



Federal Communications Commission
Washington, D.C. 20554

October 24, 2008

DA 08-2349

In Reply Refer to:

1800B3-ALV

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Community Religious Broadcasting, Inc.
c/o Harry F. Cole, Esq.
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1300 N. 17th Street, 11th Floor
Arlington, VA 22209

In Re: Community Religious Broadcasting, Inc.
NEW (NCE FM), Bemidji, MN
Facility ID No. 122488
BNPED-20000204AAO

Application for New NCE FM Station

Dear Applicant:

We have before us a Petition for Reconsideration (the "Petition") filed on November 28, 2007, by Community Religious Broadcasting, Inc. ("CRB"). The Petition seeks reconsideration of the October 24, 2007, dismissal of the above-captioned application for a new noncommercial educational ("NCE") FM radio station in Bemidji, Minnesota.¹ For the reasons discussed below, we deny the Petition.

Background. On February 4, 2000, CRB filed an application seeking authority to construct and operate a new NCE FM station in Bemidji, Minnesota (the "Application"). The Application was paper-filed under the Commission's prior licensing procedures but was not cut-off prior to the April 2000, Commission-imposed NCE comparative licensing freeze.² Accordingly, the Application remained pending during the NCE filing freeze. In October 2007, the Media Bureau (the "Bureau") opened a filing window for new station and major modification NCE FM construction permits and mandated that applicants with pending proposals electronically amend their applications on FCC Form 340 to include comparative information.³ In the *NCE Window Public Notice*, the Bureau explicitly cautioned applicants

¹ Oppositions were due within 10 days after the filing of CRB's November 28, 2007, Petition, or by December 12, 2007. See 47 C.F.R. § 1.106(g); see also 47 C.F.R. § 1.4. Headwaters Unitarian Universalist Fellowship, Inc. ("HUUF") filed an Opposition to the Petition on December 26, 2007. Because HUUF's Opposition was filed two weeks late, without explanation or motion for late-filing, we will not consider the Opposition.

² See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386 (2000), *aff'd*, Memorandum Opinion and Order, 16 FCC Rcd 5074 (2001).

³ See *Media Bureau Announces NCE FM New Station and Major Change Filing Procedures for October 12-October 19, 2007 Window; Limited Applications Filing Freeze to Commence on September 8, 2007*, Public Notice, 22 FCC Rcd 15050 (2007) ("NCE Window Public Notice"). Applicants were directed to electronically amend their

that “the failure to electronically amend and fully complete a pending application during the October window will result in its dismissal with prejudice.”⁴ CRB failed to amend its Application by the close of the NCE filing window.⁵ Accordingly, the Bureau staff, by Public Notice, dismissed the Application.⁶ In its Petition, CRB urges the Bureau to reconsider the dismissal, accept its late-filed amendment to the Application, filed November 28, 2007, and reinstate its Application *nunc pro tunc*. CRB concedes that it “inadvertently failed to submit an amendment,” but argues that the Commission “should have provided a form of notice designed to more effectively alert such applicants” of the need to amend by a particular deadline.⁷ CRB also asserts that the acceptance of its “relatively minor curative” late-filed amendment is warranted because no other party will be prejudiced by the requested reinstatement and CRB will gain no comparative points advantage over any other applicant.

Discussion. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.⁸ CRB fails to make such a showing.

CRB fails to provide any compelling explanation for its neglect to amend its Application. Its attempt to rely upon an alleged lack of clarity in the *NCE Window Public Notice* to partially excuse its failure to amend is unavailing. In the *NCE Window Public Notice*, as well as a prior April 2007, Public Notice announcing the NCE filing window, the Bureau unambiguously warned applicants several times that pending non-cut-off applications, such as CRB’s Application, would be dismissed for failure to amend by the established deadline.⁹ It was incumbent upon CRB to monitor these Public Notices, which specifically advised it of the consequences of its failure to amend, and adhere to the requirements.¹⁰

pending applications by completing Sections III (Fair Distribution of Service), IV (Point System Factors), V (Tie Breakers), and VI (Certification) of FCC Form 340.

⁴ *NCE Window Public Notice*, 22 FCC Rcd at 15051.

⁵ The filing window opened on October 12, 2007, and closed October 22, 2007. See *NCE Window Public Notice; Media Bureau to Extend Window for NCE FM New Station and Major Change Applications; Window Will Close on October 22, 2007*, Public Notice, 22 FCC Rcd 18680 (2007).

⁶ See Public Notice, *Broadcast Applications*, Rpt. No. 46601 (October 29, 2007).

⁷ CRB Petition at 2.

⁸ See 47 C.F.R. § 1.106; *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff’d sum nom.*, *Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966); *National Ass’n of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

⁹ The *NCE Window Public Notice* explicitly stated, in bold-faced type, that: “**The failure to electronically amend and fully complete a pending application during the October window will result in its dismissal with prejudice.**” *NCE Window Public Notice*, 22 FCC Rcd at 15051. In the same Public Notice, applicants were again cautioned that “[p]aper-filed not cut-off FCC Form 340 submissions filed prior to April 22, 2000, for which no amendment to FCC Form 340 is submitted during the window will be dismissed,” and, once again, warned that “**[t]he Commission staff will return applications and amendments not submitted in accordance with the procedures described in this Public Notice.**” *Id.* at 15053-54 (emphasis in original). The Bureau’s earlier April 2007, Public Notice also explained that: “[t]he Bureau will dismiss any pending non-cut-off NCE new station or major change application that is not amended by the close of the window to include the required information.” See *Media Bureau Announces NCE FM New Station and Major Modification Application Filing Window for New and Certain Pending Proposals; Window to Open on October 12, 2007*, Public Notice, 22 FCC Rcd 6726 (2007).

¹⁰ See, e.g., *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101 (2007) (“*NCE Omnibus Order*”) (applicant’s failure to file a point supplement by the deadline because it had not monitored Commission public notices is not an excuse for late-filing); *Lakeshore Broadcasting, Inc.*, 199 F.3d 468

Accordingly, we find no error in the Bureau's dismissal of CRB's Application for failure to meet a clearly articulated deadline.¹¹

Moreover, the Commission has repeatedly disallowed the late submission of requested information in comparative cases, finding that such an allowance would "inevitably lead to abuse of the Commission's processes, applicant gamesmanship, and unfair advantage."¹² Similarly, we find that reinstating CRB's Application and accepting its untimely comparative showing would be prejudicial to NCE applicants that properly adhered to the deadline, and would undermine the integrity of the window filing process.¹³ Specifically, because the comparative information of all of the applicants filing during the NCE filing window was publicly available at the time CRB submitted its amendment,¹⁴ CRB had a considerable advantage and could have potentially manipulated its comparative showing to prevail over other mutually exclusive applications. Further, allowing CRB to gain this advantage by violating a filing deadline could encourage applicants in future cases to take similar liberties. Accordingly, we will not excuse CRB's procedural dereliction and reinstate its Application.

Accordingly, IT IS ORDERED, That the Petition for Reconsideration, filed by Community Religious Broadcasting, Inc. IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Dan J. Alpert, Esq.

(D.C. Cir. 1999) (upholding dismissal of applicant that did not meet hearing fee deadline announced by public notice); *Southern Communications, Inc.*, Order, 12 FCC Rcd 1532, 1535 (1997) (applicant unaware of payment deadline set by public notice bears responsibility for failure to meet the deadline).

¹¹ See, e.g., *Green Valley Broadcasters, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 13341 (2004) (affirming dismissal of an application for failure to submit Section 307(b) information, requested through a Bureau Public Notice, by the established deadline). See also 47 C.F.R. § 73.3568 ("Failure to prosecute an application, or failure to respond to official correspondence or request for additional information, will be cause for dismissal.").

¹² *Silver Springs Communications*, Memorandum Opinion and Order, 3 FCC Rcd 5049, 5050 (1988), *rev. denied*, 4 FCC Rcd 4917 (1989) (concluding that the rejection of an untimely filed notice of appearance in a comparative case is necessary in order to maintain the integrity of the Commission's processes and to insure that an applicant's gamesmanship does not result in an unfair advantage). See also *LRB Broadcasting*, Memorandum Opinion and Order, 8 FCC Rcd 3076 (1993); *NCE Omnibus Order*, 22 FCC Rcd 6101 (finding that the consideration of late-filed point supplements could potentially prejudice the comparative positions of mutually exclusive applicants that timely filed supplements).

¹³ Contrary to CRB's assertion, granting the CRB Petition would prejudice another applicant, as CRB's Application would be mutually exclusive with the timely-filed application of Headwaters Unitarian Universalist Fellowship, Inc. for a new NCE FM station at Bagley, Minnesota. See FCC File No. BNPED-20071019ADU.

¹⁴ On November 8, 2007, all applications and amendments filed during the October 2007, NCE FM filing window were made publicly available. CRB amended its Application on November 28, 2007.