



Federal Communications Commission
Washington, D.C. 20554

March 16, 2010

DA 10-442

In Reply Refer to:

1800B3-SS

Released: March 16, 2010

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In re: Metro Radio, Inc.
WKCW(AM), Warrenton, Virginia
Facility ID: 73190
File No. BL-20060302ADG

Application for License

Petition for Reconsideration

Dear Counsel:

We have before us: (1) a Petition for Reconsideration (“Petition”) filed on March 26, 2008, by Group A Licensee, LLC (“Group A”), licensee of Class B Station WCOJ(AM), Coatesville, Pennsylvania,¹ seeking reconsideration of the grant of the referenced application (the “Application”) of Metro Radio, Inc. (“Metro Radio”) for a license to cover the minor change of facilities of Station WKCW(AM), Warrenton, Virginia (the “Station”); and (2) Metro Radio’s April 10, 2008, Opposition to Petition for Reconsideration (“Opposition”). For the reasons discussed below, we deny the Petition.

Background. Both the Station and WCOJ(AM) are licensed to operate on 1420 kHz. On January 29, 2004, the staff granted Metro Radio a construction permit authorizing the Station to increase its daytime power from 10 to 22 kilowatts and nighttime power from 1.7 to 60 watts, utilizing a directional antenna system.² The permit fully protected the licensed WCOJ(AM) facilities from interference in accordance with Sections 73.187 and 73.37(a) of the Commission’s Rules (the “Rules”).³ During construction and testing of the modified facilities, Metro Radio sought and received special temporary authority (“STA”) under Section 73.1615 of the Rules⁴ to operate with the facilities authorized

¹ We note that on February 12, 2009, the staff granted the assignment of station WCOJ(AM) from Group A to Holy Spirit Radio Foundation, Inc. The parties consummated the assignment on February 27, 2009.

² File No. BP-20030207ACM (the “Construction Permit”).

³ See 47 C.F.R. §§ 73.187 and 73.37(a).

⁴ 47 C.F.R. § 73.1615.

in the Construction Permit in order to make final transmission system adjustments and take proof of performance measurements.⁵ Metro Radio completed construction of the Station's modified facilities, and filed the Application and a request for program test authority ("PTA") on March 2, 2006.⁶

On February 22, 2006, Group A filed a complaint with the Media Bureau (the "Bureau") alleging daytime and critical hours interference from the Station's modified facilities.⁷ Metro Radio responded to the complaint on February 28, 2006.⁸ In its response, Metro Radio maintained that the Station had been operating in full compliance with its authorization, and that the alleged interference likely was from a different source. Metro Radio asserted, for example, that the interference might be the result of problems with the WCOJ(AM) antenna system or the result of anomalous daytime skywave propagation from cyclic sunspot activity.⁹

In March 2006, the Commission's Enforcement Bureau also began receiving interference complaints from WCOJ(AM) listeners. In October 2006, staff from the Enforcement Bureau's Philadelphia Office conducted an investigation of the allegations of interference and coordinated its investigation with the Commission's Columbia, Maryland, Office. The Columbia Office conducted an unannounced inspection of the Station on January 31, 2007, during daytime hours to determine if it was operating in accordance with the terms of its license. The Enforcement Bureau's staff stated that it "did not find any violations during the inspection."¹⁰ Additionally, on February 9, 2007, the Enforcement Bureau's staff made nighttime measurements at the Station's nighttime monitoring points and took field strength readings to determine whether the Station was properly changing to nighttime power. It determined that the Station was operating at its authorized nighttime power level and stated that the Station appeared to be in compliance with the Rules regarding AM operation.¹¹ The Bureau staff granted the Application and dismissed Metro Radio's February 2006 interference complaint on February 20, 2008.¹² The staff found that the Application fully protects WCOJ(AM)'s facilities and that the Station is operating within its authorized parameters. Group A filed the Petition on March 26, 2008.¹³

Discussion. Section 405(a) of the Communications Act of 1934, as amended (the "Act"), states that any party to an order, decision, report, or action, or any other person aggrieved or whose interests are

⁵ See File No. BSTA-20050811ACY, granted by the staff on September 2, 2005. *Letter to Mark N. Lipp, Esq.*, Reference 1800B3 (MB Sep. 2, 2005). The STA was to expire on March 2, 2006; Metro Radio sought extension of the STA on that date. The extension request remains pending.

⁶ File No. 20060302ADH. The staff ultimately granted the PTA request on January 25, 2007.

⁷ See *Letter from Christopher D. Imlay, Esq., to Peter H. Doyle, Chief, Audio Division* filed on February 22, 2006.

⁸ See *Letter from Mark N. Lipp, Esq., to Marlene H. Dortch, Office of the Secretary* filed February 28, 2006.

⁹ See, e.g., Engineering Report submitted by Metro Radio in Opposition at Attachment.

¹⁰ See *Letter to Mark Lipp, Esq., and Christopher D. Imlay, Esq.*, 1800B-EAL (MB rel. Feb. 20, 2008) ("*Staff Decision*").

¹¹ While the inspection and field measurements made at the Station were not done concurrently with periods of active complaints, there is no information to suggest that the Station is operating its facilities differently during other dates and times that would increase radiation toward WCOJ(AM).

¹² See *Staff Decision*, reported in *Broadcast Actions*, Public Notice, Report No. 46679 (rel. Feb. 25, 2008).

¹³ Metro Radio filed an Opposition on April 10, 2008.

adversely affected, may petition for reconsideration.¹⁴ To establish standing, a petitioner who is not a party to the proceeding must: (1) state with particularity the manner in which its interests are adversely affected by the action taken, and (2) show good reason why it was not possible to participate in the earlier stages of the proceeding.¹⁵ To determine if a party's interests have been adversely affected, the Commission frequently relies upon a three-pronged standing test under which a party must establish: (1) a distinct and palpable injury-in-fact that is (2) traceable to the respondent's conduct and (3) redressable by the relief requested.¹⁶

Procedural Issue. Standing. Metro Radio argues that the Petition should be dismissed on procedural grounds because Group A has not demonstrated why it did not participate earlier in the proceeding.¹⁷ We disagree. Although Group A did not file an informal objection to the Application pursuant to Section 73.3587 of the Rules,¹⁸ on February 22, 2006, Group A filed an interference complaint with the staff. The issues raised in the interference complaint and, now, on reconsideration, substantially overlap. That complaint remained pending until the issuance of the *Staff Decision*. We find that Group A has adequately participated in this proceeding prior to the grant of the Application, and it therefore has standing to file the Petition pursuant to Section 1.106(b)(1) of the Rules.¹⁹

Substantive Issue. Harmful Interference. It is well established that reconsideration will not be granted merely for the purpose of again debating matters on which the agency has once deliberated and spoken.²⁰ Consequently, we agree with Metro Radio that the Petition fails because Group A does not raise any issues that warrant reconsideration of grant of the Application.

Initially, we address the issue of the Bureau's meeting its statutory obligation to protect licensed stations from interference. Group A argues that, pursuant to Section 316 of the Act,²¹ it was entitled to a hearing on its interference complaint before the Application was granted.²² Specifically, Group A contends that “the interference caused by WKCW to WCOJ constitutes a modification of WCOJ’s license,” thus entitling Group A to a hearing. As such, Group A adds, the Commission is obligated to conduct a reasonable investigation of the matter, beyond merely ascertaining whether or not “the interferor’s (sic) new, high power facilities are being operated in accordance with the issued construction

¹⁴ 47 U.S.C. § 405(a).

¹⁵ 47 C.F.R. § 1.106(b)(1).

¹⁶ See *Weblink Wireless, Inc.*, Order on Reconsideration, 17 FCC Rcd 24642 (WTB 2002); *AT&T Corp. v. Business Telecom, Inc.*, Order on Reconsideration, 16 FCC Rcd 21750 (2001); *Chris C. Hudgins*, Order on Reconsideration, 16 FCC Rcd 7941 (WTB 2001).

¹⁷ Opposition at 1.

¹⁸ 47 C.F.R. § 73.3587.

¹⁹ See *Clear Channel Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 1421, 1436 (2008) (informal complaint treated as informal objection).

²⁰ See *WWIZ, Inc.*, 37 FCC at 686; *In the Matter of Application of Broadwave Albany, L.L.C. et al.*, 17 FCC Rcd 4545, 4546 (2002); *In re Applications of Religious Broadcasting Network*, 3 FCC Rcd 6216, 6216 (1988).

²¹ 47 U.S.C. § 316.

²² Petition at 5.

permit”²³ Group A also states that the Bureau’s conclusion is “woefully insufficient.”²⁴ We disagree.

Group A’s sole substantive claim is that the Station causes interference to WCOJ(AM). The Commission licenses full service radio broadcast stations on a predicted interference basis.²⁵ The staff engineering study confirmed that the Application meets all protection requirements with respect to WCOJ(AM). Thus, we find that grant of the Application did not constitute a modification of the WCOJ(AM) license and therefore that Group A is not entitled to a hearing on this issue. Group A does not cite any Rule that the Station is violating nor does it allege that the Station is operating contrary to its authorization. Pursuant to Section 73.37 of the Rules, only the groundwave contour of a Class B station, such as WCOJ(AM), is protected from objectionable interference. The staff found that the proposed Station facilities comply with this Rule. Moreover, the Rules do not provide any critical hours protection for Class B station WCOJ(AM).²⁶ Thus, any “interference” that may occur to WCOJ(AM) from the Station during critical hours is not “objectionable.”

Regarding the matter of Group A’s dismissed interference complaint,²⁷ Group A argues in its Petition that if staff “did not want to devote the necessary resources [to conduct] . . . an adequate investigation of the interference so as to permit it to be resolved, then at the very least, Metro Radio should have been required to conduct one. . . .”²⁸ The record of this proceeding establishes that the Commission took precisely the actions which Group A demands. In the *Staff Decision*, the staff found that the Station was operating within its authorized parameters. As described above, the Commission’s Enforcement Bureau undertook an unannounced inspection of the Station’s transmission facilities and made additional observations of field measurements and required power/pattern changes, and found that the Station was operating as authorized.²⁹

²³ *Id.*

²⁴ Petition at 4.

²⁵ *See, e.g.*, 47 C.F.R. § 73.37.

²⁶ *See* 47 C.F.R. § 73.187(a)(1) (establishing critical hours protection requirements for Class A stations only); *see also, e.g., Empire State Broadcasting*, Decision, 67 RR 2d 1218 (Rev. Bd. 1990).

²⁷ *See* n.7, *supra*. We note that any periodic contacts that Group A has made with the Enforcement Bureau regarding alleged unlawful, harmful interference is not a part of this proceeding. *See* Petition at 2.

²⁸ Petition at 4-5.

²⁹ We note that Rep. James Gerlach (R-PA) submitted a February 1, 2007, letter to the Commission’s Chairman on this matter. Group A states that it is “unknown” whether the Commission responded to this Congressional inquiry. *See* Petition at 5. The Chief of the Enforcement Bureau responded to Rep. Gerlach’s letter on February 25, 2009, stating that the Station fully protects WCOJ(AM) from interference in accordance with the Rules. *See Letter to The Honorable Jim Gerlach from Kris Monteith, Chief, Enforcement Bureau* (rel. Feb. 25, 2009).

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED that, Group A's Petition for Reconsideration IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Metro Radio, Inc.
Group A Licensee, LLC
Mr. Clinton R. Weiser
Ms. Janet L. Emanuel