

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

In the Matter of
Totally Jesus Network, Inc.
Application for a New NCE FM Station at
Gold Beach, Oregon
and
UCB USA, Inc.
Application for a New NCE FM Station at
Brookings, Oregon
Facility ID No. 175729
File No. BNPED-20071018AON
Facility ID No. 172931

MEMORANDUM OPINION AND ORDER

Adopted: June 11, 2014

Released: June 12, 2014

By the Commission:

1. The Commission has before it an Application for Review ("AFR") filed by Totally Jesus Network, Inc. ("TJN") on September 9, 2011. In the AFR, TJN seeks review of a Media Bureau ("Bureau") decision that affirmed: a) the Public Notice that denied TJN's request for waiver and dismissed its application for a new noncommercial ("NCE") FM station at Gold Beach, Oregon; and b) the grant of the competing application of UCB. In the AFR, TJN again argues that the Bureau erred in not accepting its application, which TJN claims it was unable to timely file because of difficulties using the Commission's electronic filing system, CDBS. For the reasons set forth below, we deny review.

2. 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. On August 9, 2007, the Bureau released a Public Notice announcing that applicants could begin to electronically complete their FCC Form 340 applications immediately and encouraging applicants to "submit their applications early during the window to ensure proper submission." The window opened as scheduled

1 UCB USA, Inc. ("UCB"), filed an Opposition on September 23, 2011 ("Opposition").

2 Bishop Wilfret Johnson Ministries International, Inc., et. al, Letter, Ref. 1800B3-ATS (MB Aug 10, 2011) ("Reconsideration Decision"). See also Broadcast Actions, Report No. 27550 (MB Aug. 15, 2011).

3 NCE FM New Station and Major Change Application Dismissed for Failure to Timely File, Public Notice, 25 FCC Rcd 13065 (MB 2010) ("Public Notice").

4 See UCB USA, Inc., Letter, Ref. 1800B3 (MB June 26, 2008).

5 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).

6 See Media Bureau Announces NCE FM New Station and Major Change Filing Procedures for October 12 - October 19, 2007 Window; Limited Application Filing Freeze to Commence on September 8, 2007, Public Notice, 22 FCC Rcd 15050, 15054 (MB 2007) ("Applicants are encouraged to access the system and prepare their

(continued...)

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.<sup>7</sup> TJN did not file before the extended filing deadline, but instead, filed a paper application for a new NCE station and waiver request (“Waiver Request”) on October 31, 2007, nine days after the close of the extended window. TJN claimed that it continued to experience technical problems with CDBS during the extended window, and therefore that the Commission should accept its untimely paper application.<sup>8</sup> The Waiver Request relies principally on *Roamer One, Inc.*,<sup>9</sup> where the Commission waived a window deadline for electronic filing of modification applications in the 220 MHz service.

3. We find that the Bureau properly rejected this argument and correctly distinguished *Roamer One*. The record does not demonstrate unique circumstances permitting deviation in the filing deadline. The difficulties TJN allegedly encountered in filing electronically do not appear to have been widespread. As noted in the *Reconsideration Decision*, over 830 applications were filed during the last seven hours of this NCE window.<sup>10</sup> In all, over 1,200 applications were successfully filed on October 22, 2007, the day that TJN claims to have experienced difficulty, in CDBS, including over 30 other applications filed by TJN’s counsel at regular intervals throughout the day. Thus, unlike the facts in *Roamer One*, TJN has failed to demonstrate that the Commission was “partly responsible” for TJN’s failure to file in the window. Also, unlike *Roamer One*, here, in addition to allowing applicants to file over two months before the window formally opened, the Commission had already extended the filing window three days to compensate for a CDBS outage between 1:30 a.m. and 8 a.m. on October 19, 2007.<sup>11</sup> We specifically reject TJN’s apparent view that the Commission should waive the filing deadline when applicants experience any slowdown in CDBS system capabilities, particularly after applicants were urged repeatedly to file early to avoid complications and also were granted an extension to account for CDBS difficulties.<sup>12</sup>

4. TJN also ignores the *Roamer One* requirement that the applicant “initiate[] the filing in a timely manner, show[] reasonable diligence when technical difficulties occurred, and . . . file very shortly after the deadline.”<sup>13</sup> Here, TJN chose not to take advantage of the early filing option that the Commission made available for potential applicants. TJN also made no effort to file either during the originally announced seven-day window or during the first two days of the extended filing window.

(Continued from previous page) \_\_\_\_\_

applications and amendments at their earliest possible convenience. Applicants may begin to complete applications immediately [*i.e.*, starting on August 9, 2007]. Applicants are also encouraged to submit their applications early during the window to ensure proper submission.”).

<sup>7</sup> *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) (“*Window Extension PN*”).

<sup>8</sup> *Waiver Request* at 3.

<sup>9</sup> *Roamer One, Inc.*, Order, 17 FCC Rcd 3287 (2002) (“*Roamer One*”).

<sup>10</sup> A review of CDBS filing activity establishes that during the last nine hours of the extended window, the longest gap between successful filings was less than 15 minutes.

<sup>11</sup> See *Window Extension PN*.

<sup>12</sup> *Waiver Request* at 3 (“The undersigned [TJN’s counsel] spent most of Sunday [October 21st] and Monday [October 22nd] attempting to submit applications as quickly as possible. However, the system was substantially slowed down through those hours, precluding the submission of as many applications as could have been filed and as were substantially complete and ready to file.”).

<sup>13</sup> 17 FCC Rcd at 3291.

Finally, TJN waited until nine days after the close of the window to submit its application.<sup>14</sup> In contrast, the applicant in *Roamer One* diligently continued to submit applications throughout the filing window and completed its filing two days after the window's close.<sup>15</sup>

5. Upon review of the AFR and the entire record, we conclude that TJN has failed to demonstrate that the Bureau erred. We thus uphold the Bureau's decisions for the reasons stated in the *Public Notice* and the *Reconsideration Decision*.<sup>16</sup>

6. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,<sup>17</sup> and Section 1.115(g) of the Commission's Rules,<sup>18</sup> the Application for Review filed by Totally Jesus Network, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

---

<sup>14</sup> Commission records indicate that although TJN's counsel filed over thirty applications on October 22 between 6:09 a.m. and 2:00 p.m., he did not file *any* applications on October 20 and only one application on October 21, at 1:24 p.m. Counsel thus waited until the last day of the extended filing window to submit TJN's application. See *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008) ("procrastination plus the universal tendency for things to go wrong (Murphy's Law)—at the worst possible moment (Finagle's Corollary)—is not a 'special circumstance'").

<sup>15</sup> *Roamer One*, 17 FCC Rcd at 3288 (applicant had been submitting applications for a week). TJN claims that "the CDBS system was completely inoperable by the public [from the close of the window] until late on October 24" and the "only complete copy of the application that existed at the time was on the virtual copy on the Commission's computer," so it was unable to retrieve and print out a paper copy of the application until the system was again accessible. AFR at 3. TJN fails to explain why, after missing the electronic filing deadline, (1) it was unable to print out a blank form, reconstruct the application from the materials that it had used to download it to CDBS, and file it immediately, or (2) failing that, why it waited until Wednesday, October 31 to file, despite having printed out the application from CDBS on the afternoon of October 28. See Waiver Request (Attachment). In short, TJN's conduct fell short of the reasonable diligence exhibited by the tardy applicant in *Roamer One*.

<sup>16</sup> We also agree with the Bureau's rejection of TJN's contention that the Bureau's extended 2 p.m. October 22 filing deadline conflicted with the reference to midnight in Section 1.4(f) of the rules. 47 C.F.R. § 1.4(f). As the Bureau stated, that rule did not preclude it from establishing a deadline before midnight on the extended filing deadline. *Reconsideration Decision* at 3. Although TJN renews this argument at page 8 of its AFR, it still fails to provide any supporting authority for its position. Moreover, as UCB noted in its *Opposition*, because TJN made no attempt to file until October 31, it would not have timely filed even if the deadline on October 22 had been midnight, as TJN urges. *Opposition* at 6.

<sup>17</sup> 47 U.S.C. § 155(c)(5).

<sup>18</sup> 47 C.F.R. § 1.115(g).