

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

In the Matter of
Urbanmedia One
Application for a Construction Permit for a New
Low Power FM Station (WJPC-LP) at Chicago,
Illinois
File No. BNPL-20131114ADR
Facility ID No. 193259

ORDER ON RECONSIDERATION

Adopted: June 9, 2017

Released: June 12, 2017

By the Commission:

I. BACKGROUND

1. We have before us a Reconsideration Petition by Sound of Hope Radio NFP (SOH),
permittee of a new unbuilt low power FM (LPFM) station at Chicago, Illinois. SOH contends that the
Commission erred in an Order that dismissed SOH's Application for Review (AFR) of the Media
Bureau's (Bureau) authorization of another Chicago LPFM station. For the reasons stated below, we
dismiss the Reconsideration Petition.

2. SOH, Urbanmedia One (UM), and Morton College (Morton) filed mutually exclusive
applications for LPFM construction permits (SOH Application, UM Application, and Morton
Application, respectively). Each received equal points under the Commission's comparative analysis
released on September 5, 2014. On December 4, 2014, the Bureau dismissed the SOH Application and
granted the applications of UM and Morton, which had aggregated points pursuant to a timesharing
agreement. SOH, on December 8, 2014, sought reinstatement of its application by amending to specify a
different transmitter site that was not in conflict with the UM and Morton technical proposals (SOH New
Site Amendment). On January 7, 2015, while SOH's reinstatement request was pending, SOH petitioned
for reconsideration of the UM (but not the Morton) grant. In that First Petition, SOH alleged that UM
had not negotiated timesharing in good faith and was unqualified because it had engaged in unauthorized
"pirate" broadcasting. SOH expressed a desire to withdraw its then-pending site amendment, in favor of

1 SOH Petition for Reconsideration (filed Jan. 17, 2017) (Reconsideration Petition).

2 Urbanmedia One, Memorandum Opinion and Order, 31 FCC Rcd 13759 (2016) (Order).

3 SOH Application for Review (filed Aug. 19, 2016) (AFR).

4 The Commission compared the applications using a point system, tentatively selected SOH, UM, and Morton, and
afforded them opportunities to file petitions to deny, timesharing agreements, and/or major change amendments to
resolve their mutual exclusivities. Commission Identifies Tentative Selectees in 111 Groups of Mutually Exclusive
Applications Filed in the LPFM Window, Public Notice, 29 FCC Rcd 10847 (2014). SOH did not file a petition to
deny UM's tentative selection.

5 See Broadcast Actions, Public Notice, Report No. 48382 (MB Dec. 9, 2014); 47 CFR § 73.872(c).

6 See SOH Petition for Reconsideration and Rescission (filed Jan. 7, 2015) (First Petition).

7 First Petition at 1-2. See 47 CFR § 73.854; Ruggiero v. FCC, 317 F.3d 239 (D.C. Cir. 2003). SOH argued that
grant of an authorization to an alleged pirate was beyond the Commission's statutory authority. See AFR at 9-10.
The Bureau had, however, found that SOH did not adequately support its piracy claims. James L. Winston, Esq.,

reverting to its original proposal and negotiating a new timesharing arrangement with Morton.⁸ On January 14, 2015, the Bureau reinstated the SOH Application, accepted the SOH New Site Amendment, and granted the now “singleton” SOH Application, a grant to which SOH did not object. Grants of the Morton and SOH Applications became final in early 2015.⁹ SOH continued, however, to prosecute its petition against UM.

3. The Bureau or Commission has, at each stage of this proceeding, dismissed SOH’s filings as procedurally flawed.¹⁰ The *Order*, of which SOH now seeks reconsideration, dismissed SOH’s AFR for lack of standing because SOH had not demonstrated that it was “aggrieved” by grant of the UM Application.¹¹ The Commission observed that the SOH and UM proposals were not in technical conflict, and concluded that SOH was not injured by the grant of the UM Application and would not receive any redress were the UM grant rescinded. The Commission stated, for example, that even if it were to rescind the UM permit: (1) Morton would not be required to share time with SOH;¹² (2) the Commission’s rules would provide no opportunity for SOH and Morton, whose applications are no longer pending, to

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Letter Order (MB Jul. 20, 2016) (*Second Staff Decision*) at 4. SOH now repeats and expands upon its piracy claims by contending that grant of the UM permit was void at inception. *Reconsideration Petition* at 3, 6-7, citing *FCC v. Midwest Video*, 440 U.S. 689 (1979) (Commission must act within scope of its authority). SOH also equates the instant proceeding to a case, not relied upon earlier, in which the Commission dismissed an LPFM application when piracy had been established. *Id.* at 8-9, citing *WKMJ Radio Live The People Station, Inc.*, Letter, 30 FCC Rcd 13779 (MB 2015), *rev. denied*, Memorandum Opinion and Order, 30 FCC Rcd 13779, *recon. dismissed*, Memorandum Opinion and Order, 31 FCC Rcd 4306 (2016). The *WKMJ* case has no bearing here because SOH has failed to establish its piracy allegation. *See Second Staff Decision* at 4 (finding the piracy allegations “are supported by only a single, identical affidavit demonstrating no first-hand knowledge of piracy but only that the affiant viewed one of the internet pages on November 16, 2014” and accordingly concluding that “SOH has raised no substantial question of ‘pirate’ operations or false certification”). Furthermore, as the *Order* explained, any action involving the UM Application is irrelevant to the processing and grant of the amended SOH Application. *Order*, 31 FCC Rcd at 13760-61, para. 4.

⁸ *See First Petition* at 15, n.10. SOH later explained that it preferred the original site so it could serve a Chinese-American audience that is located outside the service area of its permitted facilities. *See Reconsideration Petition* at 4; AFR at 5, n.5.

⁹ SOH did not seek reconsideration of the grant of the Morton Application or of the SOH Application, as amended. Nevertheless, SOH currently argues that “the construction permit grants are not final,” without further explanation. *See Reconsideration Petition* at 12.

¹⁰ *See James L. Winston, Esq.*, Letter Order (MB Mar. 4, 2015) (dismissing *First Petition* as late-filed because SOH had not objected to the UM Application prior to grant); *Second Staff Decision* (dismissing as repetitious SOH Petition for Reconsideration (filed Apr. 2, 2015) (*Second Petition*) and briefly discussing three issues therein that SOH alleged were “critical.”); *Order*, 31 FCC Rcd at 13761, para. 4 (dismissing the AFR for lack of standing).

¹¹ *Order*, 31 FCC Rcd at 13760, para. 4, citing 47 U.S.C. § 155(c)(4); 47 CFR § 1.115(a). To demonstrate standing before the Commission, a petitioner must show (1) personal injury, (2) that is traceable to the challenged action, and (3) a substantial likelihood that the relief requested will redress the claimed injury. The injury prong can be shown through allegations of: (1) harm of a direct, tangible, or substantial nature; (2) residence in the service area of the subject station; or (3) regular listenership which is not the result of transient contacts. *Order*, 31 FCC Rcd at 13760, n.11, citing *Tabback Broad. Co.*, Memorandum Opinion and Order, 15 FCC Rcd 11899, 11900 n.3 (2000).

¹² *Order*, 31 FCC Rcd at 13760, para. 4. SOH responds that the Commission erred by overlooking evidence that Morton was prepared to enter into a timesharing arrangement with SOH. *Reconsideration Petition* at 20, citing *Declaration of Booker Wade (Second Petition, Exh. 11, para. 9)*. The alleged “evidence” is a hearsay statement from an SOH consultant who states only that Morton told him that Morton believed, in timesharing discussions with UM, that UM had also tried to contact SOH. *Id.* Nothing in the record indicates a current desire by Morton to share time with SOH, even if that were possible now.

negotiate a time sharing agreement;¹³ and (3) SOH's desired return to its original site would constitute a major change that is not permitted outside of a filing window.¹⁴

4. The primary arguments in the *Reconsideration Petition* are that SOH: (1) had no prior opportunity to address the issue of standing; (2) did not need to show that it was aggrieved because its injury, as a party to the proceeding, is "self-evident" and "presumed;"¹⁵ (3) has an interest which "vested" upon the December 4, 2014 dismissal of SOH's Application, and that this interest cannot be lost thereafter;¹⁶ and (4) has standing based on several newly-raised factors.¹⁷ SOH asks the Commission to reconsider its procedural dismissal of the AFR and review SOH's substantive arguments.

II. DISCUSSION

5. Once the Commission has dismissed an Application for Review, it will entertain a petition for reconsideration only upon a showing of new facts or changed circumstances.¹⁸ SOH's contention that standing is a new matter which it could not have addressed previously is meritless and forms no basis for reconsideration.¹⁹ The Communications Act of 1934, as amended (Act) places

¹³ See 47 CFR §§ 73.871(a)(4), 73.872(c).

¹⁴ See 47 CFR § 73.870(a), (b) (site relocations greater than 5.6 km are major and allowed only during filing windows). SOH was able to make such a change through its earlier amendment because the Commission had opened a 90-day filing window through December 8, 2014 for amendment of certain then-pending LPFM applications to eliminate technical conflicts. See *Commission Identifies Tentative Selectees in 111 Groups of Mutually Exclusive Applications Filed in the LPFM Window; Announces 30-Day Petition to Deny Period and 90-Day Period to File Voluntary Time-Share Proposals and Major Change Amendments*, Public Notice, 29 FCC Rcd 10847, 10851-52 (2014). No filing window has subsequently been opened. Nor has the Commission ever allowed a non-conflicting permittee like SOH to amend *into* a mutually exclusive relationship with a granted permit. See *id.* at 10853-54 (amendments that would cause new application conflicts not permitted).

¹⁵ *Reconsideration Petition* at 3, 12-13. SOH also contends that the Commission incorrectly relied on Section 5(c)(4) of the Act (applications for review may be filed by "any person aggrieved") instead of Section 405(a) of the Act (petitions for reconsideration may be filed by "any party thereto, or any other person aggrieved or whose interests are adversely affected"). See 47 U.S.C. §§ 155(c)(4), 405(a). SOH argues that Section 5(c)(4) is inapplicable to broadcast construction actions except to the extent that it is incorporated by reference in Section 405(a). *Reconsideration Petition* at 9. It further argues that Section 405(a)'s broader language confers standing on parties without further demonstration of injury and that standing as a party, once established, continues. *Id.* at 10, 12. See note 19 *infra*.

¹⁶ *Id.* at 11, 17-18, citing *Nevada Radio-Television Inc.*, 40 FCC 2d 444 (1973).

¹⁷ *Id.* at 13-17. See *infra*, note 21. SOH newly argues that: (1) it would receive redress by rescission of the UM permit and award of UM's timeshare periods to SOH; (2) a requirement for SOH to demonstrate standing is inconsistent with consideration, in the enforcement context, of piracy-based complaints from the general public; and (3) the Commission's failure to address the merits of SOH's allegations conflicts with an alleged Commission practice to develop complete records. *Reconsideration Petition* at 10-11, citing *FCC Enforcement Advisory: Unauthorized Radio Broadcasting is Illegal*, Public Notice, 31 FCC Rcd 1680 (EB 2016) (how to file a complaint about pirate broadcasts).

¹⁸ 47 CFR §§ 1.106(b)(2), (c); 1.115(g).

¹⁹ See *Reconsideration Petition* at 2. We also reject SOH's argument that the Commission should have applied standing requirements enunciated in Section 405(a) of the Act rather than those in Section 5(c)(4). See *supra* note 15; 47 U.S.C. §§ 155(c)(4), 405(a). Each requirement is virtually identical and requires, respectively, that persons seeking reconsideration or review be "aggrieved." For purposes of the *Order*, Section 5(c)(4) was the governing provision because it enunciates requirements for Applications for Review of actions taken on delegated authority, the very type of pleading SOH filed. SOH's claim that Section 5(c)(4) does not apply to broadcast actions is incorrect and inconsistent with precedent cited in the *Order* for a related point. See *Chapin Enter., LLC*, Memorandum Opinion and Order, 29 FCC Rcd 4250, 4252-53, para. 7 (2014), cited in *Order* at n.19 (*Chapin*) (pursuant to Section 5(c)(4), informal objector that had not shown how it was "aggrieved" lacked standing to seek review of staff action on broadcast modification application). Moreover, we reject SOH's suggestion that the

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responsibility upon each petitioner to provide “specific allegations of fact sufficient to show” standing as a party-in-interest.²⁰ SOH had the opportunity—indeed, the obligation—to demonstrate standing earlier in this proceeding, but was silent on the issue.²¹ SOH is incorrect when it argues that the Bureau affirmatively found SOH to have standing and that the Commission had no basis for a contrary finding.²² The Bureau did not address SOH’s failure to demonstrate standing. Rather, the Bureau dismissed SOH’s filings on other procedural grounds. SOH has raised no new facts or changed circumstances that it could not have presented earlier concerning its lack of standing and we, thus, dismiss the *Reconsideration Petition*.

6. In any event, we find no error in the Commission’s prior determination that as a non-mutually exclusive applicant, SOH lacked standing to challenge the grant of UM’s application. We also confirm that standing cannot be established simply by relying on the wholly speculative assumption that denying UM’s application somehow would have led to a timesharing agreement between two other permittees -- SOH and Morton (whose application has now been granted in its own right). Moreover, we observe that SOH’s new explanation of how it is “aggrieved” mischaracterizes SOH’s filings. SOH claims that it filed and has interests in two separate applications, the window-filed SOH Application (which was dismissed in December 2014) and the amended SOH Application (which was granted in January 2015).²³ SOH, however, filed only one application and amended that application to specify a different transmitter site that was not in conflict with the UM and Morton technical proposals to receive a grant.²⁴ SOH now attempts to claim ongoing interests in two different versions of the same application.²⁵ Any interest that SOH had in its original proposal ended when it amended its application, specified a different transmitter site, and thereby eliminated the mutual exclusivity between its application and that of Morton and UM. Furthermore, that application was granted, as amended, and became final. We reject

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standing language in Section 405(a) is more lenient than that in Section 5(c)(4). Section 405(a)’s reference to “any party” in addition to “any other person aggrieved,” serves simply to exclude informal objectors (non-party participants who have not demonstrated how they are “aggrieved”) from seeking reconsideration. *E.g., Chapin*, 29 FCC Rcd at 4252, para. 7.

²⁰ 47 U.S.C. § 309(d)(1).

²¹ In a belated attempt to fill this gap, SOH has now raised new claims to have standing as: (1) a competitor (despite lack of contour overlap) for listeners and underwriters in the Chicago radio market; (2) a representative of approximately 35,000 members of Chicago’s Chinese-American community within the original service area which allegedly would lose distinct minority programming from SOH’s site change; (3) an entity with a studio and residences of the majority of its directors within the contour of the UM station; and (4) an organization whose station manager, Sophie Wang, allegedly listens regularly to UM’s station from the SOH offices. *See Reconsideration Petition* at 14-17. However, SOH does not claim that these are new facts or changed circumstances or facts that were unknown to SOH until after its last opportunity to present them. Rather, these are facts that SOH failed to present in its AFR and cannot raise now.

²² *See Reconsideration Petition* at 11 (“The Denial Order has improperly recast SOH as no longer a party in interest, although the Bureau properly recognized SOH as such”), citing *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 419 (1971) (“post hoc” rationalizations are inadequate).

²³ *Reconsideration Petition* at 3.

²⁴ SOH’s single application always bore one facility identification number (FID 196767) and one file number (BNPL-20131114BNK). Had SOH been able to file two applications, each would have received a different numerical designation. Also, in such circumstances, the Commission would have dismissed the “second” application as an inconsistent application. *See* 47 CFR § 73.3518; *Hispanic Broad. Inst.*, Memorandum Opinion and Order, 30 FCC Rcd 10560, 10562, para. 4 (2015).

²⁵ *See generally Town of Sanford v. U.S.*, 140 F.3d 20, 23 (1st Cir. 1998) (rejecting as “[h]aving one’s cake and eating it, too” an attempt to claim standing to sue for monies owed while enjoying the benefits of have settled the matter). The Commission’s rules specifically prohibit the prosecution of alternate technical proposals. *See, e.g.*, 47 CFR §§ 73.3518 (inconsistent applications), 73.3520 (multiple applications).

SOH's argument that its standing "was vested" as of the staff's dismissal of its original application on December 4, 2014, and that its amended application filed on December 8, 2014, is "not determinative" as to the issue of standing.²⁶ SOH bases its argument on a misreading of *Nevada Radio-Television, Inc.*,²⁷ but that decision simply recognized that standing is not conferred on a person that lacks current harm, even if such person alleges potential future harm.²⁸ Finally, we reject SOH's assertion that the Commission should have addressed the merits of its AFR.²⁹ The Commission found that SOH was not aggrieved by the Bureau's underlying action and therefore dismissed the AFR for lack of standing.³⁰ Accordingly, having dismissed the application for lack of standing, the Commission was not obligated to address SOH's application for review on the merits.

7. ACCORDINGLY, IT IS ORDERED that the Petition for Reconsideration filed by Sound of Hope Radio NFP on January 17, 2017, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁶ See generally *Beach TV Properties, Inc. v. Solomon*, Civ. Act. No. 15-1823, mem. op. at 12 (D.D.C. Dec. 14, 2016) (low power television applicant that assigned its interests to another lost standing to sue); *Immaculate Conception Apostolic School*, Memorandum Opinion and Order, 31 FCC Rcd 13754, 13756-57, para. 8 (2016) (where Commission permit grant was based on promise to remain local, permittee was no longer qualified when it relocated); *Susquehanna Radio Corp.*, Memorandum Opinion and Order, 29 FCC Rcd 13276, 13277, para. 3 (2014) (proposed assignee had no standing after Commission granted licensee's request to cancel license); *Jacksonville Educators Broad., Inc.*, Letter Decision, 6 FCC Rcd 1617, 1617 (1991) (no standing to seek reconsideration of denial of assignment and modification of license that has been surrendered, making matter moot).

²⁷ See *Reconsideration Petition* at 11, 17-18 (citing *Nevada Radio-Television Inc.*, 40 FCC 2d 444 (1973)).

²⁸ *Nevada Radio-Television Inc.*, 40 FCC 2d at 445, para. 2 (stating that Section 405 of the Communications Act "confers standing to seek reconsideration upon persons who are aggrieved or whose interests are adversely affected by a Commission action, not upon those who may be aggrieved or whose interest may be adversely affected upon the happening of some contingent event in the future").

²⁹ *Reconsideration Petition* at 18-19.

³⁰ See *Order, supra*.