

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

In the Matter of)	
)	
Florida Community Radio, Inc.)	File Nos. BNPED-20100226AIK, BNPED-
)	20180926ABN
Construction Permit for Proposed NCE Station)	
DWRBD(FM), Horseshoe Beach, Florida)	Facility ID No. 18158

ORDER ON RECONSIDERATION

Adopted: December 7, 2020

Released: December 8, 2020

By the Commission:

I. INTRODUCTION

1. We have before us a Petition for Reconsideration (2020 Petition) filed by Florida Community Radio, Inc. (FCR).¹ FCR seeks reconsideration of the Memorandum Opinion and Order (*Order*) issued by the Commission in this proceeding,² which affirmed a Media Bureau (Bureau) decision denying FCR's request for further tolling of the construction deadline for DWRBD(FM), Horseshoe Beach, Florida (Station).³ For the reasons set forth below, we dismiss the 2020 Petition.

II. BACKGROUND

2. The Bureau issued FCR a construction permit (Permit) for the Station on May 13, 2015. The Permit specified a three-year construction period ending on May 13, 2018. On April 10, 2018, FCR requested tolling of the construction deadline based on (1) the effects of Hurricane Irma, and (2) the Commission's decision to eliminate the main studio rule for radio stations.

3. The Bureau found that FCR did not qualify for tolling.⁴ However, the Bureau found waiver of the construction deadline was warranted based on the Commission's elimination of the main studio rule late in the Permit's term, and the impact of that action on FCR's construction plans.⁵ Accordingly, the Bureau granted a six-month extension of the Permit, which resulted in a new construction deadline of November 13, 2018.⁶

4. On September 26, 2018, FCR applied to modify the Permit to specify operation from an existing tower owned by Alltel Corporation (Alltel Tower).⁷ The Bureau granted the Modification Application on September 28, 2018.⁸

¹ Petition for Reconsideration of Florida Community Radio, Inc., File No. BNPED-20180926ABN (filed July 23, 2020) (2020 Petition).

² *Florida Cmty. Radio, Inc.*, Memorandum Opinion and Order, 35 FCC Rcd 6854 (2020) (*Order*).

³ *Florida Cmty. Radio, Inc.*, Letter Order, 34 FCC Rcd 10278 (MB 2019) (*Reconsideration Decision*).

⁴ Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, to Sylvia Watson, Florida Cmty. Radio, Inc. (May 2, 2018) (*2018 Letter*). Under section 73.3598 of the Commission's rules, a construction permit deadline may be tolled only for specific circumstances not under the licensee's control, such as acts of God or delays due to administrative or judicial review. 47 CFR § 73.3598(b) (Tolling Rule).

⁵ *2018 Letter* at 2.

⁶ *Id.* at 2-3.

5. On October 11, 2018, Hurricane Michael made landfall, resulting in a storm surge and flooding in Horseshoe Beach and other parts of Dixie County.⁹ On November 15, 2018, FCR requested tolling based on the impact of the hurricane on its ability to construct the Station. The Bureau granted that request, extending the construction deadline to June 17, 2019.¹⁰

6. On April 16, 2019, FCR submitted another tolling request, seeking additional time to perform an analysis of whether the Station's power lines should be underground, and a structural analysis of the potential impact of a future Category 5 storm on the Station's antenna.¹¹ Bureau staff asked FCR for information showing a direct nexus between Hurricane Michael and its inability to construct the Station by the June 17, 2019, deadline, but FCR did not provide such information.¹²

7. On June 14, 2019, the Bureau denied FCR's request for further tolling, finding FCR had failed to show a "detailed and direct nexus between Hurricane Michael and the inability to construct the station."¹³ The Bureau noted that the analyses FCR sought to perform were not matters beyond FCR's control, but rather could have been done within the extended construction term.¹⁴ The Bureau stated that tolling had ended and indicated that FCR was required to complete construction by July 17, 2019.¹⁵ FCR filed a petition for reconsideration of this denial (2019 Petition),¹⁶ which the Bureau dismissed in part and otherwise denied.¹⁷

8. FCR then filed an application for review (AFR),¹⁸ which we dismissed in part and otherwise denied. We rejected as procedurally defective FCR's new argument that the Alltel Tower was in a FEMA designated floodplain and Executive Order 11988 was therefore controlling.¹⁹ We also dismissed as procedurally defective FCR's new request for a waiver of the Tolling Rule, which was based on a new argument related to FCR's floodplain claim and Executive Order 11988.²⁰ We went on to deny those portions of the AFR that challenged the Bureau's finding that FCR had failed to demonstrate that

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⁷ File No. BNPED-20180926ABN (Modification Application), Section VII, Question 5 (proposing operation on Antenna Structure Reg. No. 1292874).

⁸ *Broadcast Actions*, Public Notice, Report No. 49334, at 6 (MB Oct. 3, 2018).

⁹ See Letter from Sylvia Watson, Florida Cmty. Radio, Inc., to Marlene Dortch, Secretary, FCC (filed Nov. 15, 2018).

¹⁰ Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, to Sylvia Watson, Florida Cmty. Radio, Inc. (dated Nov. 29, 2018).

¹¹ Email from Sylvia Watson, Florida Cmty. Radio, Inc., to Marlene H. Dortch, Secretary, FCC (rec'd April 16, 2019).

¹² Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, to Sylvia Watson, Florida Cmty Radio, Inc., at 2 (dated June 14, 2019).

¹³ *Id.* at 1, n. 4.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Petition for Reconsideration of Florida Cmty. Radio, Inc., File No. BNPED-20180926ABN (filed July 15, 2019) (2019 Petition).

¹⁷ *Reconsideration Decision*, 34 FCC Rcd at 10282.

¹⁸ Application for Review of Florida Cmty Radio, Inc., File No. BNPED-20180926ABN (filed Dec. 4, 2019) (AFR).

¹⁹ *Order*, 35 FCC Rcd at 6856-57, para. 7.

²⁰ *Id.*

additional tolling was warranted under the Tolling Rule.²¹ We noted that FCR had not made any showing that Hurricane Michael continued to cause delays in construction, and that FCR had not made any construction progress.²² FCR timely filed the 2020 Petition, which we address below.

III. DISCUSSION

9. We dismiss the 2020 Petition for failing to meet the requirements for reconsideration of a Commission decision on an application for review. Section 1.106(b)(2) of the Commission's rules provides that, where the Commission has denied an application for review, a petition for reconsideration will be entertained only if the petition relies on facts or arguments (1) which "relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission," or (2) which were "unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity."²³ As we explain below, the four arguments FCR makes in the 2020 Petition do not meet the requirements of section 1.106(b)(2).

10. FCR argues for the first time in the 2020 Petition that (1) the Commission has failed to establish sound policies for the purpose of increasing minority ownership of radio and TV stations, (2) the Commission must establish special policies to allow permittees faced with numerous disasters back to back to complete construction of their stations, based on longer tolling time periods, and (3) the Station's community is in a "FEMA designated floodplain" area.²⁴ None of these arguments relate to "events which have occurred or circumstances which have changed" since FCR's last opportunity to present such matters to the Commission.²⁵ Nor were the arguments unknown to FCR "until after [its] last opportunity to present them to the Commission."²⁶ The arguments are procedurally barred.²⁷

11. We likewise dismiss FCR's argument that the *Order* failed to explain why the permittee in *Cranesville Block* was entitled to tolling but FCR was not.²⁸ This argument was presented to the Bureau in the 2019 Petition and rejected by the Bureau in the *Reconsideration Decision*. However, FCR did not make this argument in the AFR. Because FCR did not seek our review of this aspect of the *Reconsideration Decision*, it cannot resurrect the argument here.²⁹ FCR's argument is subject to dismissal

²¹ *Id.* at 6857-58, para. 9.

²² *Id.*

²³ 47 CFR § 1.106(b)(2).

²⁴ 2020 Petition at 3.

²⁵ *See* 47 CFR § 1.106(b)(2)(i).

²⁶ *See* 47 CFR § 1.106(b)(2)(ii).

²⁷ In terms of FCR's assertion that the Station's community of license is in a FEMA designated floodplain area, we acknowledge that FCR made a floodplain-related argument in the AFR. In the AFR, however, FCR alleged only that the Alltel Tower *itself* (FCR's proposed tower site) was located in a FEMA designated floodplain. AFR at 3, 4, 5, 7. FCR only presented the new argument about the community of license, rather than the tower site, after the *Order* rejected this argument on procedural grounds. *Order*, 35 FCC Rcd at 6856, para. 7. The *Order* also addressed this argument on the merits and rejected it, noting that the Alltel Tower is in an "Area of Minimal Flood Hazard." *Id.* at 6856, n.20.

²⁸ 2020 Petition at 3 (discussing *Cranesville Block Co.*, File Nos. BMML-20121015ADC, BNP-20070926ALF, BMP-20110207AET, Letter Order (MB Jan. 11, 2013) (*Cranesville Block*)).

²⁹ *See Commnet Supply, LLC*, Memorandum Opinion and Order, 34 FCC Rcd 11673, 11677, n.37 (2019) (noting that parties seeking Commission review of staff denial of petition for reconsideration did not "attempt to preserve on review" an argument the Bureau had rejected); *Rosendale, New York*, Memorandum Opinion and Order, 13 FCC Rcd 20590, 20590, para. 1 and n.1 (1998) (noting party made argument in a reply to oppositions to petition for reconsideration it had filed, but finding party "did not preserve . . . argument before the Commission" because argument was not presented to the Commission when party sought review of the staff's denial of its petition for

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under section 1.106(b)(2) of the Commission's rules because the argument—which is not based on new events or circumstances and which was known to FCR—was not presented to the Commission in its AFR when it had the opportunity to do so. The argument is also subject to dismissal under section 1.106(p)(3) because it was fully addressed and rejected in the same proceeding.³⁰

IV. CONCLUSION/ORDERING CLAUSE

12. For the reasons discussed above, we find that the 2020 Petition relies upon impermissible facts and arguments. **ACCORDINGLY, IT IS ORDERED** that the Petition for Reconsideration filed by Florida Community Radio, Inc., on July 23, 2020, **IS DISMISSED** pursuant to Section 1.106(b)(2) of the Commission's Rules. The Commission's records will be updated to reflect the fact that the construction permit for DWRBD(FM) (File No. BMPED20180926ABN) expired on July 17, 2019.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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reconsideration). We also note that Bureau-level decisions like *Cranesville Block* do not bind the Commission. *See, e.g., Comcast v. FCC*, 526 F.3d 763, 769 (D.C. Cir. 2008) (an agency is not bound by the actions of its staff if the agency has not endorsed those actions). In any event, even if we were to consider FCR's argument regarding *Cranesville Block*, we would deny it. In that case, the permittee's contractor failed to finish construction because of the ongoing impact of four natural disasters in a month, which the Bureau found to warrant tolling; the permittee had not previously been granted tolling; and the permittee only required one additional month of construction time. By contrast, the permittee in this case was not granted tolling because—rather than even beginning construction—it made a business decision to conduct studies that could have been undertaken at any time during its extended, four-year construction term. *See Reconsideration Decision*, 34 FCC Rcd at 10281-82 & n.29.

³⁰ 47 CFR § 1.106(p)(3); *see Reconsideration Decision*, 34 FCC Rcd at 10281.