

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

In the Matter of)
)
POWELL MEREDITH COMMUNICATIONS) File No. BNP-20051031ADY
COMPANY) Facility ID 161417
)
)
Application for a New AM Broadcast Station at)
Paradise, Nevada)
)

MEMORANDUM OPINION AND ORDER

Adopted: April 26, 2016

Released: April 27, 2016

By the Commission:

I. INTRODUCTION AND BACKGROUND

1. Before us is a "Request for commission intervention basis (sic) on civil rights violations," filed October 22, 2014, by Powell Meredith Communications Company (PMCC). Because PMCC specifically requests Commission "intervention," we treat its pleading as an application for review (AFR) of the Media Bureau's (Bureau) letter decision denying reconsideration of its denial of PMCC's request for further tolling of its Paradise, Nevada, AM construction permit.1 For the reasons stated below, we deny the AFR.

2. PMCC applied for a new AM broadcast station at Paradise, Nevada, during the 2004 filing window for AM Auction 84.2 After timely filing its complete FCC Form 301 long-form application,3 PMCC was awarded a construction permit on June 8, 2009. Because the grant of PMCC's Paradise construction permit was the subject of ongoing litigation by Alvin Lou Media (ALM), a competing applicant from a previous AM auction window, PMCC's construction period for the Paradise permit was tolled until the Bureau dismissed, as moot, ALM's petition for reconsideration of the grant of the PMCC application in light of the finality of ALM's judicial appeal.4 The construction period expired three years from that action, on October 11, 2014.

1 Ms. Amy Meredith, Letter Decision, Ref. No. 1800B3-VM (MB Oct. 9, 2014) (Staff Decision). In addition to filing a timely October 31, 2014, supplement to the AFR (Supplement), PMCC also filed two supplements dated December 8, 2014, and March 27, 2015. The supplements filed in December 2014 and March 2015 are both untimely and unauthorized under 47 CFR § 1.115(d), which provides in pertinent part, that "the application for review and any [supplement] thereto shall be filed within 30 days of public notice of such action" Accordingly, the December and March supplements are dismissed and shall not be considered.

2 PMCC's AM Auction 84 "tech box" application for Paradise, Nevada, was designated File No. BNP-20040130BAK.

3 File No. BNP-20051031ADY.

4 Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, to Dennis J. Kelly, Esq., and Andrew S. Kersting, Esq. (Oct. 11, 2011) (citing Alvin Lou Media, Inc. v. FCC, 571 F.3d 1 (D.C. Cir. 2009), reh'g en banc denied (D.C. Cir. Aug. 27, 2009)). That letter was addressed and sent to PMCC's then-counsel of record regarding the captioned Paradise application.

3. On March 20, 2014, over two years into the extended construction period for the station, PMCC filed a minor modification application, seeking to change the new station's community of license from Paradise to Enterprise, Nevada.⁵ PMCC filed a request for further tolling of the construction period on July 21, 2014. The modification application was granted September 8, 2014.⁶ On October 9, 2014, the staff denied PMCC's second tolling request.⁷ PMCC seeks review of the *Staff Decision* denying its tolling request.

II. DISCUSSION

4. A permittee must complete construction of its authorized facility no later than three years after grant of the original construction permit, not counting any periods of tolling.⁸ Our rules recognize a narrow set of circumstances, beyond a permittee's control, that shall toll the construction period. These include acts of God and administrative and judicial challenges to the permit's grant.⁹

5. PMCC presents essentially two arguments in favor of its request for further tolling of the Paradise construction period. Facially, the AFR seeks Commission intervention on the ground of unspecified "civil rights" violations. PMCC, however, does not cite a specific statute that it alleges was violated. Its allegation boils down to the assertion that because PMCC's principal, Amy Meredith, is a woman, and PMCC did not prevail in its second tolling request and in certain other applications before the Commission, specifically the Bureau's Audio Division, PMCC must therefore be the victim of discrimination.¹⁰ PMCC's AFR is devoid of any evidence of gender-based or other discrimination.¹¹ Even if PMCC's allegations were sufficient, given that its AFR is not properly verified,¹² we could not credit PMCC's allegations as support for its theory of non-specific civil rights violations.

6. Additionally, PMCC attempts to argue that it is entitled to tolling because of events surrounding eight FM translator applications filed by PMCC, five of which PMCC claims were fraudulently transferred to a third party, through the alleged "hacking" of PMCC's accounts in the Commission Registration System (CORES) and the Media Bureau's Consolidated Data Base System

⁵ File No. BNP-20140320AED.

⁶ Staff processing of the modification application was delayed by deficiencies in the application, which PMCC ultimately corrected. See Letter from Son Nguyen, Supervisory Engineer, Audio Division, Media Bureau, to Amy Meredith (July 11, 2014).

⁷ *Staff Decision*.

⁸ 47 CFR § 73.3598(a).

⁹ See 47 CFR §§ 73.3598(b)(1) and (b)(2). See also *1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules, and Processes*, Report and Order, 13 FCC Rcd 23056, 23087-93 (1998), *recon. granted in part*, Memorandum Opinion and Order, 14 FCC Rcd 17525 (1999).

¹⁰ AFR at 3-4; Supplement at 6-8.

¹¹ In its claim of discrimination, PMCC ignores not only the fact that it was awarded the Paradise construction permit, and that its original tolling request was granted, but also ignores that it was awarded four other construction permits in the AM Auction 84 window. Moreover, of the 17 remaining "tech box" applications PMCC filed in the AM Auction 84 window, only five were dismissed by the staff because they did not prevail in a Section 307(b) comparison. Eleven of the remaining 12 were dismissed due to PMCC's failure to provide required information or upfront auction payments, or to file a complete FCC Form 301 application. The last was dismissed pursuant to settlement.

¹² See 47 CFR § 1.16 (stating that written documents required to be supported by sworn statements may be supported by a declaration "under penalty of perjury" setting forth that the matters set forth are "true and correct"). PMCC's AFR does not comply with the requirement of Section 1.16 that the subscription be included in substantially the form set forth therein, specifically that the statements are verified under penalty of perjury. See AFR at 7 ("These statements are true and correct to the best of my knowledge."). See also Supplement at 9 ("The above statements are true and correct to the best of my knowledge.").

(CDBS).¹³ There are a number of difficulties with PMCC's wide-ranging allegations in this regard. Apart from the above-noted lack of properly subscribed supporting testimony, it is far from clear that the events complained of had anything to do with the Paradise application. PMCC asserts that the alleged hackers were two individuals claiming to have entered into a business arrangement with PMCC's principal, Amy Meredith, and her ex-husband, Scott Powell, concerning eight FM translator applications.¹⁴ PMCC further claims that the alleged hackers (Rockwell Media Services, LLC; its principal, E. Morgan Skinner, Jr.; and its attorney, John Christian Barlow) instituted a lawsuit in Utah state court over the eight unrelated FM translators, and that the Paradise construction permit "became part of the litigation."¹⁵ However, while PMCC attaches some documentation to indicate that these individuals were potentially interested in assisting in the development of PMCC's Paradise station, there is no evidence that their mere expression of interest ever evolved into an agreement, or that their interest impeded the timely construction of the Paradise station.¹⁶ Additionally, while PMCC also attaches to the AFR a portion of Rockwell's Utah state court complaint against PMCC, that pleading only references the agreement regarding eight FM translator permits. It is silent as to the Paradise permit.¹⁷ There is thus no evidence that the Paradise construction permit is the subject of ongoing litigation that would have provided a basis for tolling.

7. Moreover, PMCC's concerns regarding the alleged hacking of Commission accounts appear to be mere speculation as regards the Paradise permit. For example, after relating details of the alleged hacking, including its allegations that Commission staff were allowing unauthorized access into PMCC's account, PMCC's President states, "How was I to know that this would not be done to the Las Vegas AM station. Why would I spend thousands of dollars completing construction to only have [the alleged hackers] forge up another document . . . and file another transfer of a nice new built station to themselves for free."¹⁸ Thus PMCC argues, not that unauthorized individuals actually interfered with the Paradise application or construction permit or prevented it from building the station, but that they *might* do so. Such speculative concerns cannot form the basis for tolling a construction period.

¹³ AFR at 4-6; Supplement at 2-5.

¹⁴ *Id.* Additionally, PMCC's hacking claims include vague allegations that the Commission disclosed its passwords to the alleged hackers. While it is difficult to respond to non-specific allegations, Commission policy prohibits disclosing account passwords without certain checks, including the establishment and verification of Personal Security Questions (PSQs). PMCC does concede that Amy Meredith's ex-husband, Scott Powell, was working with the alleged hackers, and likely knew the answers to the PSQs on PMCC's accounts. *See* AFR at 5-6 ("The Paradise, NV station was mentioned in several emails by one of the hackers to Scott Powell, my ex husband who unfortunately played some role in the hacking . . . Scott at one time was part of PMCC and still had some information on the FRN system and knew the names of my pets, so [alleged hacker] Skinner could guess the security questions.").

¹⁵ AFR at 5.

¹⁶ *See id.*, second attachment, which purports to be an e-mail from Morgan Skinner to Scott Powell with the subject line, "MX's FM Translator Applications Agreement." After stating that the "proposed Agreement" was attached for the recipient's "review and consideration," the third paragraph of the e-mail states only, "I also need to know the latest on 1590 AM and our involvement, it expires in October of 2014."

¹⁷ *Id.*, first attachment.

¹⁸ Supplement at 5. *See also* AFR at 4-5 ("This is all impeding the process of constructing 1590AM Paradise, NV, the fact that the audio division is giving some random individual my account information and pass codes means that they *could* transfer the Paradise, NV station in to their names as well.") (emphasis added); *id.* at 5 ("This definitely impeded the construction process, why in the world would any company spend hundreds of thousands of dollars building a station to only have it illegally transferred in to a hackers (sic) name!!!").

III. CONCLUSION AND ORDERING CLAUSE

8. In order to toll PMCC's Paradise construction permit, we would have to find that certain specified factors beyond PMCC's control prevented it from completing construction within the prescribed construction period, which due to tolling had been extended to a date over five years after the original grant date. PMCC has only offered unverified, vaguely stated allegations concerning unspecified "civil rights" violations against it and its principal, and claims of illegal behavior by third parties that have no demonstrated connection to the Paradise construction permit. Under these circumstances, we agree with the Bureau that further tolling of that permit was not warranted.

9. Accordingly, PMCC's Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary