



Federal Communications Commission
Washington, D.C. 20554

January 25, 2008

DA 08-163

In Reply Refer to:

1800B3-ALV

Released: January 25, 2008

Dr. James J. McCluskey
Great Lakes Community Broadcasting, Inc.
901 Elizabeth Court
Mount Pleasant, MI 48858

In Re: Great Lakes Community Broadcasting, Inc.
Applications for New NCE FM Stations (See Appendix for file
and facility information)

Dear Applicant:

We have before us 17 Petitions for Reconsideration (the "Petitions") filed by Great Lakes Community Broadcasting, Inc. ("Great Lakes").¹ The Petitions seek reconsideration of the October 24 and 25, 2007, dismissals of 17 of Great Lakes' applications for new noncommercial educational ("NCE") FM radio stations.² For the reasons discussed below, we deny the Petitions.

Background. Between June 7, 1999, and March, 30, 2000, Great Lakes filed 17 separate applications seeking authority to construct and operate new NCE FM stations in communities throughout Michigan, Ohio, and Indiana (the "Applications"). The Applications were paper-filed under the Commission's prior licensing procedures but were not cut-off prior to the April 2000, Commission-imposed NCE comparative licensing freeze.³ Accordingly, the Applications remained pending during the NCE filing freeze. In October 2007, the Media Bureau (the "Bureau") opened a filing window for new station and major modification NCE FM construction permits and mandated that applicants with pending proposals electronically amend their applications on FCC Form 340 to include comparative information.⁴ In the *NCE Window Public Notice*, the Bureau explicitly cautioned applicants that "the failure to electronically amend and fully complete a pending application during the October window will result in

¹ From November 7 through November 20, 2007, Great Lakes filed 17 separate Petitions for Reconsideration, all of which recited similar facts and relied on the same argument. Accordingly, in the interest of administrative efficiency, we are consolidating all of the proceedings.

² A list of the applications covered by this letter is attached at the Appendix.

³ See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386 (2000), *aff'd*, Memorandum Opinion and Order, 16 FCC Rcd 5074 (2001).

⁴ 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 2726 (2007) ("NCE Window Public Notice"). Applicants were directed to electronically amend their pending applications by completing Sections III (Fair Distribution of Service), IV (Point System Factors), V (Tie Breakers), and VI (Certification) of FCC Form 340.

its dismissal with prejudice.”⁵ Great Lakes failed to amend its Applications by the close of the NCE filing window.⁶ Accordingly, the Bureau staff, by Public Notice, dismissed each of the Applications.⁷ In separate, but similar, one-page Petitions, Great Lakes urges the Bureau to reconsider the dismissals and reinstate the Applications *nunc pro tunc*. Great Lakes argues that it is not in the public interest to dismiss Applications which people in its proposed communities have “waited patiently for over seven years to be granted ... because of a clause in [the *NCE Window Public Notice*] that was not made clear” to Great Lakes.

Discussion. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.⁸ Great Lakes fails to make such a showing.

Great Lakes fails to provide any compelling explanation for its neglect to amend its Applications. Its attempt to rely upon an alleged lack of clarity in the *NCE Window Public Notice* to excuse its failure to amend is unavailing. In the *NCE Window Public Notice*, as well as a prior April 2007, Public Notice announcing the NCE filing window, the Bureau unambiguously warned applicants several times that pending non-cut-off applications, such as Great Lakes’ Applications, would be dismissed for failure to amend by the established deadline.⁹ It was incumbent upon Great Lakes to monitor these Public Notices, which specifically advised it of the consequences of its failure to amend, and adhere to the requirements.¹⁰

⁵ *NCE Window Public Notice* at 2.

⁶ The filing window opened on October 12, 2007, and closed October 22, 2007. See *NCE Window Public Notice; Media Bureau to Extend Window for NCE FM New Station and Major Change Applications; Window Will Close on October 22, 2007*, Public Notice, DA 07-4355 (October 19, 2007).

⁷ See Public Notice, *Broadcast Applications*, Rpt. Nos. 46601 (October 29, 2007) and 46602 (October 30, 2007).

⁸ See 47 C.F.R. § 1.106; *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff’d sum nom.*, *Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966); *National Ass’n of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

⁹ The *NCE Window Public Notice* explicitly stated, in bold-faced type, that: “**The failure to electronically amend and fully complete a pending application during the October window will result in its dismissal with prejudice.**” *NCE Window Public Notice* at 2. In the same Public Notice, applicants were again cautioned that “[p]aper-filed not cut-off FCC Form 340 submissions filed prior to April 22, 2000, for which no amendment to FCC Form 340 is submitted during the window will be dismissed,” and, once again, warned that “**[t]he Commission staff will return applications and amendments not submitted in accordance with the procedures described in this Public Notice.**” *Id.* at 4, 5 (emphasis in original). The Bureau’s earlier April 2007, Public Notice also explained that: “[t]he Bureau will dismiss any pending non-cut-off NCE new station or major change application that is not amended by the close of the window to include the required information.” 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, DA 07-1613 (Apr. 4, 2007).

¹⁰ See, e.g., *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101 (2007) (“*NCE Omnibus Order*”) (applicant’s failure to file a point supplement by the deadline because it had not monitored Commission public notices is not an excuse for late-filing); *Lakeshore Broadcasting, Inc.*, 199 F.3d 468 (D.C. Cir. 1999) (upholding dismissal of applicant that did not meet hearing fee deadline announced by public notice); *Southern Communications, Inc.*, Order, 12 FCC Rcd 1532, 1535 (1997) (applicant unaware of payment deadline set by public notice bears responsibility for failure to meet the deadline).

Accordingly, we find no error in the Bureau's dismissal of Great Lakes' Applications for failure to meet a clearly articulated deadline.¹¹

Moreover, the Commission has repeatedly disallowed the late submission of requested information in comparative cases, finding that such an allowance would “inevitably lead to abuse of the Commission’s processes, applicant gamesmanship, and unfair advantage.”¹² Similarly, we find that reinstating Great Lakes’ Applications and allowing it to submit an untimely comparative showing would be prejudicial to NCE applicants that properly adhered to the deadline, and would undermine the integrity of the window filing process. Specifically, because the comparative information of all of the applicants filing during the NCE filing window is now publicly available,¹³ Great Lakes would have a considerable advantage and could potentially manipulate its comparative showings to prevail over other mutually exclusive applications. Further, allowing Great Lakes to gain this advantage by violating a filing deadline could encourage applicants in future cases to take similar liberties. Accordingly, we will not excuse Great Lakes’ procedural dereliction and reinstate its Applications.

Accordingly, IT IS ORDERED, That the Petitions for Reconsideration, filed by Great Lakes Community Broadcasting, Inc. ARE DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹¹ See, e.g., *Green Valley Broadcasters, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 13341 (2004) (affirming dismissal of an application for failure to submit Section 307(b) information, requested through a Bureau Public Notice, by the established deadline). See also 47 C.F.R. § 73.3568 (“Failure to prosecute an application, or failure to respond to official correspondence or request for additional information, will be cause for dismissal.”).

¹² *Silver Springs Communications*, Memorandum Opinion and Order, 3 FCC Rcd 5049, 5050 (1988), *rev. denied*, 4 FCC Rcd 4917 (1989) (concluding that the rejection of an untimely filed notice of appearance in a comparative case is necessary in order to maintain the integrity of the Commission’s processes and to insure that an applicant's gamesmanship does not result in an unfair advantage). See also *LRB Broadcasting*, Memorandum Opinion and Order, 8 FCC Rcd 3076 (1993); *NCE Omnibus Order*, 22 FCC Rcd 6101 (finding that the consideration of late-filed point supplements could potentially prejudice the comparative positions of mutually exclusive applicants that timely filed supplements).

¹³ On November 8, 2007, all applications and amendments filed during the October 2007, NCE FM filing window were made publicly available.

APPENDIX

<u>File No.</u>	<u>Facility ID No.</u>	<u>City/State</u>
BPED-19990607MF	93662	Pellston, MI
BPED-19990610MA	93664	Big Rapids, MI
BPED-19990728MD	93944	Hillsdale, MI
BNPED-19991008AAA	106571	Mackinac Island, MI
BNPED-19991104AAL	121774	Muskegon, MI
BNPED-19991106AAA	121973	Manistique, MI
BNPED-19991112AAI	121789	Fremont, MI
BNPED-19991122ABB	121871	Emmett Township, MI
BNPED-19991206AAY	121981	Hamlin Township, MI
BNPED-19991206ABI	121982	Manistique, MI
BNPED-19991227AAL	122118	Ensign Township, MI
BNPED-20000110ABB	122308	Bucks, MI
BNPED-20000202ABE	122497	Eckford Township, MI
BNPED-20000210AAB	122426	Center Township, OH
BNPED-20000225ACP	122814	Attica Township, MI
BNPED-20000306ACG	122925	Newbury Township, IN
BNPED-20000330ACE	123216	Huron Township, MI