Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Holy Family Oratory of St. Philip Neri	)	File No. BNPED-20071022AXL
	)	Facility ID No. 172329
Application for Construction Permit for a New	)	
Noncommercial Educational Station at	)	
Bedford, Michigan	)	

MEMORANDUM OPINION AND ORDER

Adopted: October 17, 2014 **Released: October 20, 2014**

By the Commission:

1. The Commission has before it an Application for Review filed on August 18, 2008, by First Pentecostal Church of God in Christ ("FPC").[1] FPC seeks review of the Media Bureau's ("Bureau") July 18, 2008, decision[2] which: (1) treated FPC's June 23, 2008, "Emergency Petition to Rescind Construction Permit Grant" ("Petition") for a new noncommercial educational ("NCE") station at Bedford, Michigan as a petition for reconsideration; (2) dismissed the Petition as untimely; and (3) dismissed as moot FPC's October 22, 2007, request for waiver ("FPC Waiver Request") of the requirement that applicants for new NCE stations filed during the October 2007 NCE FM filing window be filed electronically prior to the extended 2:00 p.m., October 22, 2007 deadline. For the following reasons, we dismiss in part and otherwise deny the Application for Review.

2. *Background*. On April 4, 2007, the Bureau announced a filing window from October 12 to October 19, 2007, for new NCE FM station and major modification construction permit applications.[3] The window opened as scheduled on October 12, and CDBS functioned properly until it experienced a brief overnight outage on October 19, 2007. In response, the Bureau extended the filing window until October 22, 2007, at 2 p.m.[4] Holy Family Oratory of St. Phillip Neri ("HFO") successfully filed its Bedford, Michigan, application on October 22, 2007; the staff subsequently granted HFO's unopposed "singleton" application on May 14, 2008.[5]

3. In the Petition, FPC stated that, through counsel, it attempted to submit an electronic application for a construction permit for a new NCE station at Battle Creek, Michigan, *via* CDBS at 1:56 p.m., four minutes before the October 22, 2007, 2:00 p.m. deadline. FPC claimed, however, that CDBS failed to properly process the submission. FPC also claimed that, later that same day, it filed a paper

[1] On September 3, 2008, Holy Family Oratory of St. Philip Neri ("HFO") filed an Opposition, to which FPC replied on October 6, 2008.

[2] *See Matthew H. McCormick, Esq., Stuart W. Nolan, Jr., Esq.,* Letter, 23 FCC Rcd 11052 (MB 2008) ("*Bureau Decision*").

[3] *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 (MB 2007).

[4] *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).

[5] *See Broadcast Actions,* Public Notice, Report No. 46739 (MB. rel. May 19, 2008).

version of the application. According to FPC, if its application had been successfully filed, its proposal would have been mutually exclusive with the HFO application.

4. As noted above, on May 14, 2008, the Bureau granted the HFO application and, on May 19, 2008, released a Public Notice of that grant.[6] On June 23, 2008, FPC filed its Petition seeking the rescission of that grant, which the Bureau dismissed as an untimely petition for reconsideration in the July 18, 2008, *Bureau Decision.* In its Application for Review, FPC argues that the *Bureau Decision* erred in rejecting the Petition as an untimely petition for reconsideration and reiterates its argument below that the Bureau violated the *Ashbacker* doctrine[7] "by cutting off the application of a party that followed announced procedural rules for a timely filing and granted a mutually-exclusive, competing proposal without the required comparative hearing."[8]

5. We reject FPC's arguments. FPC filed no objection prior to grant of HFO's application, nor did it file a timely petition for reconsideration or application for review after grant of that application and the Commission's Public Notice of that grant. The deadline for seeking reconsideration or review was June 18, 2008.[9] Five days later, FPC filed the Petition. A petitioner cannot avoid filing deadlines by calling its petition something other than a petition for reconsideration when it, in effect, seeks reconsideration or review.[10] Section 405 of the Communications Act of 1934, as amended (the "Act"), which requires submission of petitions for reconsideration within 30 days of public notice of the complained-of action, cannot be waived except in extraordinary circumstances that are not present here.[11] As noted above, the Commission issued a Public Notice of the grant of the HFO application on May 19, 2008. FPC's explanation for its late filing here, that its counsel did not become aware of the grant until after the statutory filing deadline thirty days after that public notice had passed,[12] falls far short of the requisite showing for such a waiver.[13]

[6] Public Notice, Report No. 46739, Broadcast Applications at 6 (May 19, 2008).

[7] *Ashbacker Radio Corp. v FCC,* 326 U.S. 327 (1945).

[8] Application for Review at 5, 10.

[9] See 47 U.S.C. §405(a); 47 C.F.R. §1.106(f).

[10] *See Davina Sashkin, Esq.,* Letter, 27 FCC Rcd 2920, 2922 (MB 2012); *Anderson Radio*, 23 FCC Rcd at 579 n.8 (2008) (petition to rescind treated as timely petition for reconsideration); *see also Chadmoore Communications, Inc.,* Memorandum, Opinion and Order, 15 FCC Rcd 12898, 12899 (WTB 2000) (rejecting petitioner's request that Commission review its pleading on its own motion pursuant to Section 1.117 of the Rules and concluding that "[t]he Commission's powers in this regard are purely discretionary and were not established as a vehicle for evading the statutory strictures of Section 405 of the Act.").

[11] *See, e.g., Gardner v. FCC*, 530 F.2d 1086 (D.C. Cir. 1976); *Adelphia Communications Corporation*, Order, 12 FCC Rcd 10759 (1997) (petitioner must show that defective public notice "made it reasonably impossible for him to comply with the filing deadline.").

[12] Application for Review at 3.

[13] Because the Petition was late filed and accordingly properly dismissed by the Bureau, we need not consider whether the Bureau properly disposed of the arguments presented in that Petition.

6. ACCORDINGLY, IT IS ORDERED, that pursuant to Section 5(c)(5) of the Act,[14] and Sections 1.115(c) and (g) of the Commission's rules,[15] the Application for Review, filed on August 18, 2008, by First Pentecostal Church of God in Christ, IS DISMISSED IN PART AND DENIED IN PART.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[14] 47 U.S.C. § 155(c)(5).

[15] 47 C.F.R. §§ 1.115(c),(g).