



**Federal Communications Commission
Washington, D.C. 20554**

December 19, 2013

In Reply Refer To:
1800B3-ATS

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In re: New NCE (FM), Chandler, Arizona
Arizona Community Media Foundation
Facility ID No. 173984
File No. BNPED-20071016AGQ

Petition for Reconsideration

Dear Counsel:

We have before us the November 17, 2011, Petition for Reconsideration ("2011 Petition") filed by American Educational Broadcasting ("American") seeking reconsideration of a Media Bureau ("Bureau") staff decision¹ denying American's June 27, 2008 Informal Objection and November 21, 2008 Petition to Deny, both of which were filed against the referenced application² of Arizona Community Media Foundation ("Arizona") for a new noncommercial educational ("NCE") FM station in Chandler, Arizona ("Chandler Application").³ For the reasons set forth below, we will dismiss the 2011 Petition.

Background. As discussed in the *2011 Staff Decision*, American filed a minor modification application for Station KLKA(FM), Globe, Arizona ("2007 KLKA Application")⁴ on August 3, 2007.⁵ On August 9, 2007, the Commission announced that it would open an NCE new station filing window between October 12, 2007, and October 19, 2007, and impose a filing freeze from September 8, 2007, on the filing of reserved band and certain non-reserved band minor modification applications until the close of the window.⁶

¹ *Arizona Community Media Foundation*, Letter, Ref. 1800B3-ATS (MB October 18, 2011) ("*2011 Staff Decision*").

² File No. BNPED-20071016AGQ.

³ American filed the Petition for Reconsideration on November 17, 2011. Arizona filed an Opposition to Petition for Reconsideration on December 1, 2011. American filed a Reply on December 12, 2011.

⁴ File No. BNPED-20070803ACY.

⁵ *See also Broadcast Actions*, Public Notice, Report No. 26545 (MB Aug. 8, 2007).

⁶ *Media Bureau Announces NCE FM New Station and Major Change Filings Procedures for October 12,-October 19, 2007, Window; Limited Application Filing Freeze to Commence on September 8, 2007*, Public Notice, 22 FCC Rcd 15050, 15051 (MB 2007).

The staff determined that the 2007 KLKA Application was technically defective and dismissed it as unacceptable for filing on October 9, 2007.⁷ Arizona filed the Chandler Application on October 16, 2007, during the filing window. American filed a corrective amendment and a Petition for Reconsideration of the 2007 *Staff Decision* on November 13, 2007, seeking reinstatement of the 2007 KLKA Application *nunc pro tunc*. The staff denied the Petition for Reconsideration on May 14, 2008.⁸ American did not file an application for review. Instead American and Educational Media Foundation filed the contingently related applications for KLKA (“2008 KLKA Application”)⁹ and Station KAIC(FM), Tucson, Arizona (“KAIC Application”),¹⁰ respectively, on June 27, 2008, pursuant to Section 73.3717(e) of the Commission’s Rules (“Rules”).¹¹ On the same date American filed the Informal Objection to the conflicting Chandler Application. On October 22, 2008, the Chandler Application was accepted for filing.¹² American filed the Petition to Deny the Chandler Application on November 21, 2008, arguing that the application should be dismissed because it did not protect the prior-filed 2007 KLKA Application.

The 2011 *Staff Decision* rejected American’s argument and denied the Petition to Deny and the Informal Objection. On November 17, 2011, American filed the 2011 Petition, seeking reconsideration of the 2011 *Staff Decision*. On August 21, 2013, the staff granted the Chandler Application and dismissed both the 2008 KLKA Application and KAIC Application.¹³

Discussion. We find that the 2011 Petition is procedurally improper. Section 1.106(a)(1) of the Rules specifically prohibits petitions for reconsideration of interlocutory actions.¹⁴ The 2011 *Staff Decision* took no action on the Chandler Application, the 2008 KLKA Application, or the KAIC Application, and was therefore an interlocutory action.¹⁵ Moreover, no party filed a petition for reconsideration of the grant of the Chandler Application or of the dismissal of either the 2008 KLKA Application or the KAIC Application within 30 days of the 2013 Public Notice.¹⁶ Therefore, those actions are now final. Accordingly, we dismiss the 2011 Petition.¹⁷

⁷ Letter from Rodolfo F. Bonacci to American Educational Broadcasting, Ref. 1800B3 (MB Oct. 7, 2007) (“2007 *Staff Decision*”). See also *Broadcast Actions*, Public Notice, Report No. 46590 (MB Oct. 12, 2007) (public notice announcing dismissal of the 2007 KLKA Application).

⁸ Letter from James D. Bradshaw to American Educational Broadcasting, Ref. 1800B3 (MB May 14, 2008) (“2008 *Staff Decision*”) (modified directional pattern was still in violation of 47 C.F.R. § 73.510(a)).

⁹ File No. BPED-20080627ABN.

¹⁰ File No. BPED-20080627ABL.

¹¹ See 47 C.F.R. § 73.3717(e) (permitting the simultaneous filing of up to four contingently related FM minor change applications).

¹² See *Broadcast Actions*, Public Notice, Report No. 26847 (MB Oct. 22, 2008).

¹³ See *Broadcast Actions*, Public Notice, Report No. 48060 (MB Aug. 26, 2013) (“2013 Public Notice”).

¹⁴ 47 C.F.R. § 1.106(a)(1) (prohibiting petitions for reconsideration of interlocutory actions).

¹⁵ See *Bennett v. Spear*, 520 US 154, 178 (1977) (holding an agency’s action is final and reviewable only if, *inter alia*, it “mark[s] the ‘consummation’ of the agency’s decision making process - it must not be of a merely tentative or interlocutory nature.”) (internal quotes and cites omitted).

¹⁶ 47 U.S.C. § 405(a) (“A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of.”); 47 C.F.R. § 1.106(f) (“The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action . . .”).

¹⁷ See *Patrick J. Vaughn, Esq.*, Letter, 22 FCC Rcd 11165 (MB 2007) (dismissing petition for reconsideration filed against interlocutory order).

Conclusion/Actions. Accordingly, IT IS ORDERED that the Petition for Reconsideration filed on November 17, 2011, by American Educational Broadcasting IS DISMISSED.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter H. Doyle". The signature is fluid and cursive, with the first name "Peter" and last name "Doyle" clearly distinguishable.

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: American Educational Broadcasting
Arizona Community Media Foundation
David D. Oxenford, Esq.
Educational Media Foundation