

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Applications of)	MM Docket No. <u>86-440</u> /
)	
Achernar Broadcasting Company)	File No. BPCT-860410KP
)	
Lindsay Television)	File No. BPCT-860410KQ
)	
For Construction Permit)	
For A New TV Station on Channel 64 at)	
Charlottesville, Virginia)	

ORDER

Adopted: February 8, 2001; Released: February 12, 2001

By the Commission:

1. This Order dismisses as unauthorized the Appeal filed November 22, 2000 by Givens & Bell, a division of Blue Ridge Video Services (Givens & Bell), of *Achernar Broadcasting Company*, FCC 00-382 (rel. Oct. 25, 2000). Givens & Bell objects to the Commission's dismissal of its May 26, 2000 pleading that effectively sought reconsideration of the Commission's April 19, 2000 decision in *Achernar Broadcasting Company*, 15 FCC Rcd 7808 (rel. Apr. 28, 2000).

2. The above-captioned applications filed by Achernar Broadcasting Company and Lindsay Television were among five mutually exclusive applications for channel 64 (Charlottesville, Virginia) that were designated for hearing in 1986. By its April 19, 2000 Memorandum Opinion and Order, the Commission approved a settlement agreement that provided for the award of a construction permit to Charlottesville Broadcasting Corporation (CBC), an entity comprised of Achernar and Lindsay, and terminated the above-captioned adjudicatory proceeding. Givens & Bell, which is not a party to the adjudicatory proceeding and had not previously sought to participate in this proceeding, filed a pleading on May 26, 2000 effectively seeking reconsideration of the award of a construction permit to CBC. That pleading was dismissed on procedural grounds by the Commission. It determined that Givens & Bell had not satisfied the requirements for reconsideration specified by Section 1.106(b)(1), 47 C.F.R. § 1.106(b)(1), if the person filing the petition is not a party to the proceeding,¹ and that its

¹ Section 1.106(b)(1) provides that "if a petition is filed by a person who is not a party to the proceeding, it shall state with particularity the manner in which the person's interests are adversely affected by the action

defective application, tendered for filing in September 1996, did not afford Givens & Bell standing to object to the grant of a construction permit for that channel. *Order*, FCC 00-382 ¶ 3. Alleging that the dismissal of its pleading “terminate[d] Givens & Bell’s right to participate as a party to the hearing proceeding in MM Docket No. 85-440,” it has now filed its Appeal, purportedly as a matter of right, pursuant to 47 C.F.R. § 1.301, Section 1.301 of the Rules.

3. Further administrative review of the Commission’s April 19, 2000 award of a construction permit and termination of the above captioned adjudicatory proceeding is not authorized by Section 1.301, or by any other provision of the Commission’s Rules. Section 1.301 authorizes the filing of appeals seeking review of interlocutory rulings of an Administrative Law Judge (ALJ) under certain circumstances; it has no relevance for review of a Commission order. That provision thus does not permit the filing of an appeal of the Commission’s October 25, 2000 rejection on procedural grounds of a pleading previously filed by Givens & Bell.² By its latest filing Givens & Bell, at most, effectively seeks reconsideration of that Commission action. But even if construed as a petition for reconsideration, filed pursuant to Section 405 of the Act, 47 U.S.C. § 405, and Section 1.106 of the rules, 47 C.F.R. § 1.106, the Appeal must be dismissed. As noted in our October 25, 2000 Order, Givens & Bell is not now and never has been a party to the adjudicatory proceeding terminated by the award of a construction permit to CBC. Its November 22, 2000 filing offers no further explanation, not presented in its May 26, 2000 pleading, of how the Commission’s April 19, 2000 actions adversely affected its interests, of its inability to participate earlier in this proceeding, or of the manner in which its tendered application for channel 64, which is not entitled to consideration under the Commission’s rules, affords it standing to object to the grant of a construction permit to CBC. There is therefore no basis to grant reconsideration of the Commission’s October 25, 2000 determination that Givens & Bell did not have standing under Section 1.106(b)(1), or by virtue of its tendered application, to file its initial request for reconsideration.³

4. Insofar as the Appeal repeats earlier objections regarding the Commission’s April 19, 2000 decision, moreover, the Commission’s rules do not contemplate the filing of repetitious petitions for reconsideration. *See* Section 1.106(k)(3). Absent extraordinary circumstances, not present here, the Commission’s decision on reconsideration exhausts a party’s administrative remedies and further

taken, and shall show good reason why it was not possible for [the petitioner] to participate earlier in this proceeding.”

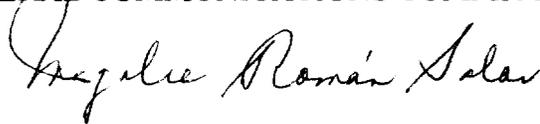
² Nor would Section 1.115, governing the filing of applications for review of actions taken pursuant delegated authority, afford a basis for challenging the Commission’s October 25, 2000 Order.

³ It is well established that the Commission does not grant reconsideration for the purpose of again debating matters that have already been fully decided. *Greater Media Radio Company*, FCC 00-128 (rel. Oct. 20, 2000), *citing WWIZ, Inc.*, 37 FCC 685 (1964), *aff’d sub nom. Lorain Journal Company v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1967). *See also* 47 C.F.R. § 1.106(d)(2) (“The petition for reconsideration . . . shall state with particularity the respects in which he believes such findings [of fact] and conclusions [of law] should be changed”).

administrative proceedings would frustrate the ends of justice. *See Warren Price Communications*, 7 FCC Rcd 6850 (1992); *Atlantic City Broadcasting Company*, 21 RR 194a (1961).

5. ACCORDINGLY, IT IS ORDERED, That the Appeal, filed November 22, 2000, by Givens & Bell, a division of Blue Ridge Video Services, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary