

FILED/ACCEPTED

AUG 12 2009

Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of the Applications of)	
)	
University of Massachusetts)	File No. BNPED-20071019AUQ
Channel 218, Gloucester, MA)	FCC Facility ID No. 174558
)	
Light of Life Ministries, Inc.)	File No. BNPED-20071022ASE
Channel 218, Rockport, MA)	FCC Facility ID No. 176844
For a New Non-Commercial Educational Construction Permit		

To: Marlene H. Dortch, Secretary, Federal Communications Commission
To the Attention of the Commission

REPLY TO OPPOSITION TO APPLICATION FOR REVIEW

The University of Massachusetts, by its attorneys, pursuant to Section 1.115(d) of the Commission's rules, hereby respectfully submits its reply to the July 29, 2009 Opposition to Application for Review filed by Light of Life Ministries, Inc. (the "Opposition"). Remarkably, in attempting to oppose the July 16, 2009 University of Massachusetts Application for Review (the "Application for Review"), Light of Life Ministries, Inc. makes the case for review and reversal.

I. THE "HARD LOOK" POLICIES ARE INAPPLICABLE TO NON-COMMERCIAL EDUCATIONAL APPLICATIONS

1. In opposing the University of Massachusetts' Application for Review, Light of Life Ministries, Inc. cites as its central authority the FCC's Report and Order in *Amendment of Sections 73.3572 and 73.3573 Relating to Processing of FM and TV Broadcast Applications*, 58 RR2d 776 (1985) (hereafter "Processing of FM and TV Broadcast Applications"). This is the Report and Order that adopted the now defunct

Public Notice which was contained in Appendix D of *Processing of FM and TV*

Broadcast Applications, and is better known as the Commission's "Hard Look" policy.

2. Light of Life Ministries, Inc., however, ignores in its Opposition that the Commission's "Hard Look" policy was applicable only to commercial applications.

Footnote 1 to Appendix D makes that clear in its statement that:

This policy applies only to commercial FM applicants. AM applicants and non-commercial FM applicants are still subject to the policy set out in our *Public Notice* of August 2, 1984. TV applicants remain subject to applicable case law.

3. The University of Massachusetts stands by its argument in its Application for Review regarding the applicability of the August 2, 1984 *Public Notice*. The Audio Division's underlying June 16, 2009 letter to which the Application for Review is directed, makes it clear that the August 2, 1984 *Public Notice*, titled *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, FCC 84-366, 56 RR2d 776, 49 Fed. Reg. 47331 (released August 2, 1984) is good law, and is the standard by which the University of Massachusetts application should be judged.

II. THE COMMISSION'S POLICIES REGARDING THE "TECH BOX" SUPPORT AN ACCEPTANCE OF THE UNIVERSITY OF MASSACHUSETTS APPLICATION

4. Light of Life Ministries, Inc. correctly cites *1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes; Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, 13 FCC Rcd 23056 (1998) (hereafter, "Streamlining of Mass Media Applications") as having a bearing on the acceptability of the University of Massachusetts application. As stated by Light of Life Ministries, Inc. at page 3 of its Opposition, "[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”.

5. Using the data in the Tech Box is exactly what the University of Massachusetts is asking the Commission to do. Accordingly, Light of Life Ministries, Inc. supports an acceptance of the University of Massachusetts application by its citation to *Streamlining of Mass Media Applications* as all of the information needed to reliably and confidently ascertain the location of the University of Massachusetts proposed transmitter site for its Gloucester facility is contained in the Tech Box.

III. THE UNIVERSITY OF MASSACHUSETTS APPLICATION HAS ALWAYS BEEN IN CONFLICT WITH THE LIGHT OF LIFE MINISTRIES, INC. APPLICATION

6. There is no Commission decision, policy statement or rule that states that the only information in the Tech Box that will be relied upon by the Commission is the geographic coordinates. Yet, that is the essence of the Light of Light Ministries, Inc. argument. Light of Light Ministries, Inc. would have the Commission, against even the precedent presented in *Streamlining of Mass Media Applications*, only look at the geographic coordinates in the Tech Box, not the other information in the Tech Box.

7. Thus, in citing correctly to the statement made by the Commission in *Streamlining of Mass Media Applications* that “[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”, Light of Life Ministries, Inc. supports review and reversal of the dismissal of the University of Massachusetts application. Data in the University of Massachusetts application Tech Box, when viewed as a whole, unquestionably places the University of Massachusetts proposed transmitter site at the site of the tower uniquely

and specifically identified by FCC Antenna Structure Registration No. 1005284 stated in the Tech Box.

IV. WITH THE SUPPORT OF LIGHT OF LIFE MINISTRIES, INC., THE COMMISSION SHOULD REVERSE THE DISMISSAL OF THE UNIVERSITY OF MASSACHUSETTS APPLICATION

8. Since, as noted above, the whole of the legal argument presented by Light of Life Ministries, Inc. supports an acceptance of the application, the Commission should accept the University of Massachusetts corrective amendment and proceed with the processing of the two mutually-exclusive applications. Light of Life Ministries, Inc. is unable to muster valid legal arguments against the acceptance of the University of Massachusetts application.¹

9. Light of Life Ministries, Inc. is going to feel rather silly arguing to a reviewing court that the University of Massachusetts, a part of the Commonwealth of Massachusetts, proposed a radio facility to be licensed by the United States of America Federal Communications Commission located in Canada when, from the information contained in the all-important Tech Box of the University of Massachusetts application, it can be reliably and confidently ascertained that the University of Massachusetts applied for a radio facility with the tower located in the applied-for community of Gloucester.

V. CONCLUSION

10. The University of Massachusetts application should be accepted *nunc pro tunc* with corrected geographic coordinates. The corrected geographic coordinates of its proposed facility can be reliably and confidently confirmed from the information

¹ The Light of Life Ministries, Inc. argument at Page 4 of its Opposition that old cases “are no longer good law”, without pointing to any case or decision whatsoever that reverses those old cases, can be disregarded for the baseless proposition that it is. There is no FCC legal or policy tenet that holds that old cases, particularly those recognized by the Commission as “longstanding Commission policy” (see Application for Review at Paragraph 14) are no longer good law.

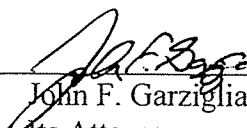
contained in the "Tech Box" of the application itself. The Commission can reliably and confidently determine from the "Tech Box" information that the University of Massachusetts intended to locate its facility on an existing specified tower in the proposed community of license of Gloucester, Massachusetts, rather than in the middle of Canada.

11. The Commission's staff may take official notice of the data specified in the Commission's Antenna Structure Registration records for ASR No. 1005284, including the geographic coordinates of the licensed facilities associated with that ASR on that existing tower, and confidently and reliably ascertain that the corrective amendment submitted by the University of Massachusetts contains the correct geographic coordinates for the proposed facility.

WHEREFORE, for the reasons stated in the Application for Review and above, an acceptance for tender *nunc pro tunc* of the corrected University of Massachusetts application seeking an original construction permit for new station on Channel 218 in Gloucester, Massachusetts (FCC File No. BNPED-20071019AUQ) is respectfully requested.

Respectfully submitted,

UNIVERSITY OF MASSACHUSETTS

By  _____
John F. Garziglia
Its Attorney

Womble Carlyle Sandridge & Rice, PLLC
1401 I Street, N.W. 7th Floor
Washington, DC 20005
(202) 857-4455

August 12, 2009

CERTIFICATE OF SERVICE

I, John F. Garziglia, hereby certify that a copy of the foregoing "Reply to Opposition to Application for Review" was mailed on this 12th day of August 2009, to the following:

James Riley, Esquire
Fletcher Heald & Hildreth PLC
1300 North 17th Street
11th Floor
Arlington, Virginia 22209
(Counsel to Light of Life Ministries, Inc.,
Applicant for Channel 218 at Rockport, Massachusetts)



John F. Garziglia