



Federal Communications Commission  
Washington, D.C. 20554

October 28, 2008

**DA 08-2360**

*In Reply Refer to:*

1800B3-SS

Released: October 28, 2008

Serendipity Educational Broadcasting, Inc.  
c/o Mr. Harold S. Vogt  
11563 Argonne Road  
Festus, MO 63028-2951

In re: **Serendipity Educational Broadcasting, Inc.**  
**New NCE-FM Station, Preston, MO**  
Facility ID No. 174230  
File No. BNPED-20071016ADS

**Petition for Reconsideration**

Dear Mr. Vogt:

We have before us a Petition for Reconsideration ("Petition") filed May 8, 2008, by Serendipity Educational Broadcasting, Inc. ("SEB"), applicant for a new noncommercial educational ("NCE") FM station at Preston, Missouri (the "Application"). SEB seeks reconsideration of the April 7, 2008, letter<sup>1</sup> dismissing the Application as unacceptable for filing.<sup>2</sup> For the reasons set forth below, we deny the Petition.

**Background.** SEB filed the Application during the NCE filing window of October 2007.<sup>3</sup> A staff engineering review of the Application revealed that the Application failed to comply with Section 73.525 of the Commission's Rules (the "Rules")<sup>4</sup> with respect to Channel 6 station KMOS-TV, Sedalia, Missouri. The Application requested a waiver of Section 73.525 regarding protection of TV Channel 6 stations. On February 18, 2008, SEB amended the Application to provide a consent letter from KMOS-TV, licensed to the University of Central Missouri ("UCM"), dated January 31, 2008. The UCM letter stated that UCM agreed to a contingent arrangement wherein SEB would not begin broadcasting until after KMOS-TV transitions to digital ("DTV") broadcasting (anticipated in February 2009). In the *Staff Decision*, the staff concluded that neither Section 73.525 of the Rules, nor established precedent provides a basis for the acceptance of such a contingent arrangement as sufficient to satisfy TV Channel 6 protection requirements. In addition, the staff concluded that a waiver of the Commission's contingent

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<sup>1</sup> Letter to Serendipity Educational Broadcasting, Inc. (MB Apr. 7, 2008) ("Staff Decision").

<sup>2</sup> See *Staff Decision* at 2.

<sup>3</sup> The filing window opened on Friday, October 12, 2007. 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 2726 (MB 2007); *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 (MB 2007).

<sup>4</sup> 47 C.F.R. § 73.525.

application rule would be contrary to the public interest. Accordingly, the staff dismissed the Application.

In its Petition, SEB states that it concurs with the staff's analysis. Also, SEB notes that it has withdrawn its request for waiver of Section 73.525 as contained in the Application.<sup>5</sup> It seeks reconsideration of the staff action based on the following new information. SEB includes in the Petition a supplemental showing requesting Commission approval under Section 73.525 of the Rules.<sup>6</sup> SEB states that it had e-mail and telephone conversations with UCM and proposed the following: (1) to perform the build-out as originally planned within a three-year period as allowed, at SEB's option; (2) if the build-out is completed prior to KMOS-TV's switch to digital, to coordinate testing with KMOS-TV to avoid interfering with KMOS-TV operations; (3) to use only vertical polarization of its antenna; (4) to provide filters to those experiencing interference within the applicable interference contour; (5) to operate only from midnight to 6:00 am to remain in compliance with Section 73.561 of the Rules;<sup>7</sup> and (6) to begin 24-hour operations only after February 17, 2009, the deadline for DTV conversion, or any new set cut-off date of the television analog signal.<sup>8</sup>

SEB indicates that it has obtained a letter from UCM consenting to this plan,<sup>9</sup> and that it will agree to UCM's request that SEB only operate from 12:30 am to 5:30 am<sup>10</sup> until KMOS-TV ceases analog operation.<sup>11</sup> Finally, SEB claims that the grant of the Application would only require special temporary authority ("STA") if SEB could not resolve interference to KMOS-TV analog operations.<sup>12</sup> SEB requests that the Commission find that the revised agreement constitutes a written agreement between the NCE-FM applicant and each affected TV Channel 6 broadcast station concurring with the proposed NCE-FM facilities and therefore conclude that the provisions of Section 73.525 do not apply to the Application.

**Discussion.** The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts, not known or existing at the time of petitioner's last opportunity to present such matters.<sup>13</sup> Petitions for reconsideration

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<sup>5</sup> Petition at 4.

<sup>6</sup> 47 C.F.R. § 73.525.

<sup>7</sup> 47 C.F.R. § 73.561.

<sup>8</sup> Petition at 3.

<sup>9</sup> See Petition at Attachment, *Letter to Mr. Harold S. Vogt from Donald W. Peterson, Director of Broadcasting Services, University of Central Missouri* (May 7, 2008) ("UCM Letter").

<sup>10</sup> In its supplemental showing, SEB had proposed to operate from midnight to 6:00 am.

<sup>11</sup> Petition at 3.

<sup>12</sup> *Id.* at 5.

<sup>13</sup> See 47 C.F.R. § 1.106(c) and (d). See also *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) ("*WWIZ, Inc.*").

which rely on facts not previously presented to the Commission may be granted if the Commission determines that consideration of the facts relied on is required in the public interest.<sup>14</sup>

We find that SEB's proposal remains inconsistent with the plain language of Section 73.525 of the Rules. The agreement includes numerous qualifications and restrictions. For instance the revised agreement allows SEB to operate daily only from 12:30 am until 5:30 am for "signal testing."<sup>15</sup> SEB's updated showing, therefore, does not change the fact that UCM is only allowing SEB to proceed as long as SEB agrees "not to begin broadcast operations until KMOS-TV stops broadcasting an analog signal [on February 17, 2009]."<sup>16</sup> It is clear that UCM is not "concurring with the proposed NCE-FM facilities," as required by the Rule, *until* the "date analog broadcasting will cease."<sup>17</sup> Thus, Section 73.525 applies in this context, and the Application does not adequately protect KMOS-TV. Accordingly, SEB has not corrected the defect for which the Application was initially dismissed.

**Conclusion/Action.** SEB has not shown a material error or omission in the *Staff Decision*. Accordingly, IT IS ORDERED, that the Petition for Reconsideration filed by Serendipity Educational Broadcasting, Inc., IS DENIED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>14</sup> See 47 C.F.R. § 1.106(c)(2). See also *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Scranton and Surfside Beach, South Carolina)*, Memorandum Opinion and Order, 4 FCC Rcd 2366 (MB 1989).

<sup>15</sup> See n.9, *supra*.

<sup>16</sup> See *UCM Letter*.

<sup>17</sup> See *id*.