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In Reply Refer To:

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In Re: WRFN-LP, Pasquo, Tennessee
Facility ID Number: 135643
File No.: BLL-20081205ADY

Petition for Reconsideration

Dear Counsel:

This letter concerns the referenced application of Radio Free Nashville, Inc. ("RFN") for covering license (the "Application") for Low Power FM ("LPFM") Station WRFN-LP, Pasquo, Tennessee (the "Station"). The staff granted the Application on December 12, 2008.¹ By letter filed December 12, 2008, Bay-Pointe Broadcasting, Inc. ("Bay-Pointe") objected to the grant of the Application ("Informal Objection") and, by letter filed December 23, 2008, sought reconsideration ("Petition for Reconsideration") of the decision granting that Application. RFN opposed the Petition for Reconsideration in a letter (the "Response") dated February 17, 2009.² For the reasons set forth below, we grant the Petition for Reconsideration to consider the arguments set forth in the Informal Objection. Further, we waive Section 73.3598(e)³ of the Commission's Rules (the "Rules") to permit the late filing of the Application, consider the late-filed Application, and admonish RFN for its failure to file a timely license application. Finally, we deny the Petition for Reconsideration in all other respects.

¹ See Public Notice, *Broadcast Applications*, Report No. 46885 (Dec. 17, 2008) at 14.

² The letter was received by the Commission on March 2, 2009.

³ 47 C.F.R. § 73.3598(e),

Background. On April 16, 2007, RFN filed a minor modification application to relocate the Station's licensed facilities.⁴ The application was granted on April 25, 2007. The construction permit required RFN to complete construction and file a covering license application by October 25, 2008. RFN filed the subject Application on December 5, 2008, more than six weeks late.

Bay-Pointe filed its Informal Objection to the Application on December 12, 2008. The staff, unaware of the Bay-Pointe Informal Objection, granted the Application on December 12, 2008. On December 23, 2008, Bay-Pointe filed its Petition for Reconsideration of the grant of the Application.

In the Petition for Reconsideration, Bay-Pointe contends that the grant of the Application was premature, and that the staff should rescind this action and dismiss the Application, in light of the prior expiration of the WRFN-LP Construction Permit.⁵ On January 27, 2009, Media Bureau staff sent RFN a letter asking it to file a response to the Informal Objection. RFN filed the Response on March 2, 2009. In the Response, RFN indicates that it completed construction immediately following the grant of the modification and that its failure to file a covering license application was due to an inadvertent administrative oversight.⁶ RFN avers that the construction at the new site took less than one day because it was merely returning to a site that it had previously used.⁷

Discussion. Section 73.3598(e) of the Rules provides that “[a]ny construction permit for which construction has not been completed and for which an application for license has not been filed, shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission.”⁸ As noted above, Bureau staff was unaware of the Bay Pointe Informal Objection when it granted the Application. Because the Bureau should have considered the arguments made in the Informal Objection prior to granting the Application, we grant Bay-Pointe's Petition for Reconsideration and consider those arguments herein.

As Bay-Pointe notes and RFN concedes, the Application was filed some six weeks subsequent to the expiration of the Construction Permit. Despite this, the Bureau's grant of the Application was consistent with precedent. Specifically, in several previous instances, the Media Bureau has granted license applications filed after the permit expiration date, provided that the permittee has demonstrated timely construction in accordance with the terms of the permit.⁹ Here, RFN states that it disclosed to the staff prior to filing the Application that it had inadvertently failed to promptly file a covering license, and indicates in its Response that construction actually had been completed on April 26, 2007, long before the construction permit expired.¹⁰ Neither the Informal Objection nor the Petition for Reconsideration contest

⁴ File No. BPL-20070416AAX.

⁵ Bay-Pointe made this same argument in its Informal Objection.

⁶ RFN Response at 1.

⁷ *Id.* at 2.

⁸ 47 C.F.R. § 73.3598(e).

⁹ See *Clear Channel Broadcasting Licenses, Inc.*, Letter, 21 FCC Rcd 8677, 8680-81 (MB 2006) (“*Clear Channel*”), *recon. denied sub nom. Marissa G. Repp, Esq., Frank R. Jazzo, Esq.*, Letter, 23 FCC Rcd 4526 (MB 2008).

¹⁰ Response at 2.

these factual claims. Accordingly, this matter falls within our precedent accepting late-filed covering license applications.

Although RFN did not request a waiver of Section 73.3598(e),¹¹ it did contact the staff when it discovered its oversight and followed the staff's directions. Therefore, we will waive *sua sponte* Section 73.3598(e) of the Rules and, after having considered the Informal Objection on the merits, deny it to the extent it requests dismissal of the Application. While we waive Section 73.3598(e) herein and determine it is not appropriate to dismiss the Application, we do admonish RFN for its late-filed application and emphasize the importance of timely filing an application for license to cover.

Conclusions/Actions. Accordingly, IT IS ORDERED that the Petition for Reconsideration filed by Bay-Pointe Broadcasting, Inc., IS GRANTED to the extent indicated above and IS DENIED in all other respects.

IT IS FURTHER ORDERED, that Radio Free Nashville IS ADMONISHED for its late-filed license application in violation of Section 73.3598(a) of the Commission's Rules.

IT IS FURTHER ORDERED, that Section 73.3598(e) of the Commission's Rules IS WAIVED to the extent indicated.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Virginia Welsch

¹¹ See *Clear Channel, supra*, 21 FCC Rcd at 8681 (permittee tendering a license application two days after expiration of the permit "did not meet the express terms of Section 73.3598(a), and it should have requested a waiver of that rule and of Section 73.3598(e) in its license application.")