Federal Communications Commission
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In Reply Refer to:
1800B3-TSN

Harry F. Cole, Esq.
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street
11th Floor
Arlington, VA 22209

Church Planters of America
c/o William Danny Hawkins, President
6704 Highway 8 South
Germanton, NC 27019

Re: Craven Community College
WZNB(FM), New Bern, North Carolina
Facility ID No. 94050
File No. BPED-20070906AFE

Application for Minor Modification to Noncommercial Educational FM Station

Dear Counsel and Applicant:

We have before us a Petition for Reconsideration ("Petition"), filed June 18, 2012, by Craven Community College ("Craven"), seeking reconsideration of the expiration of its construction permit for modification to the facilities of noncommercial educational FM ("NCE") station WZNB(FM), New Bern, North Carolina.[1] For the reasons stated below, we dismiss the Petition.

Background. Craven previously filed a petition for reconsideration of the staff's March 29, 2011, grant of Church Planters of America's ("CPA") application for a minor modification to the licensed facilities of NCE FM station WGHW(FM), Lockwoods Folly Town, North Carolina ("April Petition").[2] The CPA Application was filed after the construction permit for the Craven Application expired on February 4, 2011, and would otherwise have been mutually exclusive with the Craven Application. In the April Petition, Craven argued that events beyond its control made it impossible to complete construction by February 4, 2011; that it had submitted a letter notifying the Commission of those events in December 2010, prior to expiration of the construction permit; and that because it had not received notification from the Commission that tolling had been denied, it assumed that tolling had been granted because the events that it described were beyond its control.[3] The staff rejected Craven's contentions, finding that the

[1] File No. BPED-20070906AFE ("Craven Application"). On February 4, 2008, Craven was issued a construction permit, authorizing certain facility modifications to WZNB(FM). That permit was subsequently modified on May 8, 2008 (File No. BMPED-20080226AAK), and on October 20, 2009 (File No. BMPED-20091002AAE).

[2] File No. BPED-20110211AAK ("CPA Application").

[3] April Petition at 2-5 and Attachment A.

Craven construction permit had expired by its terms on February 4, 2011, and thus denied the April Petition by letter dated May 18, 2012.[4]

In the current Petition, Craven seeks reconsideration of the announcement, in the *Staff Decision*, that the Craven construction permit expired in February 2011.[5] Craven justifies its filing of a second petition for reconsideration by contending that the April Petition "was not directed to the status of the WZNB construction permit because, as of the date of [the April Petition], Craven was under the legitimate belief that its construction deadline was tolled as a result of the tolling notification it submitted in December, 2010."[6] It argues that the current Petition is thus timely and appropriate because the *Staff Decision* was "the first time the [Audio] Division has formally notified Craven of the expiration of its permit – or offered any rationale for that position . . . ."[7]

Discussion. We reject Craven's Petition as procedurally defective. To the extent that the current Petition constitutes a petition for reconsideration of the *Staff Decision*, as Craven suggests,[8] it is subject to dismissal as being repetitious. In the April Petition, Craven sought reconsideration of the staff's grant of the CPA Application. Craven attempts to justify its second petition for reconsideration by arguing that it is now challenging the expiration of its construction permit. However, the expiration of Craven's construction permit was a necessary predicate to grant of the CPA Application, and thus the fact of the construction permit's expiration was incorporated in the *Staff Decision*. In the Petition, then, Craven presents arguments virtually identical to those advanced in the April Petition, which were already considered and rejected in the *Staff Decision*, and challenges the staff's rejection of those arguments. Because the Petition plainly represents an attempt to persuade the staff to reconsider matters previously denied on reconsideration, it is therefore dismissed as repetitious.[9]

Moreover, the Commission's Rules specify that petitions for reconsideration will be entertained within 30 days of public notice of a final Commission action.[10] However, the *Staff Decision* did not constitute "final Commission action" with respect to the expiration of Craven's construction permit. The expiration of a construction permit does not require affirmative action by the Commission; in the instant case, the Craven construction permit expired on February 4, 2011, by its own terms, and was automatically forfeited on that date pursuant to Section 73.3598(e) of the Rules, because Craven had not

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[4] *Craven Community College and Church Planters of America*, Letter, Ref. No. 1800B3-TSN (MB May 18, 2012) ("*Staff Decision*").

[5] Petition at 1.

[6] *Id.* at 2 n.1.

[7] *Id.*

[8] Petition at 1 ("Craven Community College . . . hereby seeks reconsideration of the decision set forth in [the *Staff Decision*].").

[9] 47 C.F.R. § 1.106(k)(3). *See A.G.P., Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 4628, 4629 (1996).

[10] *See* 47 C.F.R. § 1.106(f). When there is no Federal Register publication, nor descriptive document entitled "Public Notice" released, the public notice date is the date of action. *See* 47 C.F.R. § 1.4(b)(5).

completed its station modification and filed a license application.[11] At most, as discussed above, the *Staff Decision* merely recognized the fact of the Craven construction permit's expiration as a predicate to the staff's grant of the CPA Application. Craven is thus fundamentally mistaken when it assumes that the Commission had a duty to "formally notify" it of the expiration of its construction permit,[12] and that the *Staff Decision* commenced a period of time in which to challenge the expiration of that permit.[13]

Conclusion. For the foregoing reasons, Craven's Petition for Reconsideration IS DISMISSED.

Sincerely,

Lisa Scanlan for

Peter H. Doyle
Chief, Audio Division
Media Bureau

[11] 47 C.F.R. § 73.3598(e). Over a decade ago, the Commission ended its former practice of affirmatively acting to cancel an expired construction permit, holding that permits are subject to automatic forfeiture, without further Commission action, upon expiration of an unencumbered three-year construction period. *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes*, Report and Order, 13 FCC Rcd 23056, 23091 (1998) ("*Streamlining R&O*"), *recon. granted in part*, 14 FCC Rcd 17525 (1999) ("*Streamlining MO&O*"). *See also* 47 U.S.C. § 319(b). To the extent that Craven might argue that it did not receive an "unencumbered" construction period, based on its December 2010 tolling notification and its belief that tolling was automatically granted because Craven reported factors outside its control and did not receive a Commission response denying tolling, this argument has been considered and rejected. *See Staff Decision* at 3-5. We note further that the tolling notification (Attachment A to the April Petition) was defective, in that it did not bear required information, such as the station's frequency, the dates on which the construction permit was granted and was due to expire, or specific references to the Rules, the *Streamlining R&O*, or the *Streamlining MO&O* demonstrating that the circumstances Craven described qualified as an "approved tolling event." *See Streamlining MO&O*, 14 FCC Rcd at 17542. We also note that, while not specifically required, experienced applicants and counsel routinely include the Commission's Facility Identification Number on all filings, so as to facilitate routing of pleadings and other notices to the proper Commission personnel. Craven did not do so here.

[12] *See Streamlining R&O*, 13 FCC Rcd at 23091.

[13] Even assuming *arguendo* that the expiration of the construction permit on February 4, 2011, had constituted Commission action, Craven's June 18, 2012, Petition would have been late-filed, as any petition for reconsideration would have had to be filed no later than March 7, 2011, 30 days after the expiration of the permit. 47 U.S.C. § 405, 47 C.F.R. §§ 1.4(b)(5), 1.106(f).