



Federal Communications Commission  
Washington, D.C. 20554

October 13, 2010

**DA 10-1958**

In Reply Refer To:

1800B3-MM

Released October 13, 2010

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In re: Plus Charities  
NEW(FM), Coggon, Iowa  
Facility ID No. 171762

File No. BNPED-20071022BMC

New Bohemia Group, Inc.  
NEW(FM), Coggon, Iowa  
Facility ID No. 174923

File No. BNPED-20071019BBN

**Petitions for Reconsideration**

**I. INTRODUCTION**

1. We have before us the “Petition for Reconsideration” (“First Petition”)<sup>1</sup> and the “Petition for Reconsideration, or, in the Alternative, Application for Review” (“Second Petition”)<sup>2</sup> of Plus Charities (“Plus”), asking us to reconsider our actions of February 10 and 25, 2009, respectively, regarding the

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<sup>1</sup> Filed Mar. 12, 2009.

<sup>2</sup> Filed Mar. 25, 2009. Because Plus raises arguments in the Second Petition not yet considered by the Media Bureau (“Bureau”), we will treat this pleading as a Petition for Reconsideration pursuant to Section 1.106 of the Commission’s Rules (“Rules”). 47 C.F.R. § 1.106.

captioned applications of New Bohemia Group, Inc. (“New Bohemia”) and Plus.<sup>3</sup> For the reasons set forth below, we deny both Petitions.

## II. BACKGROUND

2. Plus and New Bohemia each applied<sup>4</sup> to construct a new noncommercial educational (“NCE”) station to serve Coggon, Iowa, during a filing window for NCE FM applications in October 2007. On November 8, 2007, the staff dismissed the Plus Application (“Dismissal Letter”)<sup>5</sup> pursuant to Section 73.3566(a) of the Rules,<sup>6</sup> because Plus’ proposed facility failed to provide adequate community coverage as required by Section 73.515 of the Rules.<sup>7</sup>

3. On December 7, 2007, Plus petitioned for reconsideration of the dismissal and requested leave to amend its application and have it reinstated *nunc pro tunc* (“December 2007 Petition”). Specifically, Plus asserted that it inadvertently checked the box “east longitude” rather than “west longitude” in Section VII, question 3 of its application.<sup>8</sup> It maintained that a review of the Plus Application “as a whole” would have shown that it had actually specified a tower located in Masonville, Iowa, as its proposed transmitter site.<sup>9</sup> Plus argued that the Commission should accept as a minor change its amended application reflecting the correct coordinates.<sup>10</sup> The Bureau’s order (“*February 25<sup>th</sup> Order*”)<sup>11</sup> rejected these arguments, finding that staff correctly dismissed the Plus Application based on data in the Tech Box. The Bureau stated that correct geographic coordinates are essential to determining an application’s completeness.<sup>12</sup> Thus, the Plus Application was patently nonconforming and properly dismissed without opportunity to file a curative amendment.<sup>13</sup>

4. On March 7, 2008, the Bureau issued a public notice that identified the New Bohemia Application and an application filed by Calvary Iowa City as mutually exclusive (“MX”) and grouped

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<sup>3</sup> On March 25, 2009, New Bohemia filed an “Opposition to Petition for Reconsideration,” and on April 3, 2009, Plus filed a “Reply to Opposition to Petition for Reconsideration” (“Reply”). New Bohemia also filed an “Opposition to Petition for Reconsideration/Application for Review” on April 8, 2009.

<sup>4</sup> File Nos. BNPED-20071022BMC and BNPED-20071019BBN (respectively, “Plus Application” and “New Bohemia Application”).

<sup>5</sup> *Letter from Rodolfo Bonacci, Assistant Chief, Audio Division to Plus Charities*, Ref. No. 1800-B3 (MB Nov. 8, 2007). Specifically, the Dismissal Letter found that the “proposed 60 dBu contour fails to cover at least 50 percent of the community of license of Coggon, Iowa.”

<sup>6</sup> Section 73.3566(a) of the Rules provides for dismissal of nonconforming applications without an opportunity for a corrective amendment. It reads: “Applications which are determined to be patently not in accordance with the FCC rules, regulations, or other requirements, unless accompanied by an appropriate request for waiver, will be considered defective and will not be accepted for filing or if inadvertently accepted for filing will be dismissed.” 47 C.F.R. § 73.3566(a).

<sup>7</sup> 47 C.F.R. § 73.515 (signal must cover “at least 50 percent of its community of license or reach 50 percent of the population within the community”).

<sup>8</sup> See Form 340, Section VII, question 3, <http://www.fcc.gov/Forms/Form340/340.pdf>.

<sup>9</sup> See December 2007 Petition at 3.

<sup>10</sup> *Id.*

<sup>11</sup> *Plus Charities*, Letter, 24 FCC Rcd 2410 (MB 2009).

<sup>12</sup> *Plus Charities*, 24 FCC Rcd at 2411-12.

<sup>13</sup> See n.6, *supra* (incomplete applications will be dismissed without opportunity to refile). See also 47 C.F.R. § 73.3564 (applications found not to meet minimum filing requirements will be returned).

them into NCE MX Group 78.<sup>14</sup> Pursuant to established procedures,<sup>15</sup> the Bureau determined that the New Bohemia Application was entitled to a dispositive preference under Section 307(b) of the Communications Act of 1934, as amended,<sup>16</sup> and identified New Bohemia as the tentative selectee.<sup>17</sup>

5. Plus filed a Petition to Deny<sup>18</sup> the tentative selection of the New Bohemia Application on the grounds that: (1) it was signed by a corporate director, rather than a corporate officer; (2) the date of the certification of the technical section of the New Bohemia Application postdated the applicant's certification; and (3) at the time the New Bohemia Application was certified, the Iowa Secretary of State had dissolved New Bohemia as a corporation.<sup>19</sup> Plus also contended that the New Bohemia Application should not have been given a "fair distribution preference" because the technical certification postdated the applicant's certification.<sup>20</sup> Finally, Plus argued that the New Bohemia Application should be designated for hearing to determine the accuracy and truthfulness of New Bohemia's certifications.<sup>21</sup> Again, the Bureau rejected Plus' arguments, finding that (1) the director was qualified to certify the New Bohemia Application; and (2) Plus did not meet its burden to establish that the different certification dates or the corporate dissolution reflected an intent to deceive the Commission.<sup>22</sup> Accordingly, it denied the Petition to Deny ("*February 10<sup>th</sup> Order*").<sup>23</sup>

6. Plus filed the First and Second Petitions on March 12 and 25, 2009, respectively, asking us to reconsider the *February 10<sup>th</sup> Order* and the *February 25<sup>th</sup> Order*. Each petition restated the allegations in the Petition to Deny and the December 2007 Petition. The Second Petition added new arguments that (1) the decision to deny the Plus Application and grant the New Bohemia Application raised questions of disparate treatment of similarly situated applicants in violation of the precedent set in *Melody Music, Inc. v. FCC*<sup>24</sup> and (2) Plus lacked notice of the Commission's acceptability standards.

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<sup>14</sup> See *Media Bureau Identifies Groups of Mutually Exclusive Applications*, Public Notice, 23 FCC Rcd 3914 (MB 2008).

<sup>15</sup> See 47 C.F.R. § 73.7002 (procedures for selecting among mutually exclusive applicants for stations proposing to serve different communities); see also *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386 (2000) ("*NCE Comparative Order*"); Memorandum Opinion and Order, 16 FCC Rcd 5074, 5105 (2001), *reversed in part on other grounds*, *NPR v. FCC*, 254 F.3d 226 (D.C. Cir. 2001).

<sup>16</sup> 47 U.S.C. § 307(b). A Section 307(b) analysis is ordinarily conducted at the staff level because the Bureau has delegated authority to make Section 307(b) determinations in NCE cases. See *NCE Comparative Order*, 15 FCC Rcd at 7397.

<sup>17</sup> See *Threshold Fair Distribution Analysis of 26 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in October 2007 Window*, Memorandum Opinion and Order, 23 FCC Rcd 9934 (MB 2008).

<sup>18</sup> Filed on Feb. 10, 2009.

<sup>19</sup> Petition to Deny at 3-5.

<sup>20</sup> Petition to Deny at 7.

<sup>21</sup> Petition to Deny at 6.

<sup>22</sup> *New Bohemia Group, Inc.*, Letter, 24 FCC Rcd 1357 (MB 2009).

<sup>23</sup> *New Bohemia Group, Inc.*, 24 FCC Rcd at 1359-60.

<sup>24</sup> *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965) (holding that the Commission must explain its disparate treatment of contemporaneous cases with similar underlying facts). Plus also argues that *Community Television, Inc.*, Hearing Designation Order, MM Docket No. 86-45, FR Doc. 86-3253, (MMB Feb. 7, 1986) ("*Community Television*"), supports its argument that the New Bohemia Application should be designated for hearing for compliance with Section 73.3513 of the Rules (47 C.F.R. § 73.3513).

### III. DISCUSSION

7. As an initial matter, we note that it is settled Commission precedent that petitions for reconsideration are not to be used for the mere reargument of points previously advanced and rejected.<sup>25</sup> To the extent that the First and Second Petitions pose arguments previously advanced and rejected, we dismiss them.<sup>26</sup> We address Plus' remaining arguments below.

8. Plus first argues that the dismissal of its application in the *February 25<sup>th</sup> Order* and the grant of the New Bohemia Application in the *February 10<sup>th</sup> Order* amounts to disparate treatment of similarly situated applicants in violation of *Melody Music*.<sup>27</sup> Specifically, Plus asserts that "New Bohemia received one standard of treatment for two clear and unambiguous violations of filing, tenderability and acceptability criteria, while Plus received a different standard of treatment when its application was dismissed and a corrective amendment refused ...."<sup>28</sup>

9. We disagree with Plus' premise that Plus and New Bohemia are similarly situated applicants. *Melody Music* applies to factually similar cases that give rise to similar applicable Rules. Here, the Plus and New Bohemia Applications contained fundamentally different defects. Correction of the Plus Application to reflect the proper geographic coordinates would have constituted an impermissible "major change."<sup>29</sup> Conversely, the defects contained the New Bohemia Application – namely, that it was signed by a corporate director (rather than officer), and that the date of the certification of the technical

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<sup>25</sup> *Regents of the University of California*, Order, 17 FCC Rcd 12891, 12892 (WTB 2002) (dismissing petition for reconsideration as repetitious) citing *Mandeville Broadcasting Corp. and Infinity Broadcasting of Los Angeles*, Order, 3 FCC Rcd 1667, 1667 (1988); *M&M Communications, Inc.*, Memorandum Opinion and Order, 2 FCC Rcd 5100, 5100 (1987) (dismissing petition for reconsideration as repetitious).

<sup>26</sup> See paras. 3 and 5, *supra*. Plus cites to a new case in support of its argument that the New Bohemia Application should be designated for hearing because it did not contain the signature of a corporate officer, as required by Section 73.3513 of the Rules. See *Community Television*, *supra* n.24. However, this case not only fails to support Plus' argument, but in fact works against it. In *Community Television*, the application at issue contained the signature of the applicant's technical officer. A Petition to Deny the application claimed that Section 73.3513 of the Rules (47 C.F.R. § 73.3513) prohibited a signature from anyone but a director. In response, the applicant revealed that the technical officer also served as the applicant's executive director and *ex-officio* member of the board. The Bureau found that it was "clear" that the signer possessed the requisite authority to satisfy the Rule (*Community Television*, MM Docket No. 86-45, FR Doc. 86-3253 at ¶ 2), denied the petition, and asked the applicant to amend its application to show that the signor was an officer of the applicant and was authorized to execute the application on behalf of the applicant. The issue designated for hearing involved the *completeness* of the application (47 C.F.R. § 73.3514, requiring applicants to provide all information requested in a form), not the authority of the signer (47 C.F.R. § 73.3513).

The new cases cited by Plus in support of its argument that the Commission staff should have looked to the application as a whole to determine the correct site coordinates are also inapposite. See Second Petition at 5, citing *Special Markets Media, Inc.*, Hearing Designation Order, 5 FCC Rcd 80 (MMB, 1989); *Major-Keene Partnership*, Hearing Designation Order, 4 FCC Rcd 8713 (MMB 1989); *Burnett Broadcasting, Ltd.*, Hearing Designation Order, 4 FCC Rcd 8497 (MMB 1989), *et. seq.*, see Second Petition at 5. These cases were decided before 1998, when the Commission stated that the Tech Box controls in the event of a discrepancy. See n.33, *infra*.

<sup>27</sup> *Melody Music*, 345 F.2d 730 (D.C. Cir. 1965).

<sup>28</sup> Reply at 4.

<sup>29</sup> See 47 C.F.R. § 73.3564 (applications must meet minimum filing requirements in order to be accepted for filing. Transmitter site coordinates is a minimum requirement. Thus, an amendment would constitute a major change).

Plus again asserts that the Commission staff could have gleaned that the coordinates in the Tech Box were incorrect had it reviewed the application in its entirety. However, the Commission has explicitly rejected this sort of temporizing approach to rectifying erroneous Tech Box submissions. See n.33, *infra*.

section postdated the applicant's certification – were minor.<sup>30</sup>

10. We further reject Plus' assertion that the Commission's acceptability criteria are unclear.<sup>31</sup> Section 73.3564 of the Rules clearly sets forth the Commission's acceptability criteria.<sup>32</sup> Moreover, it is well-settled that information in the Tech Box supersedes inconsistent data elsewhere in an application.<sup>33</sup>

#### IV. CONCLUSION.

11. Accordingly, IT IS ORDERED that the March 12, 2009, Petition for Reconsideration and the March 25, 2009, Petition for Reconsideration, or, in the Alternative, Application for Review, filed by Plus Charities, ARE DENIED.

#### FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>30</sup> *RKO General, Inc. et. al.*, Memorandum Opinion and Order, 49 FR 50449, 50451-52 (1984) (when signature on engineering portion of application postdated the certification date, Commission ruled that the discrepancy could have been corrected by a minor amendment); *David T. Murray*, Memorandum Opinion and Order, 5 FCC Rcd 5770 (1990) and *Bloomfield Hills School District*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 14055, 14058-59 (MB 2007) ("*Bloomfield*") (alleged violation of Section 73.3513(a)(5) of the Rules is overcome by the fact that signer had the authority to sign).

Plus also argues that the Bureau lacked delegated authority to conclude that the signature of a corporate director (as opposed to an officer) satisfied the requirements of Section 73.3513 of the Rules. We disagree. The Bureau has the authority to act on matters that are minor or routine and that do not present novel questions of law, fact or policy that cannot be resolved under existing precedents and guidelines. See 47 C.F.R. § 0.283(c). The Bureau previously has addressed signature requirements. See *Union County Broadcasting Co.*, Letter, 22 FCC Rcd. 10285, 10288-89 (MB 2007) and *R B Schools, Decatur, Illinois*, Letter, 22 FCC Rcd. 8409, 8411 (MB 2007) (finding that applications were "substantially complete" despite bearing general manager's signature instead of an officer of the corporation); *Bloomfield*, 22 FCC Rcd at 14058-59. Accordingly, because it was not addressing a new or novel matter, the Bureau was acting within the scope of its delegated authority.

<sup>31</sup> Second Petition at 4, arguing that *Glazer v. FCC* requires more explicit notice regarding acceptability criteria. See *Glazer v. FCC*, 20 F.3d 1184, 1186 (D.C. Cir. 1994), citing *Salzer v. FCC*, 778 F.2d 869, 875 (D.C. Cir. 1985).

<sup>32</sup> 47 C.F.R. § 73.3564 (describing minimum filing requirements: Applications that do not meet the minimum criteria, including transmitter site coordinates, will be returned to the applicant, whereas those that are "substantially complete" and "are in accordance with the Commission's core legal and technical requirements" will be accepted for filing).

<sup>33</sup> See *1998 Biennial Regulatory Review, Streamlining of Mass Media Applications, Rules, and Processes*, Report and Order, 13 FCC Rcd 23056, 23081 (1998), recon. granted in part by Memorandum Opinion and Order, 14 FCC Rcd 17525 (1999) (finding that "use of the tech box would eliminate the need for repeated staff amendment requests and attendant processing delays, necessitated by errors and discrepancies within the application.") See also FCC Form 340, Instructions for Section VII, at 9 (Dec. 2008), <http://www.fcc.gov/Forms/Form340/340.pdf> (noting that "[i]n the event that there are any discrepancies between data in the Tech Box and data submitted elsewhere in the application, the data in the Tech Box will be controlling").