



Federal Communications Commission
Washington, D.C. 20554

April 30, 2007

DA 07-1939

In Reply Refer to:

1800B3-RDH

Released: April 30, 2007

Mr. Martin L. Hensley
Hoosier Public Radio Corporation
15 Wood Street
Greenfield, Indiana 46140

In re: South Madison Community School Corp.
Station WEEM-FM, Pendleton, Indiana
Facility ID No. 61140
File No. BRED-20040330ABC

Hoosier Public Radio Corporation
File No. BPED-20040701AAA

Petition for Reconsideration

Dear Mr. Hensley:

We have before us the "Petition for Reconsideration and Reinstatement Nunc Pro Tunc/Petition for Reconsideration Nunc Pro Tunc WEEM Renewal and License Grant – Motion to Correct Errors/Petition for Hearing" (the "Petition") filed March 31, 2005, by Hoosier Public Radio Corporation ("Hoosier"). The Petition asks us to reconsider our March 2, 2005, ruling¹ granting the license renewal application (the "Application") of Station WEEM-FM (the "Station"), Pendleton, Indiana, licensed to South Madison Community School Corporation ("South Madison") and dismissing the application filed by Hoosier seeking time-share operation of the Station.² Also before us is an Opposition to Petition for Reconsideration of Hoosier Public Radio Corporation ("Opposition") which was filed on April 11, 2005, by South Madison. For the reasons set forth below, we deny the Petition.

Background. South Madison filed the Application on March 30, 2004. On August 9, 2004, Hoosier filed a "Petition to Deny" the Application.³ Additionally, on July 1, 2004, Hoosier filed its Time-Share Application seeking involuntary time-share operation of the Station, pursuant to Section 73.561(b)

¹ Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau to Kathryn Schmeltzer, Esq., and Martin L. Hensley, Reference 1800B3-CLR (Media Bureau, March 2, 2005) ("Staff Decision").

² File No. BPED-20040701AAA. (the "Time-Share Application")

³ Hoosier subsequently filed a number of other requests, motions and petitions concerning the Application and other unrelated license renewal applications. See "Motion To Join the Parties, Request For Review and Declaratory Ruling – RICO Act and Sherman Antitrust Act – Market Allocation, Request for Review and Declaratory Ruling – Ex Parte Applicant Communications, Motion To Compel – Request For Discovery, Petition To Deny – Request for Moratorium," filed September 20, 2004.

of the Commission's Rules.⁴ In the *Staff Decision*, the staff granted the Application, dismissed Hoosier's Time-Share Application, and denied Hoosier's Petition to Deny and other filings.⁵ The Petition both reiterates allegations made previously and raises new matters.

Discussion. Under Section 1.106 of the Rules, as interpreted by established case law, "reconsideration is appropriate only when the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters."⁶ We have reviewed the Petition and Opposition and have determined that Petitioner has neither demonstrated material error or omission nor presented new matters to the staff of which it could not have known prior to Hoosier's last opportunity to present such material to the Commission. Accordingly, we will deny its Petition.

As an initial matter, the Petition violates a number of our rules concerning pleading specifications and the joinder of multiple requests for relief.⁷ As to issues previously raised by Hoosier, "[r]econsideration will not be granted to debate matters upon which the Commission has already deliberated and spoken."⁸ The *Staff Decision* fully and accurately addressed Hoosier's Time-Share Application and clearly stated that it was being dismissed because it did not meet the Commission's criteria, as contained in its rules and case law, for non-consensual proposals for time sharing. Hoosier merely reiterates arguments previously rejected by the staff and fails to demonstrate any material error in that ruling.

Our Rules contain provisions governing when new material may be presented for the first time on reconsideration. Section 1.106(c) of the Rules provides that a petition for reconsideration which relies on facts not previously presented to the Commission or designated authority can only be granted where: 1) the petition relies on facts relating to events that have occurred or circumstances which have changed since the last opportunity to present such matters; 2) the petitioner could not, through the exercise of ordinary diligence, have learned of the facts prior to its last opportunity to present the facts; or 3) where the Commission or designated authority determines that consideration of the facts relied on is required in the public interest. Hoosier does not provide any showing with regard to its newly raised matters. Thus, Hoosier makes the following new allegations against South Madison: South Madison did not review its renewal application until five months after it had been submitted; the minutes of South Madison provide no reference to WEEM-FM or its license renewal; South Madison, through its attorney, may have engaged in *ex parte* contacts with the Commission; the Commission's employees have been coerced into

⁴ 47 C.F.R. § 73.561(b).

⁵ Public Notice of the *Staff Decision* was released on March 7, 2005, Public Notice, *Broadcast Actions*, Report No. 45935 (March 7, 2005).

⁶ *WWIZ, Inc.*, 37 FCC at 686; *see also National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003). *See also* 47 C.F.R. § 1.106(c).

⁷ Among the procedural rules with which the Hoosier Petition fails to comply are 47 C.F.R. § 1.49(a), (specifying pleading format requirements) and 47 C.F.R. § 1.49(c) (requiring succinct summaries for pleadings that exceed ten pages).

⁸ *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub. nom Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied* 383 U.S. 967 (1966) ("*WWIZ, Inc.*"). *See also William L. Carroll*, Memorandum Opinion and Order, 8 FCC Rcd 6279 (1993).

renewing WEEM-FM's license by counsel for South Madison; the Commission's electronic filing system hindered Hoosier's ability to file its Time-Share Application; electronic filing does not allow for actual signatures; Section 73.3513 of the Rules required South Madison's application to have been signed by a person other than the individual who signed it; and South Madison engaged in "many" unauthorized transfers of control of WEEM-FM. Because Hoosier's untimely showing as to these matters is unsupported, unspecific and based upon speculation and surmise, we cannot conclude that consideration of these allegations would be in the public interest.

Conclusion/Actions. For the reasons set forth above, Hoosier Public Radio Corporation's "Petition for Reconsideration and Reinstatement Nunc Pro Tunc/Petition for Reconsideration Nunc Pro Tunc WEEM Renewal and License Grant – Motion to Correct Errors/Petition for Hearing" IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

Cc: Kathryn R. Schmeltzer, Esq.
Jarrett Taubman, Esq.