FEDERAL COMMUNICATIONS COMMISSION
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Georgia Public Telecommunications Commission
260 Fourteenth Street, N.W.
Atlanta, GA 30318

Re: WACG-FM; August, GA
Facility ID No. 23922
Georgia Public Telecommunications Commission
BPED-20081205AAI

Dear Applicant:

This letter refers to the above-captioned minor change to a licensed facility application filed by Georgia Public Telecommunications Commission ("GPTC").

An engineering review of the application reveals that the application fails to comply with Section 73.525[1] of the Commission's Rules (the "Rules") with respect to Channel 6 TV station, WJBF(TV), Augusta, GA. To address this issue, GPTC states that the application will not begin operations with the proposed facilities until WJBF(TV) ceases analog Channel 6 transmissions. Furthermore, GPTC agrees to accept a condition restricting any operation of the proposed facility until after WJBF ceases operation of its analog facility. We nevertheless conclude that neither Sections 73.525[2] nor established precedent provides a basis for the acceptance of such a contingent arrangement as sufficient to satisfy Channel 6 protection requirements.[3] Accordingly, we will dismiss the referenced application.

A waiver of the Commission's contingent application rule also would be necessary to grant the GPTC application. The proposed facility cannot become operational unless WJBF(TV) implements certain changes in its technical operations based on certain future events. With the exception of certain narrowly defined filings, the Commission's rules prohibit generally the filing of contingent applications.[4] Such proposals can frustrate the introduction of new and improved services. Processing such applications also can result in the expenditure of limited staff resources on proposals that may never be implemented. GPTC has neither sought nor demonstrated that it has cleared the high hurdle for the required waiver.[5] We conclude that a waiver in the instant circumstances would be contrary to the public interest.

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[1] 47 C.F.R. § 73.525.
[2] *Id.*
[3] *See* Family Life Educational Foundation, Letter, DA 08-626 (MB, rel. March 21, 2008).
[4] 47 C.F.R. § 73.3517.
[5] *See WAIT Radio v. FCC,* 418 F.2d1153, 1158 (D.C. Cir. 1969), *aff'd* 459 F.2d 1103 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).

In this case, GPTC has sought, albeit prematurely, to take advantage of the expected termination of WJBF(TV) analog Channel 6 operations. Accepting this application – or any application that relies on a similar contingent arrangement with a potentially impacted Channel 6 station – could foreclose filing opportunities of other potential applicants and licensees that desire to file new station and modification applications based on the forthcoming vacation of analog Channel 6 allotments but have deferred such filings based on the recognition that it is not presently possible to file rule-compliant proposals. Accordingly, we find that acceptance of the GPTC application in these circumstances would be fundamentally unfair to those applicants that have filed applications that complied with Section 73.525[6] and to those potential applicants that deferred their filings as a result of Channel 6 protection requirement issues. The public interest is better served by dismissing the GPTC application.

In light of the foregoing, Application BPED-20081205AAI is unacceptable for filing and is HEREBY DISMISSED pursuant to Section 73.3566(a)[7] of the Rules. This action is taken pursuant to Section 0.283[8] of the Rules.

Sincerely,

Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Theodore D. Frank, Esq.
William T. Godfrey, Jr.

[6] For example, acceptance of an NCE new station application filed in the October 2007 window that includes a contingent agreement with a Channel 6 station could unfairly skew the "fair distribution" analysis to the detriment of mutually exclusive applications that filed rule-compliant proposals.

[7] 47 C.F.R. § 73.3566(a).

[8] *Id.* at § 0.283.