BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re:		
LIGHT OF LIFE MINISTRIES, INC. **Application for a New NCE FM Station at Rockport, MA**	**File No.:** **Facility Id.:**	**BNPED-20071022ASE** **176844**
UNIVERSITY OF MASSACHUSETTS **Application for a New NCE FM Station at Gloucester, MA**	**File No:** **Facility Id.:**	**BNPED-20071019AUQ** **174558**

To: Office of the Secretary

Attn: The Commission

OPPOSITION TO APPLICATION FOR REVIEW

Light of Life Ministries, Inc., by and through its attorneys, and pursuant to Section 1.115(d) of the Commission's rules, hereby opposes the Application for Review filed by the University of Massachusetts ("UMass"), on July 16, 2009, seeking reversal of the June 16, 2009, staff action undertaken pursuant to delegated authority regarding the above-captioned applications.[1] As demonstrated herein, UMass' request for Commission review should be denied.

In its Letter Decision, the Media Bureau (the "Bureau") correctly: (1) denied UMass' petition for reconsideration of the dismissal of the above-captioned application for a new noncommercial FM station (the "Gloucester Application"); (2) denied UMass' "Petition to Deny" filed against Light of Life's above-captioned application for a new noncommercial FM station (the "Rockport Application"); and (3) granted the Rockport Application.

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1 *Letter from Rodolfo F. Bonacci, Associate Chief, Audio Division, to the University of Massachusetts and to Light of Life Ministries, Inc.*, June 16, 2009 (hereinafter, the "*Letter Decision*"). *See also* Public Notice, *Broadcast Actions*, Report No. 47010 (rel. June 19, 2009)(granting Light of Life's application); *See also* Public Notice, *Broadcast Applications*, Report No. 27010 (rel. June 19, 2009)(denial of UMass Petition for Reconsideration).

As UMass acknowledges, the Gloucester Application incorrectly specified the tower coordinates for its proposed facility. As such, the facilities specified in the Gloucester Application failed "to provide adequate community coverage" in violation of 47 C.F.R. § 73.515.[2] Accordingly, the Gloucester Application was properly dismissed as patently defective pursuant to 47 C.F.R. § 73.3566. UMass filed a Petition for Reconsideration and amendment to the Gloucester Application on November 21, 2007, seeking reinstatement *nunc pro tunc*. Subsequently, UMass filed a Petition to Deny against the acceptance for filing of the Rockport Application, requesting that the Commission consider the Gloucester Application mutually exclusive with the Rockport Application, despite the defective nature of the Gloucester Application as submitted.

On June 16, 2009, the *Letter Decision* was released, which denied UMass' Petition for Reconsideration, dismissed the Petition to Deny filed by UMass against the Rockport Application, and granted the Rockport Application. In the *Letter Decision*, the Bureau determined that the amendment to correct the geographic coordinates of the proposed facility would, under Section 73.7573(a)(1) of the Commission's Rules, constitute a major, rather than minor, change in the facilities specified,[3] and would violate the terms of the Commission's August 2, 1984 *Public Notice*.[4] In addition, the *Letter Decision* noted that UMass' requested actions would bring the Gloucester Application in direct conflict with the Rockport Application, and thus is *prima facie* unacceptable for filing and processing.[5]

Well-established Commission policy militates against "permit[ting] a perfecting amendment that creates a conflict with an application filed prior to such amendment [because

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2 *Letter from Rodolfo F. Bonacci, Assistant Chief, Audio Division, to the University of Massachusetts*, November 8, 2007 (hereinafter, the "Defect Letter").

3 *Letter Decision*, at 2 (citing *Plus Charities*, 24 FCC Rcd 2410 (Chief, Audio Div. 2009).

4 *Letter Decision*, at 2 (citing *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, FCC 84-366, 56 RR 2d 776 (1984) *and Plus Charities, supra*).

5 *Letter Decision*, at 2 (citing *Window Opened to Expedite Grant of New NCE FM Station Construction Permits; Bureau Will Accept Settlements and Technical Amendments*, Public Notice, 22 FCC Rcd 19438 (2007) (hereinafter the "*Settlement Public Notice*").

it] harms the public interest in expedition of service and processing certainty that the window processing system seeks to accomplish." *Processing of FM and TV Broadcast Applications*, Report and Order, FCC 85-125, 58 RR 2d 776, ¶ 31 (1985). Indeed, the Commission explicitly stated in its November 8, 2007, Public Notice announcing the settlement window that no "amendments which create any new application conflicts" would be accepted.[6] Thus the Bureau was correct in refusing to permit a curative amendment and reinstatement of the amended Gloucester Application.

UMass argues that the Bureau staff was obliged to review, ascertain and resolve the Gloucester Application discrepancy. But as underscored in the Letter Decision, the onus is on the applicant to ensure the *entire* application, including the Tech Box, is complete, consistent, and without error before it is filed; it is not the role of the staff to proofread applications or attempt to divine an applicant's intent in order to resolve defects. The institution of the "Tech Box" on applications more than a decade ago was intended to consolidate critical engineering information in order to achieve greater efficiencies and promote faster processing of applications.[7] In adopting this policy in 1998, the Commission was explicit: "[i]n the event of any discrepancies between data in the Tech Box and data submitted elsewhere in an application, the data in the Tech Box will be used."[8] In addition, the Commission stated that it would no longer require "time-sensitive staff cross-checks - to insure that the information in the 'Tech Box' is accurate." *Id.* at 23082.

The Commission's 1998 Order was unambiguous: applicants were put on notice that they are responsible for detecting and correcting potentially fatal errors in their application Tech Boxes before submitting such applications; the Bureau staff was not obliged to do anything but follow established procedure, as it did in the instant case.

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6 *Settlement Public Notice*, 22 FCC Rcd at 19441.

7 *1998 Biennial Regulatory Review, Streamlining of Mass Media Applications, Rules, and Processes*, Report and Order, 13 FCC Rcd 23056, 23081 (1998) (hereinafter "*1998 Streamlining Order*"), *recon. granted in part by*, Memorandum Opinion and Order, 14 FCC Rcd 17525 (1999).

8 *Id.* (internal quotations omitted).

In urging reversal of the Bureau's action, UMass seeks to have the Commission return to the inefficient ways of the past, and cites as support two Hearing Designation Orders issued in the long-past comparative hearing era, *Larry Langford*, 3 FCC Rcd 4746 (ASD 1988) and *GNOL Broadcasting*, 2 FCC Rcd 2101 (VSD 1987). However, as UMass is well aware, these cases pre-date the *1998 Streamlining Order* and are no longer good law. In the past, the Commission staff was overburdened with the task of synthesizing disparate engineering information throughout the application in order to arrive at the applicant's intent. While the *1998 Streamlining Order* confirmed that the staff will utilize its own resources to corroborate the information supplied by the applicant in the Tech Box,[9] it explicitly provides that the Tech Box is the definitive determinate of the applicant's intent. UMass' selective citation to Hearing Designation Orders issued 20 years ago ignores the policy change adopted in the *1998 Streamlining Order* and confirmed in subsequent precedent, which the Bureau correctly followed.

Finally, UMass argues that *JEM Broadcasting Company, Inc.*, 22 F.3d 320 (1994) supports its position that the Commission should have given it a second bite at the apple. However, the D.C. Circuit in *JEM Broadcasting Company* specifically stated that the Commission can modify its *procedural* rules so long as adequate notice is provided. *Id.* at 329. As discussed above, the *1998 Streamlining Order* highlighted the importance of the information in the Tech Box, and that the Commission's staff would rely on that information in determining mutual exclusivity. UMass' argument that the Bureau should have made a substantive decision as to which information in the Tech Box was to be followed, is contradictory to the Commission's stated position, of which UMass had sufficient notice.

UMass has not demonstrated any legitimate legal or policy basis for a reversal of the Decision. The Bureau acted in the public interest and in accordance with Commission legal and policy precedent, thus its actions should be affirmed.

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9 *See, e.g., 1998 Streamlining Order*, at 23082

WHEREFORE, in light of the foregoing, the UMass Application for Review should be DENIED.

Respectfully submitted,

LIGHT OF LIFE MINISTRIES, INC.

By: _____

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July 29, 2009

Certificate of Service

I, Johanna Chang, hereby certify that on this 29th day of July, 2009, I caused a copy of the foregoing "Opposition to Application for Review" to be served via U.S. mail, postage prepaid, or by hand delivery upon the following persons:

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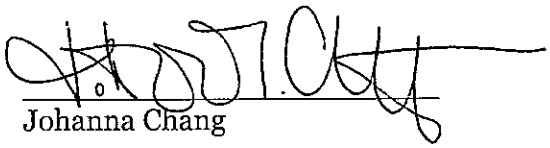

Johanna Chang

* indicates delivery by hand