

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
<b>Great Lakes Community Broadcasting, Inc.</b>	)	
Applications for Construction Permits and	)	
Licenses for Noncommercial Educational FM	)	
Stations and FM Translator Stations:	)	
	)	
WQLO(FM), Lake Odessa, MI	)	File Nos. BNPED-19990928AAV
Facility ID No. 106632	)	and BLED-20080707AAD
	)	
WAAQ(FM) (formerly WAQQ(FM)),	)	File Nos. BPED-19980505MC, BLED-
Rogers Heights, MI	)	20050321ALM, BMLED-20050607ACP, and
Facility ID No. 90609	)	BMPED-20051222AAA
	)	
WJKQ(FM), Jackson, MI	)	File Nos. BPED-19990607ME
Facility ID No. 93649	)	and BLED-20030520AAE
	)	
WJCQ(FM), Jackson, MI	)	File Nos. BPED-19981224MB
Facility ID No. 92547	)	and BLED-20050607ACR
	)	
W220CW, Rogers Heights, MI	)	File Nos. BPFT-20010627AAV
Facility ID No. 94049	)	and BLFT-20040217ABX
	)	
W207BL, Pinnebog, MI	)	File Nos. BMPFT-20000328ABV
Facility ID No. 94130	)	and BLFT-20030508ACY
	)	
W206AZ, Fremont, MI	)	File Nos. BPFT-19990311TB
Facility ID No. 92895	)	and BLFT-20030508ABN
	)	
W205BQ, Brevort, MI	)	File Nos. BPFT-19990823TG
Facility ID No. 94126	)	and BMPFT-20000328ABW
	)	
<b>Great Lakes Broadcast Academy, Inc.</b>	)	
Applications for Construction Permits and	)	
Licenses for Noncommercial Educational FM	)	
Stations and FM Translator Stations:	)	
	)	
WPQZ(FM), Muskegon, MI	)	File Nos. BPED-19960502MD
Facility ID No. 81726	)	and BLED-20030520AAB
	)	
W206BF, Rogers Heights, MI	)	File Nos. BPFT-19990818TB
Facility ID No. 94048	)	and BLFT-20000626AEQ
	)	
W211BI, Ann Arbor, MI	)	File Nos. BPFT-19990823TH
Facility ID No. 94125	)	and BLFT-20021018AAQ

## MEMORANDUM OPINION AND ORDER

Adopted: October 29, 2009

Released: October 30, 2009

By the Chief, Audio Division, Media Bureau:

## I. INTRODUCTION

1. We have before us a “Request to Set Aside Opinion and Order DA 09-1372 and Review Complete Record” (“Petition”) filed by Great Lakes Community Broadcasting, Inc. and Great Lakes Broadcast Academy, Inc. (collectively, “Great Lakes”) on July 21, 2009. The Petition seeks reconsideration of our decision cancelling several authorizations held by Great Lakes.<sup>1</sup> The *Great Lakes Order*, released on June 19, 2009, described a series of broadcast applications in which Great Lakes had submitted false certifications after constructing FM radio stations and FM translator stations at variance from the authorized facilities. The Petition does not question any factual determination made in the *Great Lakes Order*, nor does it raise any issue with respect to the decision’s legal analysis. Rather, the Petition addresses the outcome, arguing that the public interest is not served by the loss of service by Great Lakes’s stations with cancelled authorizations. Great Lakes contends that we instead should have accepted a settlement proposal to remove Great Lakes’s controlling principal, James J. McCluskey, Ph.D., from broadcasting by allowing Great Lakes to donate its assets (including the authorizations in question) to another entity.<sup>2</sup> For the reasons set forth below, we dismiss the Petition as untimely.

## II. DISCUSSION

2. Section 405 of the Act and Section 1.106(f) of our Rules require petitioners to seek reconsideration no later than 30 days after the Commission gives public notice of the action for which reconsideration is sought.<sup>3</sup> Although the Commission may not refuse to consider a late-filed petition for reconsideration if the petitioner shows that its failure to file for reconsideration in a timely manner resulted from “extraordinary circumstances,”<sup>4</sup> the Commission otherwise lacks the authority to extend or waive the statutory 30-day filing period under Section 405 of the Act. In this case, the 30-day filing period ended on Monday, July 20, 2009.<sup>5</sup> The Petition, although dated July 15, 2009, was stamped as received in the Commission’s mailroom on July 21, 2009. Accordingly, we dismiss the Petition as untimely.

<sup>1</sup> *Great Lakes Community Broadcasting, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 8239 (Audio Div. 2009) (“*Great Lakes Order*”), applying Section 312(g) of the Communications Act of 1934, as amended (the “Act”), and Section 73.3598(e) of the Commission’s Rules (the “Rules”). See 47 U.S.C. § 312(a) and 47 C.F.R. § 73.3598(e). The *Great Lakes Order* noted that a separate Hearing Designation Order would address the character qualifications of Great Lakes and its consulting engineer, David C. Schaberg, to hold their remaining Commission authorizations. See *Great Lakes Order*, 24 FCC Rcd at 8240.

<sup>2</sup> Petition at 1-3.

<sup>3</sup> 47 U.S.C. § 405; 47 C.F.R. § 1.106(f).

<sup>4</sup> *Gardner v. FCC*, 530 F.2d 1085, 1091-92 (D.C. Cir. 1976) (“extraordinary circumstances” involve failure by the Commission to provide a party with notice and the text of the action in question); *Richardson Independent School District*, Memorandum Opinion and Order, 5 FCC Rcd 3135, 3136 (1990) (same). A party’s failure to miss the deadline by one day is not an “extraordinary circumstance” that would warrant reconsideration of a decision. *Pueblo Radio Broadcasting Service*, Memorandum Opinion and Order, 6 FCC Rcd 1416 (1991).

<sup>5</sup> Under Section 1.4(b)(2) of our Rules, the 30-day period started on June 20, 2009, the day after the release date of the *Great Lakes Order*. 47 C.F.R. § 1.4(b)(2). The 30<sup>th</sup> day was Sunday, July 19, 2009. Under Section 1.4(j) of the Rules, the filing date was the next business day, Monday, July 20, 2009. 47 C.F.R. § 1.4(j).

3. Even if the Petition were timely, we find it completely lacks merit. The *Great Lakes Order* found that Great Lakes had, at best, constructed “quasi-translators” rather than the full-service noncommercial educational FM stations authorized in their construction permits. It concluded that this practice was fraudulent, and that it directly harmed the public interest.<sup>6</sup> This type of spectrum hoarding prevents other parties from applying for stations or upgrading existing stations, causing substantial harm in an era of intense demand for broadcast spectrum.<sup>7</sup> We reject, as contrary to the public interest, Great Lakes’s proposal to reinstate and assign the authorizations cancelled in the *Great Lakes Order* to an entity controlled by Mr. Schaberg, who was directly involved in Great Lakes’s fraudulent activities.<sup>8</sup> There is no basis for reinstating the cancelled authorizations, nor is there any basis for allowing Great Lakes to assign its authorizations to an entity controlled by a fellow wrongdoer.<sup>9</sup> Finally, we note that the Commission holds broad discretion over its enforcement decisions and is under no obligation to accept a settlement proposal offered once a violation has been uncovered.<sup>10</sup>

### III. ORDERING CLAUSES

4. Accordingly, IT IS ORDERED that the “Request to Set Aside Opinion and Order DA 09-1372 and Review Complete Record” filed by Great Lakes Community Broadcasting, Inc. and Great Lakes Broadcast Academy, Inc. on July 21, 2009 IS DISMISSED.

5. IT IS FURTHER ORDERED that a copy of this *Memorandum Opinion and Order* shall be sent to Great Lakes Community Broadcasting, Inc., P.O. Box 334, Stanwood, MI 49346, and to Great Lakes Broadcast Academy, Inc., P.O. Box 334, Stanwood, MI 49346.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>6</sup> *Great Lakes Order*, 24 FCC Rcd at 8244 n.24.

<sup>7</sup> The *Great Lakes Order* has created the opportunity for a number of radio stations to modify their facilities. In some cases, the party to which Great Lakes wishes to donate its authorizations has objected to those proposed modifications, citing the pendency of the Petition. See, e.g., FCC File Nos. BMPED-20090908ADE, BMPED-20090831ACP.

<sup>8</sup> See *Great Lakes Order*, 24 FCC Rcd at 8240-43.

<sup>9</sup> The settlement proposal also would not have ensured the removal of Dr. McCluskey from broadcasting. For example, it did not include a request to dismiss a number of applications for new noncommercial educational FM stations in which Dr. McCluskey is a party. See FCC File Nos. BNPED-20071018BEA, BNPED-2007-1018BBX, BNPED-20071018AWK, and BNPED-20071017AKM.

<sup>10</sup> See *Radio One Licenses, LLC*, Forfeiture Order, 19 FCC Rcd 23,922, 23,932 (2004).