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In re: **The Last Bastion Station Trust, LLC, as Trustee**
WMGL(FM), Ravenel, South Carolina
Facility ID No. 61592
File No. BLH-20071220ABN

Application for License to Cover Construction Permit

Petition for Reconsideration

Dear Counsel:

We have before us: (1) a Petition for Reconsideration ("License Petition") filed by Georgia Eagle Broadcasting, Inc. ("Georgia Eagle") on August 12, 2010, seeking partial reconsideration of the grant of the referenced application of The Last Bastion Trust, LLC, as Trustee ("LBT"), for a license to cover the granted construction permit of Station WMGL(FM), Ravenel, South Carolina (the "WMGL License Application");[1] (2) LBT's September 13, 2010, Opposition to Petition for Reconsideration ("Opposition"); and (3) Georgia Eagle's September 23, 2010, Reply to the Opposition ("Reply"). For the reasons discussed below, we deny the Petition.

Background. On January 19, 2007, Citadel Broadcasting Company ("Citadel"), licensee of WNKT(FM), St. George, South Carolina, filed an application (the "WNKT Application")[2] to change the community of license of WNKT(FM) from St. George to Eastover, South Carolina. On April 13, 2007, Citadel, then the licensee of WMGL(FM),[3] filed an application for minor modification of the facilities of

[1] The staff granted the WMGL License Application on July 12, 2010. *See Broadcast Actions,* Public Notice, Report No. 47278 (rel. July 15, 2010).

[2] File No. BPH-20070119AEM.

[3] *See* File No. BALH-20060228ALE (consummated on June 12, 2007, pursuant to which Citadel assigned the WMGL(FM) license to LBT).

WMGL(FM) (the "WMGL Permit Application"),[4] and, on the same day, amended the WNKT Application to make the two applications mutually contingent.[5] The staff granted the uncontested Applications on July 5, 2007.[6] On that same date, Georgia Eagle filed a modification application to change the community of license of its Station WMCD(FM) from Claxton, Georgia, to Sullivan's Island, South Carolina,[7] and on August 10, 2007, Georgia Eagle filed a timely petition for reconsideration of the grant of the WMGL Permit Application ("Permit Petition"). On March 25, 2008, the staff dismissed the Permit Petition. On April 24, 2008, Georgia Eagle filed an Application for Review of the staff's decision, which remains pending.

On December 20, 2007, during the pendency of the Permit Petition, LBT filed the WMGL License Application. On December 26, 2007, Georgia Eagle filed an Informal Objection, reiterating arguments set forth in the Permit Petition. On July 9, 2010, the staff denied the objection and granted the WMGL License Application.[8] On August 12, 2010, Georgia Eagle filed its License Petition.

Georgia Eagle argues that: (1) it was "premature" for the staff to grant the WMGL License Application until Commission action is taken on Georgia Eagle's Application for Review; and (2) it was "incorrect" for the staff to have granted the WMGL License Application without conditioning the grant upon the outcome of the appeal of the underlying WMGL Permit Application or in any way acknowledging the underlying construction permit litigation.[9]

In Opposition, LBT argues that cases Georgia Eagle relies on to support its arguments are "distinguishable" from this proceeding and that Georgia Eagle has never requested "injunctive relief" in this case and would not be entitled to it if it had been requested.[10] In Reply, Georgia Eagle argues that it is not requesting "injunctive relief" and that all it is insisting upon is that its "appellate rights be clearly protected . . . and preserved."[11]

Discussion. The Commission will consider a petition for reconsideration only when petitioner shows either a material error in the Commission's original order or raises changed circumstances or unknown additional facts not known or existing at the time of petitioner's last opportunity to present such matters.[12] Georgia Eagle has not met this burden.

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[4] File No. BPH-20070413AFJ.

[5] *See* 47 C.F.R. § 73.3517(e). The applications specifically referenced this contingency. *See* WMGL Permit Application, Exhibit 5 at 1 and Exhibit 26 at 1; WNKT Application, as amended, Exhibit 1 and Exhibit 26 at 1.

[6] *See Broadcast Actions,* Public Notice, Report No. 46525 (rel. July 11, 2007).

[7] *See* File No. BPH-20070705AAA. The staff dismissed this application on April 9, 2013. *See Broadcast Actions,* Public Notice, Report No. 47966 (rel. Apr. 12, 2013). Georgia Eagle filed an Application for Review of this dismissal on May 13, 2013, which remains pending.

[8] *See Letter to The Last Bastion Station Trust, LLC, as Trustee and Georgia Eagle Broadcasting, Inc.,* Letter, Reference 1800B3-JDB (MB Jul. 9, 2010).

[9] Petition at 2 and 4 (citing *Kidd Communications,* Letter, 20 FCC Rcd 12723 (MB 2005) ("*Kidd*").

[10] Opposition at 3, 5.

[11] Reply at 2.

[12] *See* 47 C.F.R. § 1.106(c); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sum nom., Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966); *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

Initially, with respect to the License Petition, we stress the stringent standard of Section 319(c) of the Communications Act of 1934, as amended ("Act"),[13] by which Georgia Eagle's challenge to the WMGL License Application must be judged. So long as "all the terms, conditions, and obligations set forth in the application and permit have been fully met," which is the case here, LBT has a protected interest in the grant of the WMGL License Application.[14] It is entitled to a presumption that the Section 309 public interest determination made in granting the associated construction permit application continues in effect unless "extraordinary circumstances" have arisen that would make grant of the WMGL License Application contrary to the public interest.[15]

Georgia Eagle raises no such "extraordinary circumstances" here. In support of its argument that the staff prematurely granted the WMGL License Application, Georgia Eagle cites *R&S Media*.[16] Georgia Eagle asserts that, in *R&S Media*, that the staff dismissed (without prejudice) a pending license application upon granting a petition for reconsideration of the grant of the underlying construction permit.[17] The staff certainly could have done so here had it *granted* Georgia Eagle's petition for reconsideration of the WMGL Permit Application but, in fact, the staff dismissed that pleading. *R&S Media* is inapposite here.[18]

Furthermore, with respect to Georgia Eagle's claim that the staff should have conditioned the grant of the WMGL License Application upon the outcome of Georgia Eagle's appeal of the underlying WMGL Permit Application, it appears that Georgia Eagle misapprehends the scope of reviewability of actions taken pursuant to delegated authority. It is clear from the Commission's Rules that actions taken under delegated authority are, unless otherwise ordered, effective on release of the decision and that the filing of an Application for Review does not automatically stay the decision of which review is being sought.[19] Clearly, and irrespective of whether the authorization is so conditioned, action on the WMGL Permit Application is subject to the Commission's determination on Georgia Eagle's Application for Review, and any decision by LBT to construct WMGL(FM)'s modified facilities is at its sole risk.[20]

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[13] 47 U.S.C. § 319(c).

[14] *See Richard F. Swift, Esq., Lawrence Bernstein, Esq.,* Letter, 26 FCC Rcd 15567, 15571 (MB 2011); *see also Whidbey Broadcasting Service, Inc.*, Memorandum Opinion and Order, 4 FCC Rcd 8726, 8727 (1989) (petition for reconsideration against license application denied; protest is more properly raised at the time during which a construction permit application is under consideration).

[15] *See Focus Cable of Oakland, Inc.,* Memorandum Opinion and Order, 65 FCC 2d 35, 39-40 (1977) .

[16] Petition at 4, citing *R&S Media*, Memorandum Opinion and Order and Order to Show Cause, 19 FCC Rcd 6300 (MB 2004).

[17] *R&S Media,* 19 FCC Rcd at 6307.

[18] Additionally, in *R&S Media,* petitioner demonstrated that its station would receive interference from the granted permit, which constituted a modification of petitioner's license under 47 U.S.C. § 316;[18] the Bureau staff therefore granted reconsideration in part and issued an Order to Show Cause why the station's license should not be so modified. Here, Georgia Eagle has not made any claim under Section 316 of the Act nor any claim that it has a licensed facility which will receive interference as a result of the grant of the WMGL License Application. *Id.*

[19] *See* 47 C.F.R. §1.102(b)(1) and (2). The Commission may, within 40 days of the release of public notice announcing an action by delegated authority, call for the record and set aside that action. *See* 47 C.F.R. § 1.117. It did not do so here, and Georgia Eagle did not seek a stay of the staff's dismissal of the petition for reconsideration.

[20] *See, e.g., Letter to Dennis P. Corbett, Esq. and Katrina C. Gleber, Esq*., 22 FCC Rcd. 4795, 4797-98 (MB 2007); and *Las Americas Communications, Inc.,* Memorandum Opinion and Order, 6 FCC Rcd 1507, 1510 (1991) (an applicant opting to construct before the grant of its application becomes final does so at its own risk).

Nevertheless, the grant of the WMGL Permit Application is effective, if not final, and there is no basis for withholding action on the WMGL License Application.[21] Additionally, we find Georgia Eagle's reliance on, *inter alia*, *Kidd Communications,*[22] unavailing. Each of those cases concerned an assignment application related to ongoing bankruptcy or other civil litigation. Here, there is no civil litigation and thus no court order for the Commission to accommodate.[23] *Kidd* and the other assignment cases Georgia Eagle cites involving pending civil litigation are inapposite.

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

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: The Last Bastion Station Trust, LLC, as Trustee
Georgia Eagle Broadcasting, Inc.
Citadel Broadcasting Company

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[21] *See, e.g., KTXX-FM, Bee Cave, Texas,* Letter, 25 FCC Rcd 2129, 2131 (MB 2010) (modification application granted while Application for Review pending against grant of underlying construction permit application); *Caswell Capital Partners et al.,* Letter, 24 FCC Rcd 14335 (MB 2009) (granting voluntary license assignments from receiver to other parties while Application for Review pending against grant of previous assignment to receiver).

[22] *See* Petition at 3-4 citing *Kidd,* 20 FCC Rcd at 13724-5) (where the issue arises, Commission typically does not add a separate condition, but rather includes language in the text of a decision letter granting an assignment application which relates to ongoing civil litigation).

[23] *See, e.g., A Radio Company, Inc.*, Letter, 27 FCC Rcd 6001, 6002 (MB 2012) ("The Commission's long-standing policy is to accommodate the actions of state courts, thereby avoiding conflicts between state and federal authority, unless a public interest determination under the Act would compel a different result . . . the principle of fair accommodation between State and Federal authority . . . should be observed if the state's laws "can be effectively respected while at the same time reasonable opportunity is afforded for the protection of that public interest" which underlies licensing decisions.") (citations omitted).