



Federal Communications Commission  
Washington, D.C. 20554

June 29, 2006

**DA 06-1326**  
In Reply Refer To  
1800B3-ALM  
Released: June 29, 2006

Donald E. Martin, Esquire  
6527 Bay Tree Court  
Falls Church, Virginia 22041

**In re: NEW (NCE FM), Winnetka, Illinois**  
RB Schools  
Facility ID No. 164010  
File No. BNPED-20041101AHA  
Petition For Reconsideration

Dear Mr. Martin:

This is in reference to the July 1, 2005, Petition for Reconsideration (the "Petition") regarding the captioned application in which RB Schools ("RB") claims that its application was incorrectly dismissed by the staff. In a letter of May 31, 2005,<sup>1</sup> the Audio Division dismissed the application of RB for failure to timely respond to a staff inquiry letter dated March 24, 2005.<sup>2</sup> The Petition demonstrates, however, that RB provided a timely response on April 25, 2005. The filing was not brought to the staff's attention prior to issuance of the May 31, 2005, letter. We will therefore grant reconsideration to review the RB response.

The application of RB for a new noncommercial educational ("NCE") FM station in Winnetka, Illinois, was filed pursuant to Section 73.561 of the Commission's rules and proposed to share time with WNTH(FM), licensed to Board of Education, New Trier Township District #203 ("New Trier"). NCE FM radio stations, such as WNTH(FM), are licensed to operate for an unlimited number of hours each day, unless they operate pursuant to a time sharing arrangement with another qualified NCE broadcaster.<sup>3</sup> Under Section 73.561(b) of the Commission's rules, the Commission will consider non-consensual proposals for time sharing only in connection with renewal of the NCE FM station's license and only if the station has operated for less than 12 hours per day during the preceding license term.<sup>4</sup> In addition, the party seeking to share time must first attempt to reach agreement with the licensee. If the licensee and

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<sup>1</sup> Letter to Donald E. Martin, Esquire, and Board of Education for New Trier Township District #203, Reference 1800B3-ALM (MB May 31, 2005)

<sup>2</sup> Letter to Donald E. Martin, Esquire, Reference 1800B3-ALM (MB March 24, 2005)

<sup>3</sup> 47 C.F.R. § 73.561(a).

<sup>4</sup> 47 C.F.R. § 73.561(b); *Nassau Community College*, 12 FCC Rcd 12234 (1997) ("*Nassau*").

share time proponent fail to reach agreement, the share time proponent must file its application no later than the deadline for filing petitions to deny the renewal application of the existing licensee.<sup>5</sup>

The Commission will not entertain proposals that do not conform to these requirements.<sup>6</sup> RB's does not. We find that the record establishes that RB did not attempt to reach an agreement with New Trier prior to filing its time share application, as is required by the Commission's rules. Thus, RB's application is subject to dismissal.

In its April 25, 2005 response to the staff inquiry letter, RB states that it disagrees with the staff's contention that it had an obligation to initiate share-time negotiations with High School prior to filing its application. To the extent *Westchester* imposes such a requirement, states RB, the case "is not consistent with the text of Section 73.561 itself, which does not explicitly require such negotiations . . . ."<sup>7</sup> We reject RB's argument, as the Commission has spoken directly to this issue in *Westchester*: it requires a share-time proponent to attempt to negotiate an agreement with the incumbent licensee prior to filing a share-time application. The staff is, of course, bound by Commission precedent.<sup>8</sup>

Accordingly, in light of the above discussion, RB's Petition for Reconsideration IS GRANTED to the extent indicated and IS DENIED in all other respects. The application of RB Schools (BNPED-20041101AHA) REMAINS DISMISSED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: RB Schools

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<sup>5</sup> 47 C.F.R. § 73.561(b); *Westchester Council for Public Broadcasting*, 8 FCC Rcd 2213, 2214 (1993) ("*Westchester*") ("[E]fforts to negotiate [must be] initiated prior to the filing of the application, so that either a share-time agreement, or a statement that no agreement could be reached, [may be] filed with [the] application.").

<sup>6</sup> *Nassau*, 12 FCC Rcd at 12238 (citing *Westchester*, 8 FCC Rcd at 2214).

<sup>7</sup> April 8, 2005 RB response at 1.

<sup>8</sup> *See, e.g., WLDI, Inc.*, 17 FCC Rcd 14750, 14752 (EB 2002) ("the Bureau has no authority to alter or depart from Commission precedent").