



Federal Communications Commission
Washington, D.C. 20554

February 9, 2006

DA 06-322

In Reply Refer to:
1800B3-MFW

Mr. Art Hage, Pastor/President
Hurricane Bible Church
P.O. Box. 151
Hurricane, WV 24426

In re: **NEW (NCE-FM), Hurricane, WV**
Hurricane Bible Church d/b/a Truth &
Liberty Christian School
Facility ID No. 75416
File No. BPED-19950524MF

Dear Pastor Hage:

This letter refers to your response to the staff's letter of May 17, 2004, dismissing as untimely a petition for reconsideration of the dismissal of the captioned application of Hurricane Bible Church d/b/a Truth & Liberty Christian School ("HBC") for a new noncommercial educational FM (NCE-FM) station in Hurricane, West Virginia ("Staff Decision"). The response was received at the Commission on July 1, 2004. Although it does not specifically request such treatment, the letter is addressed to the Commission, and we will accord the July 1 filing the status of an Application for Review of the Staff Decision pursuant to Section 1.115 of the Commission's rules.¹

The HBC application was dismissed by *Public Notice* on August 9, 2002, because it was mutually exclusive with other NCE-FM proposals and failed to file the requisite "Point Supplement" required of such applicants.² HBC sought reconsideration of that action by letter received at the Commission on September 19, 2002,³ arguing that it had timely submitted the required information and that the Commission apparently had lost the submission. In the Staff Decision, the staff dismissed the petition for reconsideration as untimely, because it was not received at the Commission within 30 days of the *Public*

¹ 47 C.F.R. § 1.115. Positive Alternative Radio, Inc. ("PAR"), mutually exclusive applicant for a new NCE-FM facility in Hurricane (File No. BPED-19960328MI), filed an Opposition to the Application for Review on August 12, 2004.

² *Public Notice*, "Noncommercial Educational FM and FM Translator Applications Dismissed for Failure to File Required Information," DA 02-1963 (MB Aug. 9, 2002). Mutually exclusive NCE-FM applicants were required to submit either a universal settlement agreement, engineering amendments eliminating all conflicts, or point supplement amendments by July 19, 2001. *See also Public Notice*, "Supplements and Settlements to Pending Closed Group NCE Applications," 16 FCC Rcd 6893 (MB 2001); *Public Notice*, "Deadline for NCE Settlements and Supplements Extended to July 19, 2001," 16 FCC Rcd 10892 (MB 2001).

³ The letter was dated August 30, 2002, but was not received in the Commission's Mail Room until September 19, 2002.

Notice dismissing the HBC application.⁴ In the Application for Review, HBC reiterates that it “did submit the required information before the deadline” and that the Staff Decision is “incorrect.” While it does not address the issue regarding the timeliness of its petition for reconsideration, HBC nevertheless asks that the Commission reconsider the Staff Decision.

Under Section 1.115 of the Commission’s rules, any person aggrieved by an action taken pursuant to delegated authority may file an application for review of that action; the application for review must be filed within 30 days of public notice of the staff action. In this case, public notice of the dismissal of HBC’s petition for reconsideration was issued on May 20, 2004,⁵ and an application for review was due by June 21, 2004.⁶ HBC’s application for review, not arriving until July 1, 2004, is itself untimely and hereby IS DISMISSED.⁷

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Cary S. Tepper, Esq.
Positive Alternative Radio, Inc.

⁴ 47 C.F.R. § 1.106(f). The Staff Decision also observed that, while HBC attached to the petition a copy of the material it allegedly timely submitted, the exhibit bore no Commission date stamp of receipt, and thus could not be considered probative evidence of timely filing. The material did, however, bear an incorrect file number, BPED-1999052~~5~~MF, as opposed to the correct file number of HBC’s proposal, BPED-1999052~~4~~MF. The erroneous file number listed in HBC’s filing the file number of an application by Goetz and Smith Broadcasting, Inc. for a new noncommercial educational FM station in Charlestown, Indiana, that was dismissed pursuant to a settlement agreement on August 23, 1996. The Commission has no record of HBC’s purported submission.

⁵ See *Public Notice*, “Broadcast Actions,” Report No. 25740 (May 20, 2004), pp 7-8.

⁶ See 47 C.F.R. § 1.4.

⁷ See *Board of Education of the City of Atlanta*, 11 FCC Rcd 7763, 7765-6 (1996) (application for review filed one day late dismissed as untimely). See also *Garnerlynn Communications*, 99 F.C.C.2d 1176, 1177 n.2 (1984) (staff may dismiss untimely application for review).