



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

**DA 10-1161
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Mr. George S. Sebastian, President
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Community Television Educators, Inc.
c/o Robert L. Olender, Esq.
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Re: Oral Roberts University
Facility ID No. 82349
File No. BPET-19960621KE

Community Television Educators, Inc.
Facility ID No. 84146
File No. BPET-1996093

For a Construction Permit for a New
Noncommercial Educational Television Station on
DTV Channel *26, Tulsa, OK

Gentleman:

We have before us a petition for reconsideration filed by Global Educational Development, Inc. ("GED"), of the Commission's decision selecting Oral Roberts University ("ORU") as the tentative selectee to construct a new television station on DTV channel *26 at Tulsa, Oklahoma.¹ ORU filed an opposition to the petition. For the reasons stated below, we dismiss the petition for reconsideration.

GED was part of a larger group of applicants for a new noncommercial educational television station on channel *63, Tulsa, Oklahoma. These applicants included Oral Roberts University, Broadcasting for the Challenged, Inc., Faith That Pleases God Church Corporation, Family Educational Broadcasting, Inc., and Community Television Educators, Inc. ("CTE"). With the impending digital transition, the applicants jointly requested, and the Video Division granted,² the substitution of DTV channel *26 for TV channel

¹ *Oral Roberts University*, Memorandum Opinion and Order, 23 FCC Rcd 17440 (2008) ("Tentative Selectee Order").

² *Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations; and Section 73.622(b), Table*

*63 at Tulsa. The *Tulsa Channel Substitution Order* required that “within 45 days of the effective date of this *Order*, the [a]pplicants shall submit to the Commission minor change applications for a construction permit (FCC Form 340) specifying DTV [c]hannel *26 in lieu of TV [c]hannel *63 at Tulsa.”³ The effective date of the *Tulsa Channel Substitution Order* was January 14, 2005.⁴ Therefore, the deadline for the applicants to submit their minor change applications for a construction permit specifying DTV channel *26 at Tulsa was February 28, 2005. Only two applicants, ORU and CTE, timely submitted minor change applications. GED untimely submitted its minor change application on March 29, 2005. Thereafter, on March 23, 2007, the Video Division dismissed GED’s Tulsa application, as well as the applications of all of the other applicants who failed to timely file their minor change applications.⁵ Subsequently, on April 4, 2007, GED submitted a petition for reconsideration of the Video Division’s dismissal of its Tulsa application (“Tulsa Application Petition”).

On November 19, 2008, the Commission, using the comparative selection criteria established in the *Noncommercial Educational Comparative Standards Report and Order*,⁶ released the *Tentative Selectee Order*, which selected ORU to operate on DTV channel *26 at Tulsa. As only ORU and CTE had timely filed minor change applications pursuant to the *Tulsa Channel Substitution Order*, the Commission only considered these applicants.

In GED’s petition for reconsideration, it states that “Since a timely filed [p]etition for [r]econsideration contesting the dismissal of GED’s application is pending, the Commission’s action selecting Oral Roberts University as the tentative selectee is clearly erroneous,” and that until the Commission acts with respect to the Tulsa Application Petition, “GED presumptively deserves to have its application’s comparative characteristics considered with the comparative process with respect to [c]hannel *26 at Tulsa.”⁷

In opposition to GED’s petition for reconsideration, ORU argues that the *Tentative Selectee Order* is an interlocutory action, and therefore GED’s Petition is procedurally improper pursuant to Section 1.106(a)(1) of the Commission’s Rules⁸ which, according to ORU, “specifically prohibits the filing of petitions for reconsideration of actions that are interlocutory in nature.”⁹ In addition, ORU asserts that the existence of GED’s Tulsa Application Petition did not prevent the Commission from issuing the *Tentative Selectee Order* as the Commission has historically “declined to hold its actions in abeyance based upon pending litigation or petitions for reconsideration.”¹⁰

of *Allotments Digital Broadcast Television Stations (Tulsa, Oklahoma)*, Report and Order, 19 FCC Rcd 71383 (2004) (“*Tulsa Channel Substitution Order*”).

³ *Tulsa Channel Substitution Order* at ¶6.

⁴ 69 Fed. Reg. 71385 (Dec. 9, 2004).

⁵ *Letter from Clay C. Pendarvis, Associate Chief, Video Division, to GED, c/o Stephen C. Simpson, Esq., et al.*, March 23, 2007 (“Dismissal Letter”).

⁶ See *Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386 (2000) (“*Noncommercial Education Comparative Standards Report and Order*”); Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 10549 (2001); Memorandum Opinion and Second Order on Reconsideration, 17 FCC Rcd 13132 (2002); *aff’d sub nom. American Family Association, Inc., et al. v. FCC & USA*, 365 F. 3d 1156 (D.C. Cir. 2004), *cert. denied*, 125 S. Ct. 634 (2004); *see also* 47 C.F.R. § 73.7003.

⁷ Petition at 4 (December 22, 2008).

⁸ 47 C.F.R. §1.106(a)(1).

⁹ Opposition to Petition at 1 (Dec. 31, 2008).

¹⁰ *Id.* at 3-4.

We find that GED's Petition is moot. The Video Division has denied GED's Tulsa Application Petition in a letter that is being released simultaneously with this letter.¹¹ Furthermore, the Petition is procedurally improper. Section 1.106(a)(1) of the Commission's Rules specifically prohibits petitions for reconsideration of interlocutory actions.¹² An interlocutory action is an interim determination on a matter; it does not grant or deny an application. The *Tentative Selectee Order* was an interlocutory action, not a final action on the underlying applications ripe for consideration.¹³ Confirming the interlocutory nature of the *Tentative Selectee Letter*, the Commission repeatedly emphasized that the selection was "tentative" and took no final action with regard to the ORU's application.¹⁴ Therefore, we dismiss GED's Petition.

Even assuming GED's Petition was not procedurally improper, it still lacks merit. Pursuant to Section 1.102(b)(2), "if a petition for reconsideration of a non-hearing action is filed, the designated authority may in its discretion stay the effect of its action pending disposition of the petition for reconsideration."¹⁵ GED did not request a stay when it filed its Tulsa Application Petition, and the Video Division, at its own discretion, chose not to stay the effect of its Dismissal Letter.

ACCORDINGLY, IT IS ORDERED That, the petition for reconsideration, filed by Global Educational Development, Inc, of the Commission's decision selecting Oral Roberts University as the tentative selectee to construct a new television station on DTV channel *26 at Tulsa, Oklahoma, IS DISMISSED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹¹ Letter from Barbara A. Kreisman, Chief, Video Division to GED, c/o Joseph E. Dunne III, June 25, 2010.

¹² 47 C.F.R. §1.106(a)(1).

¹³ *Bennett v. Spear*, 520 US 154, 178 (1977) (holding an agency's action is final and reviewable only if, *inter alia*, it "mark[s] the 'consummation' of the agency's decision making process - it must not be of a merely tentative or interlocutory nature.") (Internal quotes and cites omitted).

¹⁴ *Tentative Selectee Letter*, 23 FCC Rcd 17440 at ¶1, ¶7 (The Commission stated, "we select ORU as the tentative selectee" and "Oral Roberts is TENTATIVELY SELECTED to be awarded a construction permit.... We direct staff to issue a public notice announcing this tentative selectee.") (emphasis in original).

¹⁵ 47 C.F.R. §1.102(b)(2).