

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

In the Matter of)	
)	
Covenant Network)	File No. BNPED-20071018BDN
For a New Noncommercial Educational FM)	Facility ID No. 172248
Station at Macomb, Illinois)	

MEMORANDUM OPINION AND ORDER

Adopted: April 15, 2014

Released: April 16, 2014

By the Commission:

1. The Commission has before it an Application for Review (“AFR”) filed by Covenant Network (“Covenant”) on February 20, 2009. Covenant challenges the dismissal of its application for a new non-commercial FM station at Macomb, Illinois (“Application”), for failure to satisfy the community coverage requirements set forth in Section 73.515 of the Commission’s rules (“Rules”).¹

2. Covenant filed the Application during a filing window opened by the Commission in October 2007. Subsequently, the Commission determined that the Application was mutually exclusive with another application filed during that window.² Covenant then amended the Application in an attempt to eliminate the mutual exclusivity. The Media Bureau (“Bureau”) dismissed the Application as unacceptable for filing, explaining that “an engineering study ... revealed that the proposed facility fails to provide adequate community coverage” as required by Section 73.515 of the Rules and noting that the application did not address this coverage issue.³

3. Covenant challenged the Bureau’s decision in a “Petition for Reconsideration and Petition for Leave to Amend and for Reinstatement of Application *Nunc Pro Tunc*” (“November Petition”).⁴ It concurrently again sought to amend the Application to include a new exhibit, which Covenant claimed demonstrated compliance with the Commission’s community coverage requirements. The Bureau denied the November Petition.⁵ The Bureau noted that the amendment did not alter any of the technical characteristics of the proposed station. It explained that, by its own calculations, the proposed facility still did not satisfy the community coverage requirements and set forth the percentages of total population and total area that it calculated the proposed station would cover.

4. Covenant challenged this decision too in a “Petition for Reconsideration and Petition for Leave to Amend and for Reinstatement of Application *Nunc Pro Tunc* or, in the Alternative, Application

¹ 47 C.F.R. § 73.515.

² *Media Bureau Announces Groups of Mutually Exclusive Applications Submitted in the October 2007 Filing Window for Noncommercial Educational FM Stations*, Public Notice, 23 FCC Rcd 3914 (MB Mar. 7, 2008).

³ *Letter from Rodolfo F. Bonacci, Assistant Chief, Audio Division, Media Bureau, to Covenant Network* (dated Nov. 7, 2008).

⁴ Covenant Network, *Petition for Reconsideration and Petition for Leave to Amend and for Reinstatement of Application Nunc Pro Tunc* (rec’d November 13, 2008).

⁵ *Letter from Rodolfo F. Bonacci, Assistant Chief, Audio Division, Media Bureau, to Covenant Network* (dated Dec. 8, 2008).

for Review” (“December Petition”). It again sought to amend its Application to include a new coverage exhibit.⁶ The Bureau dismissed the December Petition and rejected the amendment,⁷ citing the Commission’s established policy, announced in 1984, of denying *nunc pro tunc* reconsideration rights to an applicant whose application is returned or dismissed a second time.⁸

5. Covenant seeks Commission review of these Bureau decisions. It argues that the Initial Bureau Decision failed to comply with the precedent set forth in *Salzer v. FCC*,⁹ and *Glaser v. FCC*,¹⁰ and asserts that various aspects of the Bureau decisions violated the Administrative Procedure Act.¹¹ Covenant makes these arguments for the first time in its AFR.

6. Upon review of the AFR and the entire record, we conclude that Covenant’s arguments must fail because Covenant never presented them to the Bureau. Section 5(c)(5) of the Communications Act of 1934, as amended, and Section 1.115(c) of bar applications for review that rely “on questions of fact or law upon which the [designated authority issuing the decision] has been afforded no opportunity to pass.”¹²

7. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,¹³ and Section 1.115(c) of the Commission’s Rules,¹⁴ the Application for Review filed by Covenant Network IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁶ Covenant Network, Petition for Reconsideration and Petition for Leave to Amend and for Reinstatement of Application *Nunc Pro Tunc* or, in the Alternative, Application for Review (rec’d December 15, 2008).

⁷ Letter from Rodolfo F. Bonacci, Assistant Chief, Audio Division, Media Bureau, to Covenant Network (dated Jan. 16, 2009).

⁸ *Id.*, citing Commission States Future Policy in Incomplete and Patently Defective AM and FM Construction Permit Applications, Public Notice, 56 RR 2d 776 (1984). In imposing this procedural rule thirty years ago, the Commission observed: “Incomplete and patently defective applications place an inordinate burden on our processing staff. This burden entails repeated requests by the staff for information clearly called for by the application. This delays the processing of not only the incomplete and patently defective applications, but also the processing of grantable applications. More important, service to the public in the initiation of new broadcast service is delayed.” *Id.* at 777.

⁹ See AFR at 7-10, citing *Salzer v. FCC*, 778 F.2d 869 (D.C. Cir. 1985).

¹⁰ See AFR at 9, citing *Glaser v. FCC*, 20 F.3d 1184 (D.C. 1994).

¹¹ *Id.* at 11-14.

¹² See 47 U.S.C. § 155(c)(5); 47 C.F.R. § 1.115(c).

¹³ 47 U.S.C. § 155(c)(5).

¹⁴ 47 C.F.R. § 1.115(g).