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In Reply Refer to:

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In re: Plus Charities
NEW(FM), Coggon, IA
Facility ID No. 171762
File No. BNPED-20071022BMC

Petition for Reconsideration

Dear Counsel:

We have before us the "Petition for Reconsideration and Petition for Leave to Amend and for Reinstatement of Application Nunc Pro Tunc" ("Petition") filed December 7, 2007, by Plus Charities ("Plus"). The Petition asks us to reconsider our November 8, 2007, letter¹ ("Dismissal Letter") dismissing the above-captioned application filed by Plus ("Application"). Also before us is an "Opposition to Petition for Reconsideration" ("Opposition") filed by New Bohemia Group, Inc. ("New Bohemia") on December 20, 2007, to which Plus replied on January 3, 2008 ("Reply"). For the reasons set forth below, we deny the Petition.

Background. On October 22, 2007, Plus filed an application to construct a new noncommercial educational ("NCE") station to serve Coggon, Iowa. The staff dismissed the Application pursuant to Section 73.3566(a) of the Commission's rules ("Rules"),² finding that the facility proposed in the Application failed to provide adequate community coverage as required by Section 73.515 of the Rules.³ Specifically, the Dismissal Letter held that the "proposed 60 dBu contour fails to cover at least 50 percent of the community of license of Coggon, Iowa."

¹ Letter from Rodolfo F. Bonacci, Assistant Chief, Audio Division, to Plus Charities, Ref. No. 1800-B3 (MB Nov. 8, 2007).

² Section 73.3566(a) of the Rules directs the staff to dismiss nonconforming applications: "Applications which are determined to be patently not in accordance with the FCC rules, regulations, or other requirements, unless accompanied by an appropriate request for waiver, will be considered defective and will not be accepted for filing or if inadvertently accepted for filing will be dismissed." 47 C.F.R. § 73.3566(a).

³ 47 C.F.R. §73.515.

In its Petition, Plus argues that it should be entitled to file a curative amendment that would correct the deficiencies cited in the Dismissal Letter. Specifically, it asserts that it inadvertently checked the box “east longitude” rather than “west longitude” in Section VII, question 3 of the Application. It maintains that a review of the Application “as a whole” would have shown that it had actually specified a tower located in Masonville, Iowa, as its proposed transmitter site.⁴ Given this error, Plus argues that the Commission should accept as a minor amendment its amended application reflecting the correct coordinates, stating that its “intent [was] to file for an FM station located in Iowa, not in China.”⁵

In Opposition, New Bohemia asserts that Plus’s proposed amendment constitutes a “major change” that cannot be accepted outside a designated filing window, and that Plus has not demonstrated that its proposed changes are minor or that good cause otherwise exists for waiving the Rules to allow the Commission to accept such changes.⁶ In its Reply, Plus argues that the Commission has routinely allowed the filing of curative amendments when an application has been dismissed for an engineering defect.⁷

Discussion. At issue is whether the staff properly dismissed the Application as deficient without providing Plus an opportunity to correct the identified defects. We conclude that the staff action dismissing the Application was proper. Accordingly, we will deny Plus’s Petition.

As discussed above, Plus’s Tech Box data cites geographic coordinates different than those specified elsewhere in the Application. In the event of any discrepancies between data in the Tech Box and data submitted elsewhere in an application, the data in the Tech Box must be used.⁸ Based on the information provided in the Tech Box, staff concluded that the facility proposed in the Application failed to provide adequate community coverage. Accordingly, consistent with both the Commission’s Rules and staff practice, staff dismissed the Application as defective.

Plus asserts that we should reinstate the Application and accept an amendment to correct the Tech Box coordinates as a “minor” amendment. We will generally reinstate an application *nunc pro tunc* where the original application was dismissed and where a “minor curative amendment” is filed within

⁴ See Petition at 3.

⁵ *Id.*

⁶ See Opposition at 2. New Bohemia also argues that Plus’s proposed amendment contains a host of changes in addition to the new geographic coordinates, such as a new tower height, height of center of radiation, antenna height above average terrain, and a new exhibit to demonstrate community coverage. *Id.* at 1. It further argues that Plus attempts to submit a new “Fair Distribution” exhibit. *Id.* Plus asserts that the additional changes cited by New Bohemia are minor and that the fair distribution exhibit made a minor change serving to reduce the number of persons claimed by the exhibit submitted with the Application. See Reply at 2-3.

⁷ See Reply at 2 (citing *Edward T. Czelada*, Letter, 22 FCC Rcd 16634 (MB 2007)).

⁸ See 1998 Biennial Regulatory Review, *Streamlining of Mass Media Applications, Rules, and Processes*, Report and Order, 13 FCC Rcd 23056, 23081 (1998) (finding that use of the tech box would eliminate the need for repeated staff amendment requests and attendant processing delays, necessitated by errors and discrepancies within the application), *recon. granted in part by*, Memorandum Opinion and Order, 14 FCC Rcd 17525 (1999). See FCC Form 340, Instructions for Section VII, at 9 (Dec. 2008), available at <http://www.fcc.gov/Forms/Form340/340.pdf> (noting that: “In the event that there are any discrepancies between data in the ‘Tech Box’ and data submitted elsewhere in the application, the data in the ‘Tech Box’ will be controlling.”).

thirty days of the dismissal date.⁹ The amendment in this case, however, describes a fundamentally different location than that specified in the Tech Box of the Application. The geographic coordinates of a proposed site are essential for the staff to determine whether an applicant's proposal is in compliance with the Rules.¹⁰ Accordingly, we reject Plus's contention that the staff should treat its proposed amendment as a "minor" amendment.

Conclusion/Actions. For the reasons set forth above, the Petition for Reconsideration and Petition for Leave to Amend and for Reinstatement of Application Nunc Pro Tunc filed by Plus Charities IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Plus Charities
Calvary Iowa City
New Bohemia Group, Inc.

⁹ See *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR 2d 776, 49 Fed. Reg. 47331 (rel. Aug. 2, 1984).

¹⁰ See, e.g., *Aerco Broadcasting Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 24417, 24419 (2003) (finding an application listing geographic coordinates and site elevation data that did not match the requisite tower registration on file with the Commission to be patently defective).