

*Butterfield v. FCC*, 99 U.S. App. D.C. 71; 237 F.2d 552 (1956)

Petitioners may raise the noted new facts for the reasons given in *Butterfield v. FCC*, where DC Circuit Court held:

....In these circumstances nothing in the language of sections 310(b) and 405 deprived the Commission of power to receive the new evidence and to reconsider or redécide the case....

Delay in seeking reopening of the record is a factor to be weighed in the exercise of the Commission's discretion. Here, however, it was excusable. The only reason the appellants' effort to reopen was not made earlier in the proceedings was that the new events which occasioned it were kept secret by WJR for several months.<sup>7</sup> Such a circumstance would have called for reopening the record even under the dissenting opinion in *Enterprise*. That opinion pointed out that 'there was no concealment', because the successful applicant had disclosed the option agreement a few days before the argument of the petition for rehearing. Our dissenting brother added, however, that 'had it withheld the information until after the (denial of the petition for rehearing) notwithstanding the execution of the agreement (earlier), a very different situation might well be said to have arisen. That is this case.

.... Moreover, appellants should be readmitted to the contest, even if that would serve to prolong it. The new evidence here goes to the foundation of the Commission's decision, so that refusal to reopen the record deprives appellants of their rights as competing applicants....

.... The Commission will conduct further hearings on the question of differences between WJR's original and modified proposals and will reconsider its grant to WJR in the light of the differences thus disclosed.<sup>1</sup> [*Underlining added. Footnotes deleted.*]

Also see: (i) *Re Beacon Broadcasting Corporation*, FCC FCC96-66 (adopted 2/21/96): reconsideration is appropriate where petitioner shows either material error or omission in original order, or raises additional facts not known or not existing until after petitioner's last opportunity to present such matters, and

(ii) *Re Armond J. Rolle* (1971) 31 FCC2d 533: proceedings will be remanded and reopened by newly discovered evidence relied on by petitioner that could not with due diligence have been known at time of hearing, and if proven true, is substantially likely to affect outcome of proceeding. These also apply in to the instant case.

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<sup>1</sup> *Butterfield v. FCC*, 99 U.S. App. D.C. 71; 237 F.2d 552 (1956),