

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

MM Docket No. 88-83

In re Applications of

WEBSTER-FULLER File No. BPH-870312MJ
COMMUNICATIONS
ASSOCIATION

ANTHONY E. TRIMBLE File No. BPH-870313MF

PETER ACHILLES File No. BPH-870313MP
BROIKOU

For Construction Permit for a New
FM Station, Channel 274A
Webster, New York

ORDER

Adopted: January 31, 1989; Released: February 10, 1989

By the Review Board: MARINO (Chairman),
BLUMENTHAL, ESBENSEN.

1. In a previous *Memorandum Opinion and Order* in this proceeding, 3 FCC Rcd 6967 (Rev. Bd. 1988) the Review Board denied the appeal of Anthony E. Trimble from the presiding officer's ruling dismissing his application for want of a transmitter site. Now before the Board is a petition for reconsideration, filed January 6, 1989, by Trimble, in which he argues that "new facts" support his claim that he has reasonable assurance of a transmitter site and that his application should be reinstated. We disagree and affirm our earlier ruling.

2. To begin with, Trimble's reliance on Section 1.106 of the Commission's Rules, 47 CFR §1.106, as authority for filing his petition, is erroneous. That section expressly allows the filing of only petitions for reconsideration from "final decision[s]" and "final action[s]" and equally clearly provides that requests for reconsideration "of . . . interlocutory actions will not be entertained." 47 CFR §1.106(a)(1); accord 47 CFR §1.102(b)(2); 47 CFR §1.291(c)(3). The Board's limited action denying Trimble's appeal was not a final decision, and did not even reach the two applications still remaining in this proceeding; thus, it was not subject to reconsideration. See also 47 CFR §1.301(a)(1)(Dismissal of application by ALJ treated as interlocutory ruling appealable as a matter of right). Second, even assuming that a reconsideration petition may be entertained, insofar as Trimble recites information previously submitted and reargues matters already addressed, it is of course well-settled that reconsideration will not be granted "merely for the purpose of again debating matters on which [the Commission or Board] has once deliberated and spoken." *WWIZ, Inc.*, 37 FCC 2d 685, 686 (1964), *aff'd sub nom. Lorain Journal*

Co. v. FCC, 351 F.2d 824 (1965), *cert. denied*, 383 U.S. 967 (1966). Finally, however, inasmuch as Trimble alleges new grounds for his petition based on an attached statement from the site owner, Nicholas D'Angelo, this argument also fails. The attached statement in support (Trimble Exhibit 1), purportedly in affidavit form, is deficient on its face in that it contains neither Mr. D'Angelo's signature, nor the date of the statement, nor the notary's signature, nor the notary's seal. Cf. *Catherine Juanita Henry*, 3 FCC Rcd 6806 (Rev. Bd. 1988). In addition to these technical infirmities, the statement itself, while indicating that D'Angelo was willing to make his land available when initially contacted by Wall (Trimble's agent) and instructed Wall to discuss terms with D'Angelo's attorney, does not contradict the substance of D'Angelo's previous declaration submitted to the ALJ and the Board, which was relied on in our earlier opinion. In that statement, D'Angelo clearly affirmed that Wall never identified Trimble as the person he represented and that D'Angelo never even spoke to Trimble prior to the filing of his application; that nothing in the way of an agreement or permission to use the land ever materialized from Wall's contact with D'Angelo's attorney; and that D'Angelo's land is not now available to Wall or Trimble for use as a transmitter site. In sum, there is no new information before us that would alter either our conclusion that the applicant and site owner did not have a meeting of the minds resulting in a firm understanding for use of the site, or the ALJ's ruling that Trimble lacks a transmitter site and that his application should therefore be dismissed.¹

3. ACCORDINGLY, IT IS ORDERED, That the petition for reconsideration filed January 6, 1989 by Anthony E. Trimble IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

FOOTNOTE

¹ We also note all three parties retain appeal rights and standing, and that Trimble here seeks reinstatement solely to preserve the amount of his original settlement. Nothing estops the parties from renegotiating their settlement so as to avoid the instant impasse, and the Commission has no interest in enhancing Trimble's status purely to "provide [him] with additional leverage in its bargaining with a competitor." *Hispanic Information & Telecommunications Network, Inc. v. FCC*, No. 88-1335, slip op. at 11 (D.C. Cir. Jan. 24, 1989).