

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

In the Matter of	)	
	)	
<b>ROMAR COMMUNICATIONS, INC.</b>	)	File No. BNP-19971126AH
	)	Facility ID No. 89232
For a Construction Permit for a New AM Station at Lansing, New York	)	
	)	
and	)	
	)	
<b>KM COMMUNICATIONS, INC.</b>	)	File No. BNP-20000201AEY
	)	Facility ID No. 122482
For a Construction Permit for a New AM Station at South Hill, New York	)	
	)	
	)	

**MEMORANDUM OPINION AND ORDER ON RECONSIDERATION**

**Adopted: February 7, 2008**

**Released: February 11, 2008**

By the Commission:

**I. INTRODUCTION**

1. We have before us a Petition for Reconsideration (“Petition”), filed December 22, 2004, by Romar Communications, Inc. (“Romar”). Romar seeks reconsideration of the Commission’s decision in *Romar Communications, Inc. and KM Communications, Inc.*,<sup>1</sup> in which the Commission granted in part KM Communications, Inc.’s (“KM”) Application for Review of the Media Bureau’s (the “Bureau”) denial of KM’s previous Petition for Reconsideration. In *Romar Communications*, the Commission found that, because Romar and KM, in effect, both proposed new AM stations at Ithaca, New York, both applicants’ proposals were to proceed to auction. For the reasons set forth below, we deny the Petition.

**II. BACKGROUND**

2. KM and Romar filed mutually exclusive applications during the filing window for AM Broadcast Auction No. 32.<sup>2</sup> Romar proposed a new station at Lansing, New York, while KM proposed a new station at South Hill, New York, communities that are both adjacent to Ithaca, New York, and located within the Ithaca Urbanized Area. Pursuant to procedures set out in the Commission’s *First Report and Order* for broadcast auctions,<sup>3</sup> the Bureau requested that the parties submit information

<sup>1</sup> *Romar Communications, Inc. and KM Communications, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 23128 (2004) (“*Romar Communications*”).

<sup>2</sup> See *AM Auction Filing Window and Application Freeze*, Public Notice, 14 FCC Rcd 19490 (MMB/WTB 1999).

<sup>3</sup> See *Implementation of Section 309(j) of the Communications Act-Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses*, First Report and Order, 13 FCC Rcd 15920, 15965 (1998) (“*Broadcast First Report and Order*”), recon. denied, 14 FCC Rcd 8724, modified, 14 FCC Rcd 12541 (1999).

sufficient to allow an evaluation of the respective applications under Section 307(b) of the Communications Act of 1934, as amended (“Section 307(b)”)<sup>4</sup>. After evaluating the applicants’ responsive submissions, the Bureau determined that, because both applicants proposed new stations that would serve the Ithaca Urbanized Area, neither was entitled to a Section 307(b) preference for proposing a first local service to its specified community of license.<sup>5</sup> The Bureau further held that the difference in population coverage between the two proposals was not so significant as to warrant a dispositive Section 307(b) preference under Priority (4) (“other public interest matters”).<sup>6</sup> Thus, the Bureau concluded that the two applicants should proceed to auction.

3. Subsequently, the Bureau afforded KM and Romar the opportunity to submit amended Section 307(b) information.<sup>7</sup> KM relied on its previous submission, while Romar filed a new Section 307(b) showing. Based upon this information, the Bureau set aside the 2001 Staff Decision. It found again that both applicants were not sufficiently independent of the Ithaca Urbanized Area to warrant a finding that either would provide first local service.<sup>8</sup> However, based upon Romar’s amended Section 307(b) showing, which included adjusted population coverage data, the Bureau determined that the Romar proposal would serve a significantly larger population than that of KM and thus was entitled to a dispositive Section 307(b) preference under Priority (4).<sup>9</sup> The Bureau denied KM’s Petition for Reconsideration in the August Staff Decision, concluding that, when conducting a Section 307(b) analysis, the Bureau must compare the respective populations that are to be served by the applicants.<sup>10</sup>

4. KM sought review of the August Staff Decision, arguing that both applicants should proceed to auction or, in the alternative, that its application merited a dispositive Section 307(b) preference. In *Romar Communications*, the Commission agreed with KM’s contention that, because the Bureau had found that neither Lansing nor South Hill could be considered communities independent of Ithaca after applying the criteria set forth in *Faye and Richard Tuck*,<sup>11</sup> both KM and Romar must be considered applicants for the Ithaca Urbanized Area, and no Priority (4) comparison of their proposals should be made. Instead, the applicants must proceed to competitive bidding. In its Petition, Romar seeks reconsideration of this finding and reinstatement of its dispositive Section 307(b) preference.

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<sup>4</sup> 47 U.S.C. § 307(b).

<sup>5</sup> See *KM Communications, Inc. and Romar Communications, Inc.*, Letter, Ref. No. 1800B3-JWR (MMB Aug. 7, 2001) (“2001 Staff Decision”), *set aside and reversed*, *KM Communications, Inc. and Romar Communications, Inc.*, Letter, Ref. No. 1800B3-JWR (MB Apr. 26, 2002) (“April Staff Decision”), *recon. denied*, *Jeffrey L. Timmons, Esq., and A. Wray Fitch III, Esq.*, Letter, Ref. No. 1800B3-TSN (MB Aug. 13, 2002) (“August Staff Decision”). See also *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC2d 88 (1982) (“*FM Assignment Policies*”). The FM allotment priorities are as follows: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local service, and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). The FM allotment priorities were first applied to Section 307(b) determinations in mutually exclusive AM proceedings in *Alessandro Broadcasting Co.*, Decision, 99 FCC2d 1 (Rev. Bd. 1984).

<sup>6</sup> 2001 Staff Decision at 3.

<sup>7</sup> See *KM Communications, Inc., Romar Communications, Inc., and Mr. Robert L. Vinikoor*, Letter, Ref. No. 1800B3-TSN (MMB Oct. 22, 2001). This letter bore OMB Control No. 3060-0996.

<sup>8</sup> April Staff Decision at 4.

<sup>9</sup> *Id.*

<sup>10</sup> August Staff Decision at 3.

<sup>11</sup> *Faye and Richard Tuck*, Memorandum Opinion and Order, 3 FCC Rcd 5374, 5376 (1988).

### III. DISCUSSION

5. Romar, in its Petition, characterizes the Commission's *Romar Communications* holding as "arbitrary and capricious"<sup>12</sup> and re-asserts the arguments that it made in opposition to KM's Application for Review.<sup>13</sup> Romar contends on reconsideration, as it did previously, that Lansing and South Hill are separate communities, that "KM and Romar are proposing service to different communities," and thus that the Commission must compare both communities under Priority (4) in a Section 307(b) analysis, finding in favor of Romar's proposal due to its superior population coverage.<sup>14</sup> However, in *Romar Communications*, the Commission expressly rejected this premise, finding instead that both applicants "have, in effect, applied for AM construction permits serving the same community," and that in such a case "the staff should not continue the Section 307(b) analysis by proceeding to a Priority (4) evaluation."<sup>15</sup> Having chosen only to restate its prior contentions in this regard, Romar provides no reason to overturn the Commission's holding in *Romar Communications*. "It is settled Commission policy that petitions for reconsideration are not to be used for the mere reargument of points previously advanced and rejected."<sup>16</sup>

### IV. ORDERING CLAUSE

6. For the reasons discussed above, Romar's Petition IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>12</sup> Petition at 2.

<sup>13</sup> See Romar's Opposition to Application for Review, filed Sept. 24, 2002, at 1-2.

<sup>14</sup> Petition at 2-4.

<sup>15</sup> *Romar Communications*, 19 FCC Rcd at 23131.

<sup>16</sup> *S&L Teen Hospital Shuttle*, Order on Reconsideration, 17 FCC Rcd 7899, 7900 (2002). Romar is also in error when it states that failure to award a dispositive Section 307(b) preference to its Lansing proposal "deprives service to over 243,000 people that would otherwise be served." Petition at 5. This presupposes that Romar will not have the opportunity to bid on a construction permit at Lansing, when in fact the Commission expressly directed that both applicants proceed to auction. *Romar Communications*, 19 FCC Rcd at 23132.