



**Federal Communications Commission
Washington, D.C. 20554**

July 13, 2009

DA 09-1525

In Reply Refer To:

1800B3-RA

Released: July 13, 2009

Al Gilbertson
Refuge Media Group
4604 Airpark Blvd.
Duluth, MN 55811-5751

In re: New FM Station, Belle Plaine, MN
Facility ID No. 173809
File No. BNPED-20071015AFM

Petition for Reconsideration

Dear Mr. Gilbertson,

We have before us the Petition for Reconsideration ("Petition"), filed on March 9, 2009, by Refuge Media Group ("RMG"). RMG requests reconsideration of a January 28, 2009, staff action dismissing the above-referenced application for a new noncommercial educational ("NCE") FM Station in Belle Plaine, Minnesota.¹ We dismiss the Petition for the reasons set forth below.

Background. On April 4, 2007, the Media Bureau announced by Public Notice a filing window for new NCE FM stations and major modification construction permits to run from October 12, 2007, to October 19, 2007.² RMG filed an application for a new station on October 15, 2007. On June 18, 2008, the Bureau issued a public notice identifying 148 groups, all of which contained thirteen or fewer mutually exclusive NCE FM applications.³ RMG's application for a new station at Belle Plaine, Minnesota, was determined to be mutually exclusive with six other applications. All seven applications were designated MX Group 372.⁴ On December 17, 2008, the Bureau issued a Memorandum Opinion and Order that identified the tentative selectee in each group. Minn-Iowa Christian Broadcasting, Inc. was identified as the tentative selectee in MX Group 372, and RMG's application was subsequently dismissed by Public Notice on January 28, 2009.⁵ RMG filed its Petition on March 9, 2009.

Discussion. Section 405 of the Communications Act of 1934, as amended (the "Act"), and Section 1.106(f) of the Commission's Rules ("Rules"), require petitioners to seek reconsideration no later than 30 days after the public notice announcing the action for which reconsideration is sought.⁶ Because RMG's

¹ Southern Minnesota Catholic Radio filed an Opposition on March 9, 2009.

² *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, DA 07-1613 (MB rel. Apr. 4, 2007).

³ *See Media Bureau Identifies Groups of Mutually Exclusive Applications*, Public Notice, DA 08-1437 (MB rel. Jun. 18, 2008).

⁴ *Id.*

⁵ *See Public Notice*, Rpt. No. 46910 (rel. Jan. 28, 2009).

⁶ 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f).

application was dismissed by Public Notice on January 28, 2009,⁷ the final day to file a petition for reconsideration was February 27, 2009.⁸ However, RMG's Petition was not received by the Commission until March 9, 2009.⁹ The Commission generally lacks the authority to extend or waive the 30-day statutory filing period for petitions for reconsideration set forth by Section 405 of the Act.¹⁰ Although the Commission may not refuse to consider a late-filed petition for reconsideration if the petitioner shows that its failure to file for reconsideration in a timely manner resulted from "extraordinary circumstances," no such showing has been made here.¹¹ Because RMG's Petition for Reconsideration was untimely, it is procedurally defective and will be dismissed.

Conclusion. Accordingly, IT IS ORDERED that the Petition for Reconsideration filed by Refuge Media Group IS DISMISSED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Dennis J. Kelly, Esq.

⁷ See *Public Notice*, Rpt. No. 46910.

⁸ See 47 C.F.R. § 1.4.

⁹ Though the Petition was dated February 20, 2009, the Commission's Rules clearly state that a document is considered filed upon receipt by the Commission. See *id.* at § 1.7.

¹⁰ See *Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986); see also *Application of Moran Towing Corp.*, Order on Reconsideration, 24 FCC Rcd 3221, 3221 (2009); *Airband Communications, LLC*, Order on Reconsideration, 24 FCC Rcd 3133 (2009).

¹¹ *Gardner v. FCC*, 530 F.2d 1085, 1091-92 (D.C. Cir. 1976).