those applications and the License Application. Accordingly, Holston is barred by Section 1.106(b)(1) from belatedly raising the matter on reconsideration.

⁸ 47 USC §319(c).

⁹ *Whidbey Broad. Serv., Inc.*, Memorandum Opinion and Order, 4 FCC Rcd 8726, 8727, para. 8 (1989) (denying application for review of denial of reconsideration of grant of license application, finding, "in the interest of administrative finality," that arguments in opposition should have been raised at the time that the underlying construction permit application had been under consideration).

granting Continental's construction permit application continues in effect unless "extraordinary circumstances" have arisen that would make operation of the station contrary to the public interest.¹⁰

5. Holston raises no such "extraordinary circumstances" here. The Bureau noted in the *Informal Objection Letter* that, although Continental had filed the License Application by the October 23, 2011 construction deadline, the application was returned because Continental had submitted the incorrect filing fee, and refiled the application with the proper fee on November 1, 2011, with the correct fee. Moreover, relying on the Declaration of William Boyd, the broadcast engineer who supervised the construction of the Station modification, who stated that, contrary to Holston's contention, construction "was completed on October 21, 2011,"¹¹ the Bureau concluded that waiver of Section 73.3598(e) of the Rules¹² and processing of the License Application would be appropriate and consistent with its past treatment of similarly situated applicants.¹³ We agree with the Bureau's analysis and affirm its grant of the License Application.¹⁴

6. For the reasons set forth above, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and Section 1.115(g) of the Commission's rules, 47 CFR § 1.115(g), the Application for Review filed by Holston Broadcasting Corporation on November 26, 2016, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁰ See 47 U.S.C. § 319(c), and *Focus Cable of Oakland, Inc.*, Memorandum Opinion and Order, 65 FCC 2d 35, 39-40, para. 11 (1977).

¹¹ See *supra* note 3. As noted therein, Holston did not file a reply or otherwise respond to Continental's Opposition.

¹² 47 CFR § 73.3598(e) provides that any construction permit for which construction has not been completed and for which an application for license has not been filed, shall be automatically forfeited upon expiration.

¹³ *Informal Objection Letter* at 4. The Bureau cited, at n. 23, *WKLC, Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 2061 (MB 2013).

¹⁴ In light of our affirmation of the Bureau's dismissal of the Petition on procedural grounds, we need not reach, and do not consider, the substantive issues raised by Holston in the Petition or AFR in opposition to the Bureau's grant of the three Continental applications.