Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer to:
1800B3-HOD

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In re: **Family Stations, Inc.**
Punjabi America Media, LLC

K227AH, River Pines, California
Facility ID No. 85824
File No. BALFT-20160729ALB

Punjabi America Media, LLC

K227AH, River Pines, California
Facility ID No. 85824
File No. BPFT-20160729ALZ

Petitions for Reconsideration

Dear Petitioners and Counsel:

We have before us a Petition for Reconsideration (Gwyn Petition) filed by Charles Gwyn (Gwyn) on October 15, 2018. Gwyn challenges the dismissal of his Informal Objection to the above-captioned applications for consent to the assignment of license and modification of station license and our grant of those applications. Also before us is a Petition for Reconsideration (Dandridge Petition) filed by Pierce Dandridge (Dandridge) on November 1, 2018. Dandridge challenges only our grant of the application for modification of station license—filed by Punjabi America Media, LLC (PAM)—to change the frequency and community of license of K227AH, River Pines, California (Station). For the reasons set forth below, we dismiss both the Gwyn and Dandridge Petitions.

Background. On July 29, 2016, Family Stations, Inc. (FSI) and PAM filed an application (Assignment Application) for consent to the assignment of the license for K227AH, River Pines, California (Station), from FSI to PAM. That same day, during a filing window opened as part of the Commission's AM revitalization efforts,[1] PAM filed a contingent application (Application) to move the Station from Channel 227 to Channel 290 and from River Pines to Granite Bay, California. PAM subsequently amended the Application to specify Channel 289 and Elk Grove, California.[2] However, the amended application conflicted with another application filed during the same filing window. Thus, when Channel 290 became available due to the expiration of a construction permit for an LPFM station operating on that channel, PAM amended the Application to propose operation on Channel 290 at Elk Grove.[3]

Nine months later, on September 24, 2018, Gwyn filed an Informal Objection to the Application. Therein, he argued that the application conflicted with the Local Community Radio Act of 2010 (LCRA). He also questioned how PAM could "authorize and file" applications related to the Station. FSI and PAM filed a Joint Opposition to Informal Objection on October 2, 2018. We denied the Informal Objection and granted the Assignment Application and the Application on October 3, 2018.[4]

Gwyn filed the Gwyn Petition on October 15, 2018. Therein, he repeats his argument that the Application conflicts with the LCRA.[5] He also argues that there was an unauthorized transfer of control of the Station to PAM and cites PAM's filing of the Application in support of this claim.[6] Gwyn asks us to rescind our grants of the Assignment Application and the Application.[7] FSI and PAM filed a Joint Opposition to Petition for Reconsideration (Gwyn Opposition) on October 30, 2018. Among other things, they argue that Gwyn lacks standing.[8] Gwyn filed a Reply to Objection (Gwyn Reply) on November 5, 2018.

Dandridge filed the Dandridge Petition on November 1, 2018. He too argues that the Application conflicts with the LCRA.[9] Much of the text of the Dandridge Petition is pulled verbatim from the Informal Objection and the Gwyn Petition. FSI and PAM filed a Joint Opposition to Petition for

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[1] *Media Bureau Announces Filing Dates and Procedures for AM Station Filing Window for FM Translator Modifications and Availability of FM Translator Technical Tools,* Public Notice, 30 FCC Rcd 14690 (MB 2015).

[2] PAM filed this amendment on September 23, 2016.

[3] PAM filed this most recent amendment on December 11, 2017. As there was no application for a license to cover the permit for Channel 290 on file at that time and the LPFM station's construction permit specified an expiration date of December 8, 2017, File No. BNPL-20131104AUY, staff cancelled the permit. In response, Women's Civic Improvement Club of Sacramento, Inc. (WCICS)—the permittee—filed a license application. *See* File No. BLL-20171219ADO. The Bureau later dismissed the license application. *Broadcast Actions*, Public Notice, Report No. 49220 (MB Apr. 23, 2018). WCICS then filed a petition for reconsideration of the dismissal, which the Commission denied on August 24, 2018. *Women's Civic Improvement Club of Sacramento, Inc.*, Letter Order (MB Aug. 24, 2018). Gwyn asserts that he "was associated with" WCICS. Petition at 2. He appears to have filed the Gwyn Petition in response to the Bureau's action on the WCICS petition for reconsideration.

[4] *Broadcast Actions*, Public Notice, Report No. 493378 (MB Oct. 9, 2018) ("noting that modification applications do not constitute applications for "new FM translator stations," under the language of Section 5 of the LCRA" and that "changes in the Community of License for a translator facility are considered minor and can be performed at any time.").

[5] Gwyn Petition at 4-7.

[6] *Id.* at 3-4.

[7] Id. at 7.

[8] Gwyn Opposition at 2-4.

[9] Dandridge Petition at 3-7.

Reconsideration (Dandridge Opposition) on November 14, 2018. Among other things, they assert that Dandridge lacks standing.[10] Dandridge filed a Reply to Objection (Gwyn Reply) on November 21, 2018.

Discussion. Section 1.106(b)(1) of the Commission's rules permits "any party to a proceeding, or any other person whose interests are adversely affected" to file a petition for reconsideration.[11] If a petition for reconsideration is filed by a non-party, however, the non-party must "state with particularity the manner in which the [petitioner's] interests are adversely affected" and "show good reason why it was not possible ... to participate in the earlier stages of the proceeding."[12] To show that it is "adversely affected" by an action, a petitioner must demonstrate a direct causal link between the challenged action and the alleged injury to the applicant, and show that the injury would be prevented or redressed by the relief requested.[13] In the broadcast regulatory context, petitioners generally show this by demonstrating that they are: (1) a competitor in the market suffering signal interference; (2) a competitor in the market suffering economic harm; or (3) a resident of the station's service area or regular listener of the station.[14]

We conclude that Gwyn lacks standing to seek reconsideration of our grant of the Assignment Application. Gwyn did not participate in the Commission's initial consideration of the Assignment Application. Thus, Gwyn is not a party to the proceeding. Gwyn, therefore, must show how his "interests are adversely affected" and "good reason" why he could not participate earlier.[15] Gwyn, however, has not explained why he did not participate prior to grant of the Assignment Application.[16] Accordingly, he lacks standing to seek reconsideration of that grant and we dismiss the portion of the Gwyn Petition that challenges the Bureau's grant of the Assignment Application.

We further find that Gwyn lacks standing to seek reconsideration of our grant of the Application. Gwyn is not a party to the proceeding, having filed only an Informal Objection to the Application.[17] As a non-party, he must demonstrate that he is "adversely affected" by grant of the Application.[18] Gwyn does not claim he is a resident of the station's current or proposed service area or a listener of the station.[19] Nor does he claim to be a competitor in the market. Instead, Gwyn argues that he "is adversely affected

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[10] Dandridge Opposition at 2-4.

[11] 47 CFR § 1.106(b)(1).

[12] *Id.*

[13] *Entercom Sacramento Licenses, LLC*, Order on Reconsideration, FCC 18-151, para. 3 (Oct. 25, 2018) (recon. pending) (*Entercom Sacramento Renewal*).

[14] *See Chet-5 Broad., L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041, 13042, para. 3 (1999) ("[W]e will accord party-in-interest status to a petitioner who demonstrates either residence in the station's service area or that the petitioner listens to or views the station regularly, and that such listening or viewing is not the result of transient contacts with the station."); *Northern Pacific Radio Corp.*, Memorandum Opinion and Order, 44 FCC 2848, 2851, para. 12 (1962) (stating "[i]n order to have standing to petition for reconsideration ..., petitioner must show that he is a 'person aggrieved or whose interests are adversely affected'" and noting that this statutory language was "synonymous" with the term "party, in interest" and that "the same showing is required in each instance").

[15] 47 CFR 1.106(b)(1).

[16] While the Assignment Application is mentioned in Gwyn's Informal Objection to the Application, Gwyn objected only to the Application therein. In any event, the filing of an Informal Objection does not confer party status upon the objector. *See, e.g., Entercom Sacramento Renewal*, para. 3; *Montgomery County Broad. Corp.*, Memorandum Opinion and Order, 65 FCC 2d 876, 877 n.2 (1977).

[17] *Id.*

[18] 47 CFR § 1.106(b)(1).

[19] Gwyn Reply at 3 ("It would not make sense for the Petitioner to state he was a listener ..."). In the Petition, though, Gwyn stated he "is a resident of Sacramento." Gwyn Petition at 2. As FSI and PAM point out, though, he does not reside within the existing or proposed service area of the Station. Gwyn Opposition at 3.

by the loss of a Sacramento LPFM channel."[20] According to Gwyn, Channel 290 is the only channel available for LPFM use in Sacramento.[21] However, even assuming this to be the case, Gwyn does not assert that he is affiliated with an organization that wishes to apply for a construction permit for a new LPFM station serving the Sacramento area,[22] nor is there any basis to assume such an application would be successful if filed.[23] Thus, Gwyn has failed to show how this loss would injure him in a "direct, tangible and substantive nature."[24] In any event, as the Commission has noted, "standing is not conferred on a person that lacks current harm, even if such person alleges potential future harm."[25] Gwyn has failed to show how he is adversely affected by our grant of the Application.[26] Accordingly, we find he lacks standing to challenge that action and dismiss the remainder of the Gwyn Petition.

We also determine that Dandridge lacks standing to seek reconsideration of our grant of the Application.[27] Dandridge is not a party to the proceeding, having filed no objection to the Application prior to its grant. As a non-party, he must show "good reason why it was not possible … to participate in the earlier stages of the proceeding."[28] He argues that his failure to participate earlier is excused by the fact that the change proposed in the application is, "by definition," a major change subject to the local public notice requirements set forth in the Commission's rules. Dandridge ignores the fact that, as an application filed during an AM revitalization filing window, the Application is classified as a minor modification application.[29] Further, as Dandridge acknowledges, the Application—and subsequent amendments to the application—were included in public notices of broadcast applications accepted for filing.[30] Thus, while public notice of the Application was not required to be published in a local

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[20] Gwyn Petition at 3; Gwyn Reply at 3.

[21] Gwyn Petition at n. 10.

[22] Gwyn himself could not apply for a construction permit for an LPFM station because individuals are not eligible to hold LPFM station licenses. *See* 47 CFR § 73.853(a) (providing that an LPFM station may be licensed only to: (1) nonprofit educational organizations, (2) state and local governments and non-government entities, or (3) Tribal Applicants).

[23] As noted, *supra* note 3, Gwyn states that he was associated with WCICS. However, he was not listed by WCICS as a party to the permit application. In any event, WCICS chose not to challenge the Bureau's denial of its petition for reconsideration of the dismissal of its license application for the LPFM station.

[24] *Entercom Sacramento Licenses, LLC*, Letter Order, 32 FCC Rcd 6880, 6883 (2017) (subsequent history omitted) (noting that a petitioner for reconsideration must "demonstrate standing as a regular listener, or some other injury of a direct, tangible or substantial nature"). *See also Urbanmedia One*, Memorandum Opinion and Order, 31 FCC Rcd 13759, 13760, para. 4 (2016) (noting that the Commission accords party-in-interest status where a filer demonstrates: "(1) harm of a direct, tangible, or substantial nature; (2) residence in the service area of the subject station; or (3) regular listenership to the station which is not the result of transient contacts.").

[25] *Urbanmedia One*, Order on Reconsideration, 32 FCC Rcd 5264, 5268, para. 6 (2017).

[26] Because we find that Gwyn has not demonstrated he is adversely affected, we need not—and do not—reach his other arguments that he participated earlier in the proceeding or alternatively that there was good cause for his failure to participate earlier. Gwyn Petition at 2; Gwyn Reply at 4.

[27] The captions to the Dandridge Petition and Dandridge Reply list the file numbers for both the Application and the Assignment Application. However, the text of the pleadings indicates they are "regarding modification of translator K227AH." Accordingly, we conclude that the Dandridge Petition relates only to the Application.

[28] 47 CFR § 1.106(b)(1).

[29] *Revitalization of the AM Service*, First Report and Order, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 30 FCC Rcd 12145, 12152, para. 15 (2015) (*AM Revitalization Order*) (In establishing this filing window, the Commission stated that "an AM licensee or permittee seeking to rebroadcast on an FM translator may acquire and relocate one … authorized non-reserved band FM translator up to 250 miles, and specify any rule-compliant non-reserved band FM channel as a minor modification application, notwithstanding Section 74.1233(a)(1) of our Rules, which defines major and minor modifications of FM translator facilities.").

[30] Dandridge states that "because there was never a clear public notice to demonstrate a new station was to occupy a new frequency in the Sacramento vicinity," this constitutes "good reason" for his failure to participate earlier.

newspaper, there was public notice of the Application.[31] Lastly, we reject Dandridge's assertion that it would have been "redundant" for him to file an objection to the Application because Gwyn had already filed a pleading raising the same concern.[32] It is axiomatic that an adjudicatory process cannot operate efficiently or accurately if a party does not participate in a proceeding but is permitted to "sit back and hope that a decision will be in its favor."[33] Dandridge has failed to show good cause for his failure to participate earlier in this proceeding.[34] Accordingly, we find that he lacks standing to file the Dandridge Petition and dismiss it herein.

Dandridge Petition at 2; Dandridge Reply at 2-3. We note that the Commission considered the issue of notice in deciding to designate applications filed during the AM revitalization windows as minor modifications. *AM Revitalization Order*, 30 FCC Rcd at 12151, para. 14 (discussing waivers of Section 74.1233(a)(1) of the Rules to permit the filing of a minor modification application for proposed changes that would otherwise require filing of a major change application, noting a request to waive Section 74.1233(a)(1) where the licensed and proposed translator facility were within the proposed AM primary station's 0.25 mV/m interfering contour but not mutually exclusive, acknowledging that the Bureau had expressed concern that granting such a waiver would not "give appropriate notice to, or protect, potential mutually exclusive applicants" and noting that the Commission would not extend the existing policy regarding waivers of Section 74.1233(a)(1) except "for the limited purpose of the modification window" in which PAM filed the Minor Modification Application).

[31] While Dandridge and FSI and PAM engage in some back and forth about how much time Dandridge had to file an objection to the Application (Dandridge Opposition at 4; Dandridge Reply at 2-3), we note that the most recent amendment was filed on December 11, 2017, almost ten months before the Bureau acted on the Application. This is not a case where prompt staff action "effectively preclude[d] participation during the initial consideration of an application." *See, e.g., KSCO, Santa Cruz, CA*, Letter Order, 29 FCC Rcd 9606, 9607 (MB 2014) (finding petitioner for reconsideration lacked standing where it had more than 90 days to object to application at issue but did not do so); *Channel 23 Ltd. P'ship,* Memorandum Opinion and Order, 29 FCC Rcd 15073, 15075-76, para. 5 (2014) (affirming staff's finding that the petitioner "had ample opportunity to file an informal objection during the four months between the Commission's Public Notice accepting the Modification Application and its grant"); *Davidson County Broad. Co., Inc*, Memorandum Opinion and Order, 8 FCC Rcd 1689, 1690 (1993) (finding that petitioner for reconsideration lacked standing where it had four months to file informal objection to application at issue but did not do so).

[32] Dandridge Petition at 2-3.

[33] *See, e.g., Canyon Area Residents for the Environment*, Memorandum Opinion and Order, 14 FCC Rcd 8152, 8154, para. 7 (1999), *quoting Colorado Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941).

[34] Because we find that Dandridge has not demonstrated good cause for his failure to participate earlier, we need not—and do not—reach his arguments that his interests are adversely affected. Dandridge Petition at 3; Dandridge Reply at 1-2.

Conclusion/Ordering Clauses. Accordingly, for the reasons set forth above, IT IS ORDERED that the Petition for Reconsideration filed by Charles Gwyn on October 15, 2018, IS DISMISSED. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by Pierce Dandridge on November 1, 2018, IS DISMISSED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau