

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

In the Matter of)
Gillian Sutton) Application File No. BL-11485
) Facility ID No. 12810
)
Station DKRSN(AM),) Application File No. BLFT-20130819AGC
Los Alamos, New Mexico) Facility ID No. 154369
)
FM Translator Station DK296GI,)
Los Alamos, New Mexico)

MEMORANDUM OPINION AND ORDER

Adopted: February 13, 2024

Released: February 13, 2024

By the Commission:

I. INTRODUCTION

1. We have before us an Application for Review (AFR) filed by Albuquerque Board of Education (ABE) on September 18, 2023. ABE seeks review of a Media Bureau (Bureau) decision denying its request that the Commission reinstate the cancelled licenses of Station DKRSN(AM), Los Alamos, New Mexico and FM Translator Station DK296GI, Los Alamos, New Mexico (collectively, Stations), which were formerly licensed to Gillian Sutton (Sutton), and that ABE be designated as the temporary trustee of the Stations. For the reasons set forth below, we dismiss the AFR to the extent it relies on new arguments not previously presented to the Bureau, and otherwise deny the AFR.

II. BACKGROUND

2. On May 1, 2023, Sutton voluntarily surrendered the licenses for the Stations, and the Bureau gave public notice of those cancellations on May 4, 2023. No petitions for reconsideration of the license cancellations were timely filed, and the cancellations became final on June 13, 2023. On August 2, 2023, ABE, a party with no prior interest in the Stations, submitted an "Emergency Petition for Extraordinary Relief" (Petition), which sought: (1) reinstatement of the licenses for the Stations; and (2) designation of ABE "as the temporary trustee of [the Stations] so that the facilities can resume operating

1 Albuquerque Board of Education, Application for Review, Pleading File No. 0000221109 (filed Sept. 18, 2023).

2 Albuquerque Board of Education, Letter Order, DA 23-721 (MB Aug. 18, 2023) (Reconsideration Decision).

3 Letter from Lauren Lynch Flick, Esq., to Son Nguyen, Audio Division, FCC Media Bureau (May 1, 2023) (cancellation notice for Station DKRSN(AM)); Application File No. 0000214473 (filed May 2, 2023) (cancellation notice for FM Translator Station DK296GI).

4 Actions, Public Notice, Report No. PN-2-230504-01 (MB May 4, 2023) (Cancellation Public Notice).

5 See 47 U.S.C. § 405(a); 47 CFR § 1.106(f).

6 See 47 CFR § 1.117(a) (providing for 40 days after public notice of the Bureau's decision for the Commission on its own motion to order the record before it for review).

on an emergency basis.”⁷ ABE argued that “[t]he FCC cancellation leaves Los Alamos County with no local, licensed AM broadcast service whatsoever,”⁸ and included a letter from Sutton stating that she supported the Petition.⁹

3. In the *Reconsideration Decision*, the Bureau found that, although the Petition was styled as an “Emergency Petition for Extraordinary Relief,” such a pleading is not contemplated by the Commission’s rules (Rules).¹⁰ The Bureau treated the Petition as a petition for reconsideration because ABE sought reconsideration of the cancellation of the licenses for the Stations.¹¹ The Bureau dismissed the Petition as untimely because it was filed approximately two months after the filing deadline for petitions for reconsideration.¹² As a separate and independent basis for dismissal, the Bureau found that ABE lacked standing to file the Petition.¹³

4. In the AFR, ABE asserts that it “clearly put forward its Petition as a waiver [request] which obviously did not meet the normal requirements of the Commission’s rules.”¹⁴ ABE further asserts that the Bureau failed to provide a reasoned basis for denying the waiver request, and that the request was not given the “hard look” to which it was entitled under applicable precedent.¹⁵

III. DISCUSSION

5. Section 1.115 of the Rules provides that any person aggrieved by any action taken pursuant to delegated authority may file an application requesting review of that action by the Commission.¹⁶ The Commission may grant the application for review in whole or in part, or it may deny the application with or without specifying its reasons.¹⁷ For the reasons set forth below, we dismiss in part and otherwise deny the AFR.

6. *Waiver Request.* We reject ABE’s assertion that it put forward the Petition as a waiver request.¹⁸ In the Petition, which was styled as an “Emergency Petition” and not a waiver request, ABE did not request that any specific rule(s) be waived, cite to any rules or cases pertaining to waiver requests, use the word “waiver” anywhere in the pleading, or offer any other indication that the pleading was a waiver request.¹⁹ In addition, ABE fails to provide support in the AFR for its argument that the Petition

⁷ Albuquerque Board of Education, Emergency Petition for Extraordinary Relief, Application File Nos. BL-11485 and BLFT-20130819AGC at 1 (filed Aug. 2, 2023).

⁸ *Id.*

⁹ *Id.* at 4.

¹⁰ *Reconsideration Decision* at 2.

¹¹ *Id.*

¹² *Id.* The filing deadline for petitions for reconsideration was June 5, 2023, and the Petition was filed on August 2, 2023.

¹³ *Id.* at 2-3.

¹⁴ AFR at 2.

¹⁵ *Id.* at 2-5. ABE does not contest in the AFR the Bureau’s finding that the Petition was untimely and that ABE lacked standing to file the Petition.

¹⁶ 47 CFR § 1.115(b)(2); *Warren Havens*, Memorandum Opinion and Order, 23 FCC Rcd. 3210, 3212, para. 6 (2008) (*Warren Havens*).

¹⁷ 47 CFR § 1.115(g); *Warren Havens*, 23 FCC Rcd. at 3212, para. 6.

¹⁸ *See* AFR at 2.

¹⁹ ABE appears to concede that its purported waiver request was flawed as it states that the request “obviously did not meet the normal requirements of the Commission’s rules.” *Id.* at 2.

was a waiver request, and merely relies on conclusory statements.²⁰ Accordingly, we find that the Petition was not a waiver request.

7. We also reject ABE's contention that the Bureau did not provide a reasoned basis for denying its waiver request, and that the waiver request was entitled to a "hard look."²¹ The Bureau was not obligated to provide a basis for denying a waiver request where no waiver was requested.²² Furthermore, waiver requests are entitled to a hard look when they are "stated with clarity and accompanied by supporting data."²³ Here, the Petition did not include any waiver request, much less one that was stated with clarity and accompanied by supporting data.

8. *Timeliness.* The Bureau correctly held that the Petition was untimely.²⁴ Section 405 of the Communications Act of 1934, as amended (Act), and section 1.106(f) of the Rules, require petitioners to seek reconsideration no later than 30 days after public notice of the action for which reconsideration is sought.²⁵ The Commission has held consistently that it does not have authority to waive or extend, even by as little as one day, the statutory 30-day filing period for petitions for reconsideration, absent extraordinary circumstances, which are not present in the instant case.²⁶ The Petition was filed 90 days after release of the Cancellation Public Notice, and 58 days after the deadline for filing petitions for reconsideration.²⁷ The Petition did not address that it was untimely filed, and the Bureau specifically held that ABE could not rely on styling the Petition as an "Emergency Petition" to circumvent statutory filing deadlines.²⁸ Accordingly, the Bureau properly dismissed the Petition as untimely.

9. *Standing.* The Bureau correctly found lack of standing to be a separate and independent basis for dismissal of the Petition.²⁹ In the broadcast regulatory context, a non-party attempting to establish standing as someone aggrieved or whose interests were adversely affected generally must show it in one of three ways: (1) as a competitor in the market subject to signal interference; (2) as a competitor in the market subject to economic harm; or (3) as a resident of the station's service area or regular listener of the

²⁰ For example, ABE fails to support its statement that it "clearly put forward its Petition as a waiver [request]." *Id.* at 2. While the cases that ABE cites in the AFR discuss the circumstances under which waiver requests may be considered and granted, they are immaterial to ABE's assertion that the Petition was a waiver request. *See id.* at 3-5. Moreover, to the extent that ABE relies on these cases for the first time in its AFR, we dismiss the AFR pursuant to section 1.115(c) of the Rules. 47 CFR § 1.115(c) ("No application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass."); *see also ACCESS*, Memorandum Opinion and Order, 29 FCC Rcd 9735 (2014) (dismissing application for review that relied on arguments not previously presented to the Media Bureau). Also, ABE does not specify in the AFR any rule(s) that would be waived for its purported waiver request, or contend that it specified any such rule(s) in the Petition.

²¹ *See* AFR at 2-5.

²² *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, para. 2 (D.C. Cir. 1969) (the Commission need not sift through pleadings and documents to identify arguments not stated with clarity), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

²³ *BellSouth Corp. v. FCC*, 162 F.3d 1215, 1224 (D.C. Cir. 1999); *WAIT Radio*, 418 F.2d at 1157, para 2.

²⁴ *See Reconsideration Decision* at 2.

²⁵ 47 U.S.C. § 405(a); 47 CFR § 1.106(f).

²⁶ *Metromedia, Inc.*, Memorandum Opinion and Order, 56 FCC 2d 909 (1975) (finding that the Commission may not waive the thirty day filing period to accept a petition for reconsideration filed one day late); *Ole Brook Broadcasting, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 20644 (2000); *Henry Cotton*, Letter Order, 22 FCC Rcd 18610 (MB-AD 2007); *Martin L. Hensley*, Letter Order, 22 FCC Rcd 8377 (MB-AD 2007).

²⁷ *See* Cancellation Public Notice.

²⁸ *Reconsideration Decision* at 2.

²⁹ *See id.* at 2-3. 47 U.S.C. § 405; 47 CFR § 1.106(b)(1).

station.³⁰ A petitioner claiming its interest is adversely affected must demonstrate a direct causal link between the challenged action and its alleged injury, and show that the injury would be prevented or redressed by the relief requested.³¹ Here, the Bureau correctly found that ABE was not a party to the surrender of the licenses for the Stations, and has not demonstrated what alleged injury it has suffered or how grant of the Petition would redress that injury.³² In the AFR, ABE does not address, let alone demonstrate, that it had standing to file the Petition. As a result, the Bureau appropriately found that ABE lacked standing to file the Petition.

IV. ORDERING CLAUSE

10. Accordingly, for the reasons discussed above, **IT IS ORDERED** that the Application for Review filed by Albuquerque Board of Education on September 18, 2023, **IS DISMISSED IN PART AND OTHERWISE DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁰ See *Punjabi American Media, LLC*, Memorandum Opinion and Order, 35 FCC Rcd 6869, 6872, n.26 (2020) (citing *Tribune Media Co.*, Memorandum Opinion and Order, 34 FCC Rcd 8436, 8448, para. 23 (2019)).

³¹ See *Susquehanna Radio Corp.*, Memorandum Opinion and Order, 29 FCC Rcd 13276, 13277, para. 3 (2014), *recon. denied*, Memorandum Opinion and Order, 30 FCC Rcd 13978 (2015).

³² *Reconsideration Decision* at 2.