

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

MM Docket No. 90-380

In re Applications of

RIO GRANDE File No. BPH-880815MV
BROADCASTING CO.

ROBERTO PASSALACQUA File No. BPH-880816NN

IRENE RODRIGUEZ File No. BPH-880816OR
DIAZ DE McCOMAS

UNITED BROADCASTERS File No. BPH-880816OW
COMPANY

For Construction Permit for a
New FM Station on Channel 247A
in Rio Grande, Puerto Rico

MEMORANDUM OPINION AND ORDER

Adopted: November 22, 1993; Released: December 13, 1993

By the Review Board: GREENE and BLUMENTHAL.
Board Chairman MARINO absent.

1. The Review Board has under consideration a Petition for Reconsideration, filed October 1, 1993, by Roberto Passalacqua (Passalacqua), of the Board's *Decision*, 8 FCC Rcd 6256 (Rev. Bd. 1993). There, we denied Passalacqua's post-hearing petition for leave to amend specifying a new transmitter site and dismissed his application for want of a viable site. We had earlier found in our *Decision*, citing *Imagists*, 8 FCC Rcd 2763 (1993), that the presiding Administrative Law Judge (ALJ) had erroneously accepted a site amendment filed March 21, 1991 by Passalacqua; and thus, we did not have to consider whether Passalacqua had good cause later to amend from that site. See *Colorado*

Television, Inc., 98 FCC 2d 513, 518 n. 6 (Rev. Bd. 1984)(denial of first site amendment requires rejection of a second site amendment because "the chain of good cause had long been broken").¹ Our *Decision* also granted the application of United Broadcasters Company as the superior comparative applicant. In urging reinstatement of his application, Passalacqua primarily argues that waiting until 1991 to file an amendment did not warrant dismissal of his 1988 application. He also argues that the Board retroactively applied a new stricter standard against his application by relying on *Imagists*, which was released subsequent to the amendment. Passalacqua also renews arguments made in exceptions that two of United's principals are not entitled to integration credit. Responsive pleadings were filed by the opposing parties and Passalacqua filed a consolidated reply on November 2, 1993.

DISCUSSION

2. Reconsideration is appropriate only where the petitioner has shown "manifest error or omissions so material that their correction will result in substantial alteration of the original decision." *WWIZ, Inc.*, 37 FCC 685, 686 ¶ 2 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966). Thus, reconsideration "will not be granted merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken." *Id.* Here, Passalacqua has not attempted to show that the Board committed manifest error in its application of Commission policy or precedent; rather he mainly reargues the result, an insufficient ground for reconsideration.² As for his contention that the Board retroactively applied a new standard to his amendment, he is mistaken. The Commission in *Imagists* did not materially revise the criteria for good cause showings. It simply clarified the degree of diligence it will now deem acceptable, urging applicants to submit curative amendments no later than thirty days after they learn, or should have learned, of the deficiency requiring an amendment. That clarification was not decisional concerning Passalacqua's amendment inasmuch as the amendment was filed more than one and one-half years after Passalacqua had been alerted to problems regarding his site proposal. Citing precedent pre-dating Passalacqua's amendment, the Commission noted in *Imagists* at ¶ 14 and n. 17 that a delay of more than six months has long been presumed to be excessive in the absence of unusual circumstances.³ Providing no basis for departing from our previous *Decision*, Passalacqua's petition for reconsideration shall be denied.

¹ In ¶ 13 of our *Decision*, the Board noted significant problems concerning Passalacqua's relationship with the site owner that would have vitiated any showing of good cause for the post-hearing amendment, had it been necessary to reach the merits of that question.

² Passalacqua does point out a misstatement contained in note 6 of our *Decision*. There, with respect to an earlier site amendment (*i.e.* October 17, 1990), we stated that Passalacqua did not claim to amend as of right. In his petition for leave to amend, Passalacqua included, along with a good cause showing, a claim that the amendment was filed as of right, but counsel for Passalacqua asked the ALJ to defer action on the petition pending a further amendment. When no amendment was filed, the ALJ denied the petition for leave to amend. See ¶ 5 of our *Decision*.

³ Passalacqua filed both a motion for leave to supplement his

petition for reconsideration, and the supplement, on October 8, 1993, reporting that the Commission, in *Nugget Broadcasting Co.*, 8 FCC Rcd 7121, 7123 n.11 (1993), commented on the applicability, under different circumstances, of its *Imagists* good cause discussion. The applicant in *Nugget* technically had failed to meet the thirty day filing period for reporting a deficiency, in apparent conflict with the admonishment in *Imagists*. The Commission, however, distinguished the situation in *Nugget* from that of *Imagists*, noting the amendment in the later case had been filed more than 15 months after the applicant had learned of its deficiency. The Commission further observed that *Nugget* was not a case in which "an applicant [sat] idly by, either doing nothing or pursuing a course that was unlikely to resolve the problem expeditiously." Passalacqua seeks to identify himself with the applicant in *Nugget*, but the facts in this proceeding more closely resemble those found in *Imagists*.

3. ACCORDINGLY, IT IS ORDERED. That the Motion for Leave to File Supplement to Petition for Reconsideration, filed on October 8, 1993, by Roberto Passalacqua IS GRANTED; and his Petition for Reconsideration, filed on October 1, 1993, and supplemented on October 8, 1993, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marjorie Reed Greene
Member, Review Board