

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

In the Matter of)	
)	
Emmis Radio License, LLC)	
)	
License Renewal Applications of)	
Station WFNI(AM)	)	File No. BR-20040401AOH
Indianapolis, Indiana	)	Facility I.D. No. 19521
)	
Station WLHK(FM)	)	File No. BRH-20040401ARD
Shelbyville, Indiana	)	Facility ID No. 19522
)	
Station WYXB(FM)	)	File No. BRH-20040401AOL
Indianapolis, Indiana	)	Facility ID No. 51432
)	
Station WWVR(FM)	)	File No. BRH-20040401AJ0
West Terre Haute, Indiana	)	Facility ID No. 68824
)	
Station WTHI-FM	)	File No. BRH-20040401AJH
Terre Haute, Indiana	)	Facility ID No. 70652
)	
and)	
)	
Merlin Media License, LLC)	
)	
Station WKQX(FM)	)	File Nos. BRH-20040802AQH,
Chicago, Illinois	)	BRH-20120801AJU
	)	Facility ID No. 19525

ORDER ON RECONSIDERATION

Adopted: July 24, 2014

Released: July 24, 2014

By the Chief, Media Bureau:

I. INTRODUCTION

1. We have before us a Petition for Reconsideration filed on April 7, 2014, by David E. Smith (“Smith”), Peter LaBarbera, Kathy Valente, Illinois Family Institute, and Illinois Chapter of the Concerned Women for America (collectively, “Petitioners”).¹ The Petition seeks reconsideration of the Commission’s April 12, 2013, Memorandum Opinion and Order, which denied two Applications for Review (“AFRs”), one filed by Smith, and the second filed jointly by Petitioners.² In this *Order on*

¹ A Joint Opposition to Petition for Reconsideration was filed on April 22, 2014, by Emmis Radio License, LLC (“Emmis”), and Merlin Media License, LLC (“Merlin”). Emmis assigned to Merlin the license for Station WKQX(FM) in 2011. See File No. BALH-20110627AAW. Petitioners filed a Reply on May 2, 2014.

² *Emmis Radio License, LLC*, Memorandum Opinion and Order, 29 FCC Rcd 2571 (2014) (“MO&O”).

Reconsideration, we dismiss the Petition pursuant to Section 1.106(p) of the Commission's Rules ("Rules").³

II. BACKGROUND

2. The AFRs sought review of Media Bureau ("Bureau") decisions⁴ granting the captioned license renewal applications filed by Emmis Radio License, LLC ("Emmis"), for Stations WFNI(AM) (formerly WIBC(AM)), Indianapolis, Indiana; WLHK(FM) (formerly WENS(FM)), Shelbyville, Indiana; WYXB(FM), Indianapolis, Indiana; WWVR(FM), West Terre Haute, Indiana; and WTHI-FM, Terre Haute, Indiana (collectively, "Indiana Applications"), and for Station WKQX(FM) (formerly WIQI(FM)), Chicago, Illinois ("WKQX Application") (collectively, "Emmis Applications"). In the *Indiana Staff Decision*, the Bureau denied Smith's Informal Objection to the Indiana Applications and held that: 1) the Bureau was barred from considering Smith's indecency complaints against Emmis by the terms of consent decree entered into by the Commission and Emmis' parent corporation, Emmis Communications Corporation;⁵ and 2) the Bureau did not need to consider the civil lawsuit filed against Smith by Erich "Mancow" Muller, who hosted a program that was broadcast by Emmis, because the lawsuit was a non-broadcast activity not regulated by the Commission and not involving Emmis. The *MO&O* affirmed the Bureau decisions for the reasons stated therein.⁶

3. Petitioners base the subject Petition on Section 1.106(b)(2)(i) of the Rules, which provides that where the Commission has denied an application for review, a petition for reconsideration will be entertained if "the petition relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission."⁷ Petitioners state that they "are Christian and seek to defend traditional Judeo-Christian morals and virtues."⁸ Petitioners "argue that the Commission has violated their right to equal protection under the 14th Amendment to the United States Constitution⁹ because it did not "investigate Emmis for its apparent violations of federal criminal statutes," but did "consciously investigate[] and/or impose[] civil forfeitures upon Christian organizations for relatively minor violations [of the Rules]."¹⁰ Accordingly, Petitioners argue that the Commission is required by the Equal Protection Clause to likewise investigate Emmis by designating the Emmis Applications for hearing.

³ 47 C.F.R. § 1.106(p).

⁴ *Emmis Radio License Corporation*, Letter, 22 FCC Rcd 16637 (MB 2007) (denying Smith's Informal Objection to the Indiana Application) ("*Indiana Staff Decision*"), *aff'd* *Emmis Radio License Corporation*, Letter, 24 FCC Rcd 369 (MB 2009); *Emmis Radio License Corporation*, Letter, Ref. 1800B3-MFW (MB Oct. 22, 2010) (denying Petitioner's Petition to Deny the WKQX Application).

⁵ *Emmis Communications Corp.*, Order, 19 FCC Rcd 16003 (2004) ("*Consent Decree*"), *recon. denied*, Order on Reconsideration, 21 FCC Rcd 12219 (2006) (denying Petitioners' petition for reconsideration of the order approving the consent decree), *aff'd sub nom. David Edward Smith et al. v. FCC*, No. 06-1381, Order (D.C. Cir. Mar. 29, 2007).

⁶ *MO&O*, 29 FCC Rcd at 2572.

⁷ Petition at 2, *citing* 47 C.F.R. § 1.106(b)(2)(i).

⁸ Petition at 3.

⁹ U.S. Const. amend. XIV § 1 ("All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.") ("Equal Protection Clause").

¹⁰ Petition at 4-5. Petitioners provide a list of Commission enforcement proceedings against what they identify as "Christian broadcasting organizations." Petition at Exhibit A.

III. DISCUSSION

4. We find that Petitioners have not demonstrated that there has been a change of circumstances warranting review of the *MO&O* pursuant to Section 1.106(b)(2)(i). Petitioners have merely identified several enforcement actions against allegedly Christian affiliated licensees which occurred following the filing of the AFRs. Petitioners have not presented any facts to support its contention that these actions demonstrate a change in Commission policy. Accordingly, we will dismiss the Petition for failing to satisfy the requirements of Section 1.106(b)(2)(i).¹¹

5. Additionally, Section 1.106(p) provides “[p]etitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s),”¹² including petitions that “relate to matters outside the scope of the order for which reconsideration is sought.”¹³ The proceedings that Petitioners claim shows a history of Commission enforcement actions against “Christian broadcasting stations” are unrelated to the matter at hand – whether the Commission erred by not designating the Emmis Applications for hearing. Accordingly, we dismiss the Petition to the extent it raises matter unrelated to the current proceeding.

IV. ORDERING CLAUSE

6. ACCORDINGLY, IT IS ORDERED that, pursuant to authority contained in Section 1.106(b)(3) and 1.106(p) of the Commission’s Rules,¹⁴ that the Petition for Reconsideration filed on April 7, 2014, by David E. Smith, Peter LaBarbera, Kathy Valente, Illinois Family Institute, and Illinois Chapter of the Concerned Women for America IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

¹¹ 47 C.F.R. § 1.106(b)(3) (“A petition for reconsideration of an order denying an application for review which fails to rely on new facts or changed circumstances may be dismissed by the staff as repetitious.”). *See, e.g., Holy Family Communications, Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 15687 (MB 2013) (Media Bureau dismisses a petition for reconsideration pursuant to Section 1.106(b)(3) where it found petitioner had not demonstrated new circumstances warranting review of Commission decision).

¹² 47 C.F.R. § 1.106(p).

¹³ 47 C.F.R. § 1.106(p)(5).

¹⁴ 47 C.F.R. §§ 1.106(b)(3), 1.106(p).