



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

March 26, 2015

In Reply Refer To:
1800B3-EAB

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In re: LPFM MX Group 282

Portland State University
New LPFM, Portland, Oregon
Facility ID Number: 192143
File Number: BNPL-20131113BPL

Portland Russian Media Center
New LPFM, Portland, Oregon
Facility ID Number: 193303
File Number: BNPL-20131113AED

The Reed Institute
New LPFM, Portland, Oregon
Facility ID Number: 193599
File Number: BNPL-20131104ATH

**Petition to Deny and
Informal Objection**

Dear Counsel:

We have before us: (1) the applications of Portland State University ("PSU"), Portland Russian Media Center ("PRMC"), and The Reed Institute ("Reed") for new LPFM stations at Portland, Oregon ("PSU Application," "PRMC Application," and "Reed Application," respectively); (2) the Petition to Deny both the PRMC Application and the Reed Application filed by PSU ("PSU Petition") on August 8, 2014;¹ and (3) the Informal Objection to the Reed Application filed by PRMC ("PRMC Objection") on

¹ PRMC filed an Opposition to the PSU Petition on August 12, 2014, which it later withdrew on August 15, 2014. PRMC filed a new Opposition ("PRMC Opposition") on August 21, 2014. No opposition against the PSU Petition was filed by Reed.

November 12, 2014.² For the reasons set forth below, we deny the PSU Petition and dismiss the PSU Application, deny the PRMC Objection, and begin a 30-day period for PRMC and Reed to file a time-share agreement.

Background. PSU, PRMC, and Reed filed their respective applications during the November 2013 LPFM filing window. The Media Bureau (“Bureau”) determined that the three applications were mutually exclusive and identified them as LPFM MX Group 282.³ On July 9, 2014, the Commission issued a Public Notice in which it conducted a point system analysis and awarded five points to PRMC, five points to Reed, and four points to PSU.⁴ Each applicant received one point for “established community presence,” “local program orientation,” “main studio,” and “local program origination/main studio” qualifications.⁵ PRMC and Reed also received one point each for “diversity of ownership,”⁶ but PSU’s claim for a diversity point was disallowed because at the time of filing, PSU was affiliated with the Oregon University System (“University System”) and thus held attributable interests in the broadcast stations licensed to the University System.⁷ As a result, the Commission identified PRMC and Reed as tentative selectees of LPFM MX Group 282 on a time-share basis, began a 30-day period for filing petitions to deny against the applications, and began 90-day periods in which the applicants could file time-share agreements or major change amendments in order to resolve their mutual exclusivities.⁸

On August 8, 2014, PSU filed its Petition to Deny the PRMC Application and the Reed Application. In the Petition, PSU argues that its application should be awarded the diversity point because, as a result of changes in its ownership structure that were in progress before the opening of the LPFM window (but concluded after the window’s close), PSU no longer holds an attributable interest in

² Reed filed a Request for Extension of Time to file an Opposition to the PRMC Objection on November 25, 2014, and filed its Opposition (“Reed Opposition”) on December 5, 2014. PRMC filed a Reply on January 16, 2015.

³ *Media Bureau Identifies Mutually Exclusive Applications Filed in the LPFM Window and Announces 60-Day Settlement Period; CDBS Is Now Accepting Form 318 Amendments*, Public Notice, 28 FCC Rcd 16713, Attachment A (2013).

⁴ *Commission Identifies Tentative Selectees in 79 Groups of Mutually Exclusive Applications Filed in the LPFM Window; Announces a 30-Day Petition to Deny Period and a 90-Day Period to File Voluntary Time-Share Proposals and Major Change Amendments*, Public Notice, 29 FCC Rcd 8665, Attachment A (2014) (“July Public Notice”).

⁵ *Id.*

⁶ The Commission awards one point for diversity of ownership (“diversity point”) to an applicant that can certify that it holds no attributable interests in any other broadcast station. 47 C.F.R. § 73.872(b)(5). In the case of a “local chapter” of a larger organization, any broadcast interests held by the “parent” organization are considered attributable to the local chapter for the purposes of this criterion, but not for the purposes of eligibility. *See Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15459 (2012) (“Sixth Report and Order”).

⁷ *July Public Notice*, 29 FCC Rcd at Attachment A. The PSU Application contains an exhibit which argued that, despite its affiliation with the University System, PSU was eligible to hold an LPFM license because PSU was applying for a student-run station. *See* PSU Application, Section II, Question 5 and Attachment 5 (“Ownership Exhibit”); 47 C.F.R. § 73.860(d)(2). PSU acknowledges, however, that the attribution exception for student-run stations does not extend to eligibility for comparative points for diversity of ownership. *See* Ownership Exhibit (“[The Commission] made clear that the “parent” organization’s other broadcast interests and holdings will be considered “attributable . . . only” for the purposes of the new entrant point criterion.”).

⁸ *July Public Notice*, 29 FCC Rcd at Attachment A.

the broadcast stations owned by the University System.⁹ Additionally, on November 12, 2014, after the close of the formal petition period, PRMC filed its Informal Objection to the Reed Application. In the Objection, PRMC argues that Reed lacked reasonable assurance of site availability at the time it filed the Reed application, because the site coordinates proposed by Reed¹⁰ describe a location occupied by a branch of Wells Fargo Bank, which did not give Reed permission for the use of that site.¹¹

Discussion. PSU Petition. Pursuant to Section 309(d) of the Communications Act of 1934, as amended, petitions to deny must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.¹² PSU has failed to meet this burden with respect to the PRMC Application and the Reed Application.

According to PSU, a “perfect storm” of unusual circumstances and unfortunate timing resulted in PSU’s disqualification for a diversity point to which it otherwise would have been entitled, had the LPFM window closed later, or its change of ownership concluded sooner.¹³ PSU insists that its local, student-run LPFM proposal “presents a model example of the classic new entrant,” and to deny full credit and consideration to PSU’s Application due to its now fully resolved administrative timing issues would not serve the public interest.¹⁴ Accordingly, PSU requests a waiver of Section 73.871(b) of the Commission’s Rules (“Rules”), which prohibits applicants from filings amendments that would improve their comparative position after the close of the filing window.¹⁵

In its Opposition to the PSU Petition, PRMC reiterates that PSU was part of the University System at the time PSU filed the PSU Application, and that PSU has admitted as much.¹⁶ PRMC argues that it is well established Commission precedent that applications in comparative proceedings are frozen

⁹ PSU Petition at 4. The *July Public Notice* instructed applicants disputing the Commission’s point determination with respect to their applications to raise their arguments in petitions to deny. *July Public Notice*, 29 FCC Rcd at 8668 (“[A]n applicant that concedes that the tentative selectee is qualified for the points received but believes its own proposal should have received a greater number of points than the tentative selectee’s must make its argument in a petition to deny.”).

¹⁰ See Reed Application at Section VI, Question 2.

¹¹ PRMC Objection at 2, Attachment 3.

¹² 47 U.S.C. § 309(d).

¹³ PSU Petition at 6, 9. PSU’s change in ownership was the result of Oregon Senate Bill 270 (“Law”), which established independent governing boards for PSU and two other universities previously controlled by the University System. *Id.* at 3. The bill was introduced in January, 2013, before the Commission announced the 2013 LPFM filing window, and was signed into law in August, 2013, before the filing window closed. *Id.* at 4. However, pursuant to the Law, the new PSU Board of Trustees did not assume full authority over PSU until July 1, 2014, after the filing window closed. *Id.*

¹⁴ *Id.* at 9-10.

¹⁵ 47 C.F.R. § 73.871(b). The PSU Petition erroneously cited Section 73.781 of the Rules. PSU Petition at 6. On August 18, 2014, PSU filed an amendment (“PSU Amendment”) that identified the new PSU Board of Trustees as parties to the application, and claimed a point for diversity of ownership. PSU Amendment at 3-4, 6. Of the fourteen members of the State Board of Higher Education listed as parties to the original PSU Application, only one – Marinus Wilhelmus Wiewel, PSU President – is listed as a board member in the PSU Amendment. See PSU Application at 3-4; PSU Amendment at 3-4; PSU Petition at 4-5.

¹⁶ PRMC Opposition at 2.

as of the close of the filing window – also known as the “snapshot date”¹⁷ – and that waiver is inappropriate in this case because the original applicant was the University System, not PSU specifically.¹⁸ Furthermore, PRMC adds, PSU’s failure to qualify as a tentative selectee will not deprive the community of localized service, as the Commission identified two other tentative selectees that are qualified to serve the public interest.¹⁹

An applicant seeking waiver of a Rule has the burden to plead with particularity the facts and circumstances that warrant such action,²⁰ and must support its request with a compelling showing.²¹ Although the Bureau carefully considers all such requests, an applicant for waiver “faces a high hurdle even at the starting gate.”²² Waiver is appropriate only when: (1) special circumstances warrant a deviation from the general rule; and (2) such deviation better serves the public interest.²³ PSU has not met this burden.

Under Section 73.871(b) of the Rules,²⁴ actions that would improve an applicant’s comparative position, *even if initiated prior to the snapshot date*, will not qualify for points unless those actions have also been completed by the close of the filing window.²⁵ In the full-service NCE context, the Commission has previously declined to grant the type of waiver sought by PSU.²⁶ Far from an arbitrary disqualification, the Commission’s determination not to award PSU a diversity point based on the status of its attributable interests as of the snapshot date conserves limited Commission resources and “promote[s] fairness and transparency in the comparative process.”²⁷ Thus, we find that the public

¹⁷ See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Memorandum and Opinion Order, 16 FCC Rcd 5074, 5082 (2001) (“NCE MO&O”).

¹⁸ PRMC Opposition at 3.

¹⁹ PRMC Opposition at 3.

²⁰ *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968)).

²¹ *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090, 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)). See 47 C.F.R. § 1.3.

²² *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (1972), *cert. denied*, 93 S.Ct. 461 (1972) (finding that the Commission may decide in some instances that rule waiver serves the public interest if an applicant’s proposal will not undermine the policy served by the rule). See *Thomas Radio v. FCC*, 716 F.2d 921, 924 (D.C. Cir. 1983).

²³ *Network IP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio*, 418 F.2d at 1159.

²⁴ 47 C.F.R. § 73.871(b).

²⁵ The Commission designed the point system used to resolve mutual exclusivities among LPFM applicants based on the point system used for awarding construction permits to full-service noncommercial educational (“NCE”) stations. See *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2259 (2000). In the NCE context, the Commission has expressly prohibited applicants from upgrading their comparative points after the close of the filing windows. See, e.g., *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101, 6119-20 (2007) (“2007 NCE Order”) (citing *NCE MO&O*, 16 FCC at 5109 n.24 (“Applicants may not enhance their position based on matters that require additional Commission or applicant action.”)).

²⁶ *2007 NCE Order*, 22 FCC at 6119-20 (denying requests for waiver of snapshot policy).

²⁷ *Id.* at 6119. See also *NCE MO&O*, 16 FCC Rcd at 50832 (“We selected the time of filing so that there would be no need for the staff and applicants to constantly recalculate points and to minimize one-upsmanship. Applicants may not continuously amend their proposals and qualifications in attempts to surpass other mutually exclusive

interest is better served by strictly adhering to Section 73.871(b). We also find that that PSU has not identified any special circumstances warranting a waiver of Section 73.871(b). It is not unusual for an NCE or LPFM applicant to undergo changes in ownership after the close of the filing window that could affect their qualifications for a comparative point. PSU's waiver request would defeat the purpose of Section 73 and encourage gamesmanship of the comparative process.²⁸ Accordingly, we deny the waiver request. In light of this action, we find that PSU has not raised a substantial and material question of fact calling for further inquiry regarding grant of the Reed Application and PRMC Application, and we will deny the PSU Petition and dismiss the PSU Application below.²⁹

PRMC Objection. Informal objections must allege properly supported facts that, if true, would establish a substantial and material question of fact that grant of the applications would be *prima facie* inconsistent with the public interest.³⁰ PRMC has not met this burden.

The following is a brief summary of the site descriptions contained in the Reed Application and amendments:

- In the original Reed Application, Reed identified a proposed site with coordinates: 45° 28' 51" North Latitude, 122° 37' 50" West Longitude ("Original Site").³¹ The validity of the Original Site has never been in question.
- In an amendment filed on January 27, 2014 ("January Amendment"), Reed identified a new site approximately 4 kilometers away with coordinates: 45° 30' 36" North Latitude, 122° 40' 51" West Longitude ("Wells Fargo Site").³² Reed also included Tech Box

applicants, but rather must present initially, their proposal to provide the best possible service to the public regardless of whether or what any competing applicants may file.").

²⁸ The Commission has repeatedly disallowed the enhancement of qualifications in NCE comparative cases, consistent with both 47 C.F.R. § 73.7003(f), and the Commission's historical concern that the late submission of requested information would "inevitably lead to abuse of the Commission's processes, applicant gamesmanship, and unfair advantage." *Silver Springs Communications*, Memorandum Opinion and Order, 3 FCC Rcd 5049, 5050 (1988), *rev. denied*, 4 FCC Rcd 4917 (1989). See *LRB Broadcasting*, Memorandum Opinion and Order, 8 FCC Rcd 3076, 3076 (1993); *NCE MO&O*, 16 FCC Rcd at 5085-86.

²⁹ See *July Public Notice*, 29 FCC Rcd at 8670 ("We direct the staff, once the petition to deny period has run, to conduct a final study of each tentatively selected application in accordance with the Bureau's routine processing procedures. In the case of tied applications, the final study will not be conducted until the tie has been eliminated through amendment, settlement and/or time-share procedures. The staff studies should consider any petitions, comments, and objections to determine whether there is any substantial and material question of fact concerning whether grant of the tentatively selected applications would serve the public interest. If no such question exists, we direct the staff to grant the application(s) on the basis of the point system determinations and dismiss all competing applications."). In light of our action, we therefore also decline to address the effect of a major change in ownership on the PSU Application under Section 73.871(c) of the Rules. See *supra* note 15; 47 C.F.R. § 73.871(c).

³⁰ 47 U.S.C. § 309(e). See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *reh'g denied* (D.C. Cir. Sept. 10, 1993).

³¹ Reed Application at Section VI, Question 2.

³² January Amendment at Section VI, Question 2.

Exhibits 11 and 14, which describe the physical location of the site as a “multistory dormitory building” and the “roof of a mechanical penthouse.”³³

- In an amendment filed on December 5, 2014 (“December Amendment”), Reed revised the site coordinates to: 45° 30’ 36” North Latitude, 122° 40’ 56” West Longitude (“PSU Site”), and again included Exhibits 11 and 14.³⁴

In support of its claim that Reed lacks reasonable assurance of site availability, PRMC provides a sworn statement from a Wells Fargo representative that no agreement exists between Wells Fargo and Reed concerning the installation of a radio transmitter at the Wells Fargo Site (i.e., the location described by the coordinates in the January Amendment).³⁵

Reed contends that the site proposed in the January Amendment reflects an error in converting NAD83 coordinates to NAD27 geodetic data, and that the intended site is the PSU Site, the roof of a PSU dormitory building located approximately 100 meters (328 feet) from the Wells Fargo Site.³⁶ In support, Reed points to language in the January Amendment describing the proposed transmitter site as a “multistory dormitory building” and the “roof of a mechanical penthouse.”³⁷ In response to the claims made in the PRMC Objection, Reed filed the December Amendment, which changed the coordinates in the Tech Box to correspond with the PSU Site.³⁸

In the Reply, PRMC does not contend that Reed lacks reasonable assurance for the PSU Site. Instead, PRMC argues that the language contained in Tech Box Exhibits 11 and 14 is not dispositive, because it first appeared in the January Amendment, which was filed after the close of the LPFM window,³⁹ and that the original application contains no such purported landmark or specific description of the proposed site.⁴⁰ PRMC further argues that current Commission policy strongly disfavors curative amendments to tech box errors, and that Reed has not made the necessary showing of good cause, as required by existing Commission precedent, to warrant an exception to that general rule.⁴¹

An applicant seeking a new broadcast facility must, in good faith, possess “reasonable assurance” of a transmitter site at the time it files its application.⁴² It is well established that the specification of a transmitter site in an application is an implied representation that the applicant has obtained reasonable assurance that the site will be available.⁴³ While some latitude is afforded such “reasonable assurance,”

³³ January Amendment at Section VI, Question 8a, 10.

³⁴ December Amendment at Section VI, Question 2, 8a, 10.

³⁵ See PRMC Objection at 2, Attachment 3.

³⁶ Reed Opposition at 1.

³⁷ January Amendment at Section VI, Question 8a, Exhibit 11, 14.

³⁸ See December Amendment at Section VI, Question 2.

³⁹ Reply at 2. Reed filed that amendment on January 27, 2014.

⁴⁰ *Id.* at 3.

⁴¹ *Id.* at 3-4.

⁴² *Les Seraphim and Mana’o Radio*, Memorandum Opinion and Order, 25 FCC Rcd 2785, 2787 (MB 2010).

⁴³ See, e.g., *William F. Wallace and Anne K. Wallace*, Memorandum Opinion and Order, 49 FCC 2d 1424, 1427 (1974) (“*Wallace*”) (“Some indication by the property owner that he is favorably disposed toward making an arrangement is necessary.”).

there must be, at a minimum, a “meeting of the minds resulting in some firm understanding as to the site’s availability.”⁴⁴ A mere possibility that the site will be available is not sufficient.⁴⁵

Reed does not dispute the claim that it lacks reasonable assurance of availability at the Wells Fargo Site identified in the January Amendment. Rather, Reed claims that the January Amendment contained erroneous coordinates, which, once corrected, identify the intended site for which it does have reasonable assurance of availability, the PSU Site, and that the Bureau has allowed applicants to correct such errors in the past.⁴⁶ In all such cases, the Bureau has required evidence in the application of the actual intended site.⁴⁷ Here, the description of the PSU dormitory building contained in Exhibits 11 and 14 does appear in the January Amendment, and therefore can cure the inaccuracy in the Tech Box coordinates contained in the same amendment. Although PRMC argues that the Exhibits did not appear in the original application, this is irrelevant because the original application’s coordinates do not identify the Wells Fargo Site, and PRMC has not argued that Reed lacked site availability at the Original Site. Thus, Reed has shown that the PSU Site – not the Wells Fargo Site – was the intended site in the January Amendment, and PRMC does not allege that Reed lacked site availability at the PSU Site. Therefore, we will deny the PRMC Objection.

Involuntary Time-sharing. The *July Public Notice* provided 90 days for the tentative selectees in LPFM MX Group 282 to reach a voluntary time-sharing agreement.⁴⁸ Because PRMC and Reed have not filed an acceptable agreement, we will grant the applications pursuant to the involuntary time-sharing procedures set forth in Section 73.872(d).⁴⁹

We first identify which of the remaining tied applicants has been local⁵⁰ for the longest uninterrupted period of time.⁵¹ PRMC has been established since 2011 and Reed since 1954.⁵² The Commission will thus,

⁴⁴ *Genesee Communications, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 3595 (1988). The applicant need not own the proposed site and may even work out the final details for a lease sometime in the future. The “reasonable assurance” standard is satisfied by “[s]ome clear indication from the landowner that he is amenable to entering into a future arrangement with the applicant for use of the property as its transmitter site, on terms to be negotiated” *Elijah Broadcasting Corp.*, Memorandum Opinion and Order, 5 FCC Rcd 5350, 5351 (1990).

⁴⁵ See *Wallace*, 49 FCC 2d at 1425. The Commission does not require (and has never required) NCE broadcast applicants to certify the availability of the transmitter site in its application procedures. See, e.g., *Carnegie-Mellon Student Government Corp.*, Hearing Designation Order, 7 FCC Rcd 3914, 3914 (MB 1992). Nonetheless, when an NCE applicant proposes a site, it must do so with reasonable assurance in good faith that the site will be available. See, e.g., *Midland Educational Broadcasting Foundation*, Hearing Designation Order, 4 FCC Rcd 5207, 5207 (MB 1989) (holding that applicant for an NCE FM station had reasonable assurance of site availability because it paid for a lease option on the proposed transmitter site).

⁴⁶ Reed Opposition at 3.

⁴⁷ See *People of Progress, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 15065, 15066-67 n.12 (2014); *Roman Catholic Diocese of Portland, Maine, New Hampshire Public Radio, Inc., University of Massachusetts, and Plus Charities*, Memorandum and Opinion Order, 29 FCC Rcd 15068, 15070 (2014).

⁴⁸ *July Public Notice*, 29 FCC Rcd at 8668. See also 47 C.F.R. § 73.872(c).

⁴⁹ 47 C.F.R. § 73.872(d). See also Instructions to FCC Form 318, Section IV at 9; *Sixth Report and Order*, 27 FCC Rcd at 15475.

⁵⁰ See 47 C.F.R. § 73.853(b).

⁵¹ *Id.* § 73.853(b); FCC Form 318, Section IV, Question 1 (requiring applicants to provide the date on which the applicant qualified as local).

subject to a complete regulatory review, simultaneously grant the applications, assigning an equal number of hours per week to operate the proposed station to the two remaining applicants in LPFM MX Group 282 by first assigning hours to Reed and then to PRMC.

To clarify, we are providing the applicants thirty (30) days to simultaneously and confidentially submit their preferred time slots. Each applicant must certify that it did not collude with any other applicant in submitting its preference. We will use the information provided by the applicants to assign time slots, per the Rules.⁵³ During this 30 day period, we will continue to entertain voluntary time-sharing arrangements. Applicants that are unable or unwilling to submit voluntary time-sharing arrangements and that instead choose to CONFIDENTIALLY submit their preferred time slots MUST select one of the time slots described in note 32, below. Any confidential requests for preferred time slots must be emailed to: gary.loehrs@fcc.gov and james.bradshaw@fcc.gov.⁵⁴ Failure to designate a preferred time slot, failure to designate a time slot provided by the Rules, or failure to certify under penalty of perjury that the applicant did not collude with another other applicant in submitting its preference, will result in the Bureau selecting a time slot for the applicant.

Action on the applications will be deferred for thirty days from the date of this letter to permit the applicants to respond. Any time-share agreements must be submitted in writing, as an amendment to one or more of the applications (with a copy to the email addresses listed below), signed by each applicant, and satisfy the following requirements: (1) the agreement must include all applicants captioned on this letter; (2) the proposal must specify the proposed hours of operation of each time-share proponent; (3) the proposal must not include simultaneous operation of the time-share proponents; and (4) each time-share proponent must propose to operate for at least 10 hours per week.⁵⁵

Interlocutory Appeals. Finally, we remind the applicants that a petition for reconsideration of this letter as it pertains to the PRMC Application or the Reed Application would be procedurally improper. Section 1.106(a)(1) of the Rules specifically prohibits petitions for reconsideration of interlocutory actions.⁵⁶ This letter takes no action on the PRMC Application or the Reed Application and is therefore an interlocutory action with regard to those applications.⁵⁷ Accordingly, while those applications remain pending, we will dismiss any petition for reconsideration filed with respect to this letter.⁵⁸

⁵² See PRMC Application at Section IV, Question 1 and Attachment 10; Reed Application at Section IV, Question 1 and Attachment 10.

⁵³ 47 C.F.R. § 73.872(d)(2). Here, where there are only two tied, grantable applications, the applicants must select between the following 12-hour time slots: 3:00 A.M. – 2:59 P.M., or 3:00 P.M. – 2:59 A.M. If there are conflicting preferences, the Bureau will apply the provisions of 47 C.F.R. § 73.872(d)(2).

⁵⁴ Any such email may not contain additional information that would violate the Commission's *ex parte* rules, *id.* §§ 1.1200 *et seq.*

⁵⁵ *Id.* § 73.872(c)(1)(i) – (iii). The agreement can only be modified if all of the parties submit a written agreement, signed by each party, to the Commission, Attention: Audio Division, prior to the change.

⁵⁶ *Id.* § 1.106(a)(1) (prohibiting petitions for reconsideration of interlocutory actions).

⁵⁷ 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 quotations and citations omitted).

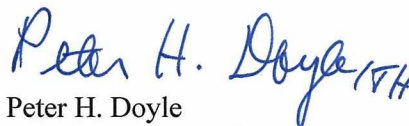
⁵⁸ See *Patrick J. Vaughn, Esq.*, Letter, 22 FCC Rcd 11165 (MB 2007) (dismissing petition for reconsideration filed against interlocutory order).

Conclusion. Accordingly, for the reasons set forth above, IT IS ORDERED, that the Petition to Deny filed by Portland State University on August 8, 2014, IS DENIED.

IT IS FURTHER ORDERED that the Informal Objection filed by Portland Russian Media Center on November 12, 2014, IS DENIED.

IT IS FURTHER ORDERED, that the application of Portland State University (BNPL-20131113BPL), for a new LPFM station at Portland, Oregon, IS DISMISSED.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" followed by a stylized monogram "PH".

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Portland State University
Portland Russian Media Center
The Reed Institute