

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Christian Charities Deliverance Church	)	
	)	
Application for a Construction Permit for a New LPFM Station at Sayville, New York,	)	File No. BNPL-20131030ABX
	)	Facility ID No. 194481
	)	
By Faith Ministries Association	)	
	)	
Application for a Construction Permit for a New LPFM Station at Sayville, New York,	)	File No. BNPL-20131114BUA
	)	Facility ID No. 197471
	)	
Rooftop Productions	)	
	)	
Application for a Construction Permit for a New LPFM Station at Seattle, Washington,	)	File No. BNPL-20131114AJR
	)	Facility ID No. 197136
	)	
and	)	
	)	
Massasoit Community College	)	
	)	
Application for a Construction Permit for a New LPFM Station at Brockton, Massachusetts	)	File No. BNPL-20131114BHW
	)	Facility ID No. 195512

**MEMORANDUM OPINION AND ORDER**

**Adopted: September 16, 2015**

**Released: September 16, 2015**

By the Commission:

1. By this *Memorandum Opinion and Order*, the Commission considers four Applications for Review that challenge the dismissal by the Media Bureau (“Bureau”) of four applications for new low power FM (“LPFM”) construction permits filed in the 2013 LPFM filing window.<sup>1</sup> All four applications were dismissed for violating the spacing requirements of Section 73.807 of the Commission’s Rules (“Rules”) and the applicants were not permitted to file curative amendments pursuant to Section 73.870(c) of the Rules.<sup>2</sup>

2. **Christian Charities Deliverance Church and By Faith Ministries Association.** The Bureau dismissed the application of Christian Charities Deliverance Church (“CCDC”) for a new LPFM station at Sayville, New York (“CCDC Application”) because it failed to meet the minimum spacing requirements of Section 73.807(a)(1) with regard to first-adjacent station WZMX(FM), Hartford,

<sup>1</sup> See *Media Bureau Announces Availability of the Revised FCC Form 318 and the Filing Procedures for October 15 – October 29, 2013 Low Power Filing Window*, Public Notice, 28 FCC Rcd 8854 (MB 2013) (“*LPFM Filing Public Notice*”).

<sup>2</sup> 47 C.F.R. §§ 73.807, 73.870(c). Pursuant to 47 C.F.R. § 73.870(c), any application submitted during an LPFM filing window that fails to meet the spacing requirements of Section 73.807 will be dismissed “without any opportunity to amend.”

Connecticut.<sup>3</sup> CCDC filed a Petition for Reconsideration on December 27, 2013; an amended Petition for Reconsideration on January 6, 2014; and a second amended Petition for Reconsideration on February 6, 2014 (“CCDC Petition”). It requested reinstatement of the CCDC Application at a new site pursuant to the Commission’s *Nunc Pro Tunc Public Notice*.<sup>4</sup> The Bureau denied the CCDC Petition, stating that the *Nunc Pro Tunc Public Notice* was inapplicable to Section 73.807 violations because Section 73.870(c) prohibits curative amendments of such spacing defects in LPFM construction permit applications.<sup>5</sup>

3. The Bureau dismissed the application of By Faith Ministries Association (“BFMA”), also for a new LPFM station at Sayville, New York (“BFMA Application”), because it failed to meet the minimum spacing requirements of Sections 73.807(a)(1) and 73.807(c) with regard to co-channel Station WSKP(FM), Poughkeepsie, New York, and first-adjacent channel translator station W283BA, Selden, New York.<sup>6</sup> BFMA filed a Petition for Reconsideration on February 6, 2014 (“BFMA Petition”), arguing that: 1) reinstatement of the BFMA Application at a new site was mandated by the *Nunc Pro Tunc Public Notice*; and 2) that the Commission’s LPFM Channel Finder had indicated that a fully-spaced channel was available at the original site.<sup>7</sup> The Bureau denied the BFMA Petition on the grounds that: 1) the *Nunc Pro Tunc Policy* was inapplicable to LPFM applicants because, as noted above, Section 73.870(c) prohibited such curative amendments in the LPFM service; and; 2) the Bureau had advised applicants that the Channel Finder did not guarantee that a channel would be available.<sup>8</sup>

4. CCDC and BFMA filed similar Applications for Review (“CCDC AFR” and “BFMA AFR,” respectively) in which they both argue that: 1) the Bureau should have reinstated their respective applications pursuant to the *Nunc Pro Tunc Public Notice*, and 2) the Bureau permitted two applicants from the 2013 LPFM filing window – University of Washington Bothell (“UWB”) and Florida Educational Broadcasting, Inc. (“FEB”) – to amend their applications to correct spacing violations, and the Bureau should afford CCDC and BFMA the same opportunity.<sup>9</sup>

5. We affirm the dismissal of the CCDC Application and the BFMA Application for the reasons stated in the *CCDC Reconsideration Decision* and the *BFMA Reconsideration Decision*. The 1984 *Nunc Pro Tunc Public Notice* is inapplicable in this context because it is superseded by Section 73.870(c), which was implemented in 2000, when the Commission adopted rules for the LPFM service.<sup>10</sup> The Commission has held that the Bureau may properly prohibit dismissed LPFM applicants that did not submit waiver requests of the spacing rules in the filing window from filing amendments to correct violations of Section 73.807.<sup>11</sup> Moreover, in the *LPFM Filing Public Notice*, the Commission specifically

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<sup>3</sup> *Christian Charities Deliverance Church*, Letter, Ref 1800 (MB Dec. 5, 2013).

<sup>4</sup> CCDC Petition at 2, citing *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR 2d 776 (1984) (“*Nunc Pro Tunc Public Notice*”).

<sup>5</sup> *Christian Charities Deliverance Church*, Letter, Ref 1800B3 (MB Sep. 17, 2014) (“*CCDC Reconsideration Decision*”).

<sup>6</sup> *By Faith Ministries Association*, Letter, Ref 1800B3 (MB Jan. 2, 2014).

<sup>7</sup> BFMA Petition at 1-2.

<sup>8</sup> *By Faith Ministries Association*, Letter, Ref 1800B3-ATS (MB Sep. 23, 2014) (“*BFMA Reconsideration Decision*”).

<sup>9</sup> CCDC AFR at 3, BFMA AFR at 2-3, citing *University of Washington Bothell* (File No. BNPL-20131114BFU) (“UWB Application”) and *Florida Educational Broadcasting, Inc.* (File No. BMJPL-20131023AKY) (“FEB Application”).

<sup>10</sup> See *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2302 (2002) (“*Report and Order*”).

<sup>11</sup> See *People of Progress*, Memorandum Opinion and Order, 29 FCC Rcd 15065 (2014); *Clifford Brown*, Memorandum Opinion and Order, 29 FCC Rcd 13258 (2014).

noted that pursuant to Section 73.870(c), applicants would not be provided an opportunity to cure a Section 73.807 deficiency.<sup>12</sup>

6. Additionally, we reject CCDC's and BFMA's argument that the Bureau should permit corrective amendments to their applications because the staff allowed amendments to the UWB Application and FEB Application to correct technical errors. As discussed below, both cases involved materially different facts and are thus inapposite.<sup>13</sup>

7. The Bureau dismissed the UWB Application because the second-adjacent channel waiver request included in the application as originally filed was defective.<sup>14</sup> However, because the UWB Application acknowledged the second-adjacent channel short-spacing and contained a waiver request,<sup>15</sup> it was properly filed in accordance with the procedures for the LPFM filing window and the Bureau permitted the applicant to supplement its waiver request. Allowing a defective spacing waiver request to be cured, while not allowing a curative amendment of an application that lacked a spacing waiver request as of the close of the filing window, comports with Section 73.3566(a) of the Rules. That rule provides for the dismissal of applications that do not comply with the Rules "unless accompanied by an appropriate request for waiver."<sup>16</sup> The UWB Application, as filed during the filing window, included an appropriate (albeit defective, until later amended) waiver request, whereas the CCDC Application and the BFMA Application did not.<sup>17</sup>

8. An amendment to correct a timely submitted but defective second-adjacent channel waiver request is permissible under the Rules. The prohibition on curative amendments in Section 73.870(c) was codified 10 years before the second-adjacent channel waiver process authorized by the LCRA and implemented by the *Sixth Report and Order*. Section 73.870(c) was promulgated to provide for efficiency in the processing of LPFM applications.<sup>18</sup> However, a strict reading of Section 73.870(c)

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<sup>12</sup> *LPFM Filing Public Notice*, 28 FCC Rcd at 8854-55 ("Consistent with established processing rules, an LPFM application that fails to protect [existing] authorizations, applications, and allotments will be dismissed with no opportunity to correct the deficiency," citing *Low Power FM Filing Window*, Public Notice, 15 FCC Rcd 24817, 24818 (MB 2000)). See also FCC Form 318, Section VI, Question 8(a).

<sup>13</sup> In any event, these cases are Bureau actions that are not binding on the Commission. See *Comcast Corp. v. FCC*, 526 F.3d 763, 769-70 (D.C. Cir. 2008) ("[A]n agency is not bound by the actions of its staff if the agency has not endorsed those actions.").

<sup>14</sup> See *University of Washington Bothell*, Letter, 1800B3 (MB Feb. 20, 2014). Section 3(b)(2)(A) of Local Community Radio Act of 2010 ("LCRA") granted the Commission the authority to waive Section 73.807 to allow second-adjacent channel short-spacings that are predicted not to result in interference to any authorized radio service. See Pub. L. No. 111-371, 124 Stat. 4072 (2011). See also *Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15425-26 (2012) (implementing Section 3(b)(2)(A) of the LCRA) ("*Sixth Report and Order*").

<sup>15</sup> UWB Application, Section VI, Question 8 and Attachment 11 (certifying that proposal did not comply with Section 73.807 and requesting waiver of second-adjacent channel spacing rule).

<sup>16</sup> 47 C.F.R. § 73.3566(a). This provision applies to LPFM applications pursuant to 47 C.F.R. § 73.801.

<sup>17</sup> Section VI, Question 8 of FCC Form 318 states that "An applicant seeking a waiver of second-adjacent channel minimum distance separation requirements must submit an exhibit demonstrating that the proposed station operations will not result in interference to any authorized radio service." Under Section 73.3566(a), an appropriate request for waiver "shall show the nature of the waiver or exception desired and shall set forth the reasons in support thereof." 47 C.F.R. § 73.3566(a). The UWB Application met this standard, and was accepted for filing so that application, including the waiver request, could be reviewed on its merits. That review revealed the deficiency in the waiver request that was then cured through the amendment to the UWB Application. The CCDC Application and the BFMA Application lacked any such waiver request.

<sup>18</sup> See *Report and Order*, 15 FCC Rcd at 2257 ("In accordance with our window filing procedure for commercial broadcast applications, after the LPFM window closes, the staff initially will screen applications for the purpose of identifying those that are mutually exclusive and those that fail to protect existing broadcast stations in accordance

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would result in the dismissal of any application requesting a second-adjacent channel waiver because such an application does not conform to the spacing requirements of Section 73.807.<sup>19</sup> We believe this rule must be applied in conjunction with Section 73.3566(a), which allows applicants with non-compliant applications to avoid outright dismissal by requesting an appropriate waiver, as UWB did.<sup>20</sup> Furthermore, Congress intended the second-adjacent channel waiver process to be flexible. Rather than providing a strict set of requirements for requesting second-adjacent channel waivers, the LCRA provides that such waivers may “[use] methods of predicting interference taking into account all relevant factors.”<sup>21</sup> The Commission further rejected suggestions that would have made the second-adjacent channel waiver process more stringent than that contemplated by the LCRA.<sup>22</sup> The Bureau’s interpretation of Sections 73.870(c) and 73.3566(a) as allowing the acceptance and processing of LPFM applications filed with appropriate second-adjacent channel spacing waiver requests is consistent with the flexible waiver process established by LCRA. Thus, although Section 73.870(c) prohibits an applicant that has not requested a waiver of Section 73.807 spacing rules from filing a corrective amendment,<sup>23</sup> it is inapplicable to cases where an applicant has properly filed such a waiver request during the filing window. Rather, the *Nunc Pro Tunc Public Notice* – which permits a single curative amendment – and Section 73.807(e) – which codified the second-adjacent channel waiver process – govern in the cases of timely but defective second-adjacent channel waiver requests.<sup>24</sup>

9. In contrast, the CCDC Application and the BFMA Application failed to comply with the spacing requirements of Section 73.807 and did not acknowledge these short-spacings.<sup>25</sup> Thus, while the

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with the standards adopted herein. Applications that fail to properly protect these existing stations will be dismissed without the applicant being afforded an opportunity to amend. *This will increase the speed and efficiency with which LPFM applications can be processed by the staff.*”) (emphasis added). See also *Mary V. Harris Foundation v. FCC*, 776 F.3d 21, 27-28 (D.C. Cir. 2015) (upholding Commission decision regarding award of a noncommercial educational (“NCE”) FM construction permit in case in which Media Bureau had denied waiver of rule requiring showing of NCE service to 10% underserved area, to applicant proposing a 9.46% underserved area where the bright-line threshold had been adopted to provide easy administration of NCE selection preferences).

<sup>19</sup> 47 C.F.R. § 73.870(c) (“Applications . . . that fail to meet the § 73.807 minimum distance separations with respect to all applications and facilities in existence as the date of the pertinent public notice in paragraph (b) of this section other than to LPFM station facilities proposed in applications filed in the same window, will be dismissed without any opportunity to amend such applications.”).

<sup>20</sup> See, e.g., *NCE MX Group 503*, Letter, 26 FCC Rcd 6155, 6161-62 (MB 2011) (application that was defective but accompanied by waiver request could be amended and reinstated pursuant to Section 73.3566(a) and *Nunc Pro Tunc Public Notice*).

<sup>21</sup> See LCRA § 3(b)(2)(A) (“the Federal Communications Commission may grant a waiver of the second-adjacent channel distance separation requirement to low-power FM stations that establish, using methods of predicting interference taking into account all relevant factors, including terrain-sensitive propagation models, that *their* proposed operations will not result in interference to any authorized radio service”) (emphasis added); *Sixth Report and Order*, 27 FCC Rcd at 15423 (implementing LCRA § 3(b)(2)(A)).

<sup>22</sup> *Sixth Report and Order*, 27 FCC Rcd at 15426-27 ¶¶ 74-76.

<sup>23</sup> See *People of Progress*, 29 FCC Rcd at 15065; *Clifford Brown*, Memorandum Opinion and Order, 29 FCC Rcd at 13258.

<sup>24</sup> See n.20 *supra*. Section 73.807(e) does not reference Section 73.870(c) and does not prohibit the Bureau from allowing applicants the opportunity to revise defective second-adjacent channel waiver request. See *Sixth Report and Order*, 27 FCC Rcd at 15428-30 (guidelines for filing a second-adjacent channel waiver request).

<sup>25</sup> See CCDC Application and BFMA Application at Section VI, Question 8 (certifying that applications complied with Section 73.807 spacing requirements). Neither application requested a waiver of Section 73.807 nor did they include a technical exhibit that addressed spacing issues. Additionally, even if the applications had acknowledged these short-spacings, the *Sixth Report and Order* noted that the LCRA specifically prohibits a waiver of co-adjacent and first-adjacent channel spacing requirements. See *Sixth Report and Order*, 27 FCC Rcd at 15430 ¶80 (“We

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Bureau was permitted by the Rules to allow a corrective amendment to the second-adjacent channel waiver request filed with the UWB Application, it was not permitted to allow such an amendment to the CCDC Application and the BFMA Application, which were defective under the terms of Sections 73.807(c) and 73.3566(a) of the Rules.

10. The case of the FEB Application is likewise distinguishable. That application was dismissed for a spacing violation. However, the applicant subsequently demonstrated that it had made a typographical error in entering its desired channel in the application Tech Box by showing that the engineering exhibit attached to the original application contained the correct desired channel. Relying on the channel identified in the engineering exhibit, there was no spacing violation. The Commission has held that LPFM applicants from the 2013 filing window may correct typographical errors in their Tech Box if there is definitive corroborating evidence in the original application providing correct data.<sup>26</sup> Here, there was no such evidence that the original applications of CCDC or BFMA complied with our rules. Accordingly, we deny the CCDC AFR and the BFMA AFR.<sup>27</sup>

11. **Rooftop Productions.** The Bureau dismissed the application of Rooftop Productions (“Rooftop”) for a new LPFM station at Seattle, Washington (“Rooftop Application”) because it failed to meet the minimum spacing requirements of Sections 73.807(a)(1) and 73.807(c) with regard to first-adjacent channel Station KMIH(FM), Mercer Island, Washington; co-channel translator station K206CJ, Issaquah, Washington; and second-adjacent channel station KNHC(FM), Seattle, Washington, for which Rooftop did not submit a second-adjacent channel waiver request.<sup>28</sup> Rooftop filed a Petition for Reconsideration on January 2, 2014 (“Rooftop Petition”) and argued that it had entered incorrect coordinates in Section VI, Question 2 of the Rooftop Application, but that the antenna identified by its Antenna Structure Registration (“ASR”) Number in Section VI, Question 3, corresponded to a compliant site.<sup>29</sup> Rooftop also argued its engineer inadvertently failed to submit a second-adjacent channel waiver request at the time the Rooftop Application was filed but that it should be allowed to amend the Rooftop Application to request such a waiver.<sup>30</sup> The Bureau denied reconsideration because it found that, even using the ASR site, the Rooftop Application would still have violated Section 73.807 with regard to

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remind potential LPFM applicants that the LCRA permits the Commission to grant waivers only of second-adjacent, and not co- and first-adjacent, spacing requirements.”).

<sup>26</sup> *People of Progress*, 29 FCC Rcd at 15065 n.12. The Commission simultaneously clarified and revised this policy for future applications, stating that the Commission will rely solely on Tech Box data, and not allow post-filing window corrections to such data. See *Roman Catholic Diocese of Portland*, Memorandum Opinion and Order, 29 FCC Rcd 15068 (2014). CCDC and BFMA did not argue that the short-spaced specifications in their respective applications were due to typographical errors, or that another part of their applications specified an intended, rule-compliant proposal.

<sup>27</sup> BFMA also argues – for the first time on review – that the *BFMA Dismissal Letter* incorrectly stated that the required spacing with regard to W238BA was 15 km instead of 13 km. BFMA AFR at 2. Section 5(c)(5) of the Act and Section 1.115(c) of the Rules bar applications for review that rely “on questions of fact or law upon which the [designated authority issuing the decision] has been afforded no opportunity to pass.” See 47 U.S.C. § 155(c)(5); 47 C.F.R. § 1.115(c); *BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1184 (D.C. Cir. 2003) (upholding Commission’s order dismissing arguments under Section 1.115(c) because that rule does not allow the Commission to grant an application for review if it relies upon arguments that were not presented below). BMFA did not present this argument to the Bureau in the BFMA Petition. Accordingly, we will dismiss this part of the BFMA AFR pursuant to Section 1.115(c). Moreover, even if the BFMA Application met the requirement spacing with regard to W283BA, it was still short-spaced to WSKP and thus was correctly dismissed on that basis.

<sup>28</sup> See *Rooftop Productions*, Letter, Ref 1800B3 (MB Dec. 4, 2013) (“*Rooftop Dismissal Letter*”).

<sup>29</sup> Rooftop Petition at 1-2.

<sup>30</sup> *Id.* at 2.



KMIH, K206CJ, and KNCH, and the latter could not be cured by a second-adjacent channel waiver request submitted after the close of the filing window.<sup>31</sup>

12. In its Application for Review (“Rooftop AFR”), Rooftop argues, for the first time on review, that: 1) the *Rooftop Reconsideration Decision* incorrectly calculated the required spacing for K206CJ because the Rooftop Application was not required to protect K206CJ’s August 8, 2013, modification application;<sup>32</sup> 2) the Commission’s LPFM Channel Finder had indicated the Rooftop Application, as originally filed, satisfied the spacing requirements for KMIH; and 3) prohibiting LPFM applicants from filing post-window second-adjacent channel waiver requests to correct Section 73.807 defects, but allowing applicants in other broadcast services to file similar curative amendments, contravenes Section 307(b) of the Communications Act of 1934, as amended (“Act”), which requires that the Commission make a fair, efficient and equitable distribution of licenses.<sup>33</sup> Rooftop never presented any of these arguments to the Bureau and we will dismiss the Rooftop AFR pursuant to Section 1.115(c).<sup>34</sup>

13. **Massasoit Community College.** The Bureau dismissed the application of Massasoit Community College (“MCC”) for a new LPFM station at Brockton, Massachusetts (“MCC Application”), because it failed to comply with the minimum spacing requirements of Section 73.807(a)(2) with regard to third-adjacent channel Station WATD-FM, Marshfield, Massachusetts, licensed to Marshfield Broadcasting Co., Inc. (“MBCI”) which broadcasts a radio reading service (“RRS”) operated by Talking Information Network, Inc. (“TIN”) via a subcarrier frequency.<sup>35</sup> MCC filed a Petition for Reconsideration on January 27, 2014 (“MCC Petition”), requesting reinstatement of the MCC Application and – for the first time – a waiver of Section 73.807(a)(2), as well as a waiver of Section 73.870(c) to allow it to belatedly request a spacing waiver. MCC stated that a waiver was in the public interest because its proposed LPFM station would serve an area unable to receive the radio reading service from WATD-FM, and that MBCI and TIN supported MCC’s waiver request.<sup>36</sup> The Bureau

<sup>31</sup> *Rooftop Productions*, Letter, Ref 1800B3-ATS (MB Sep. 17, 2014) (“*Rooftop Reconsideration Decision*”).

<sup>32</sup> Rooftop AFR at 1, citing *LPFM Filing Public Notice*, 28 FCC Rcd at 8854 (“LPFM applications also must protect pending broadcast applications in these services that were filed prior to the date of this Notice.”). See also File No. BPFT-20130808AAG (“K206CJ Modification Application”).

<sup>33</sup> Rooftop AFR at 1, citing 47 U.S.C. § 307(b).

<sup>34</sup> See n. 27 *supra*. As a separate and independent ground for affirming the Bureau’s dismissal of the Rooftop application, we also find Rooftop’s arguments without merit. The *Rooftop Reconsideration Decision* acknowledged that the *Rooftop Dismissal Letter* incorrectly stated that the required spacing to KMIH was 13 kilometers, when the actual required spacing was 56 kilometers because KMIH is a grandfathered superpowered Reserved Band Class D station. See *Rooftop Reconsideration Decision* at 2 n.8. Additionally, the Rooftop Application was determined to be short-spaced to the licensed facility for K206CJ (File No. BLFT-20030320ACJ) and not to the K206CJ Modification Application. Moreover, the *LPFM Filing Public Notice* warned applicants that the LPFM Channel Finder was only a tool to help locate available LPFM channels, and that no guarantee was made that a particular channel would be available. See *LPFM Filing Public Notice*, 28 FCC Rcd at 8856 (MB 2013) (“Please note that the LPFM Channel Finder tool is intended solely to assist LPFM applicants in tentatively identifying available FM channels. There is no guarantee that channels represented as ‘available’ will be technically acceptable at the time an application is filed. An applicant should consider using a consulting engineer or a party familiar with the LPFM technical rules to determine the technical acceptability of its application.”). The website for the LPFM Channel Finder contained a similar notice. Finally, the Commission has repeatedly rejected the argument that Section 307(b) mandates uniform processing rules for all radio services and affirmed the Bureau’s dismissal – without opportunity to amend – LPFM applications that violated second-adjacent channel spacing rules and did not include a second-adjacent channel waiver request with the application. See, e.g., *People of Progress*, 29 FCC Rcd at 15065 (2014); *Clifford Brown*, 29 FCC Rcd at 13258 (2014).

<sup>35</sup> *Massasoit Community College*, Letter, Ref 1800B3 (MB Dec. 20, 2013). See also 47 C.F.R. § 73.807(a)(2) (spacing requirements for stations offering radio reading services).

<sup>36</sup> MCC Petition at 6.

denied the Petition and waiver request on the grounds that: 1) the Bureau was statutorily prohibited by the LCRA from waiving Section 73.807(a)(2),<sup>37</sup> and 2) MCC had failed to show why a waiver of Section 73.870(c) was warranted where MCC had not requested a waiver of Section 73.807(a)(2) at the time it filed the MCC Application and had failed to explain in the MCC Petition why it had not done so at that time.<sup>38</sup>

14. MCC filed an Application for Review (“MCC AFR”) in which it again argues that: 1) the Bureau misconstrued Section 4 of the LCRA,<sup>39</sup> and 2) reinstatement of the MCC Application and grant of its waiver request is in the public interest.<sup>40</sup> MCC also argues – for the first time on review – that the process for determining compliance with Section 73.807(a)(2) is flawed because the list of stations providing RSS referenced in the rule was compiled in 2000 and has not been revised.<sup>41</sup>

15. We affirm the *MCC Reconsideration Decision* for the reasons stated therein and dismiss the MCC AFR to the extent it relies on new arguments not raised before.<sup>42</sup> The Bureau correctly determined that Section 4 of the LCRA bars the Commission from waiving Section 73.807(a)(2) with regard to third-adjacent channel stations. Additionally, even if the Commission had such authority, a waiver would not be warranted because MCC did not request it at the time of filing and has yet to explain why it did not do so at that time, much less demonstrate good cause for waiver of Section 73.870(c).

16. **Ordering Clauses.** Accordingly, IT IS ORDERED that each decision involving an Application for Review in this *Memorandum Opinion and Order* shall be deemed a distinct and separate decision for purposes of petitions for reconsideration, review on the Commission’s own motion, and appeals.<sup>43</sup> If any decision in this *Memorandum Opinion and Order* is declared invalid for any reason, the remaining portions shall be severable from the invalid part and SHALL REMAIN in full force and effect to the fullest extent permitted by law.

17. IT IS FURTHER ORDERED that the Applications for Review filed by Christian Charities Deliverance Church on October 8, 2014, IS DENIED, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, and Section 1.115(g) of the Commission’s Rules.<sup>44</sup>

18. IT IS FURTHER ORDERED, that the Application for Review filed by By Faith Ministries Association on October 14, 2014, (1) IS DISMISSED, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, and Section 1.115(c) of the Commission’s Rules, to the extent that it relies on questions of fact or law not previously presented to the Bureau; and (2) otherwise IS DENIED, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, and Section 1.115(g) of the Commission’s Rules.<sup>45</sup>

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<sup>37</sup> *Massasoit Community College*, Letter, Ref 1800B3-ATS (MB Nov. 24, 2014) (“*MCC Reconsideration Decision*”).

<sup>38</sup> *Id.* at n.15.

<sup>39</sup> MCC AFR at 5-6.

<sup>40</sup> *Id.* at 6-8, citing *Creation of a Low Power Radio Service*, Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 19208, 19273-79 (2000).

<sup>41</sup> *Id.* at 8-9.

<sup>42</sup> See n.27 *supra*.

<sup>43</sup> See 5 U.S.C. §§ 702, 704, 706; 47 U.S.C. §§ 309(d), 402(b), 405; 47 C.F.R. §§ 1.106-08, 73.7004. In cases that involve separate applications but present common issues, the petitions or appeals may be filed jointly or may be consolidated at the discretion of the Commission or a reviewing court. See, e.g., FED. R. APP. P. 3(b).

<sup>44</sup> 47 U.S.C. § 155(c)(5); 47 C.F.R. § 1.115(g).

<sup>45</sup> *Id.*

19. IT IS FURTHER ORDERED that the Application for Review filed by Rooftop Productions on October 17, 2014: (1) IS DISMISSED, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, and Section 1.115(c) of the Commission's Rules, to the extent that it relies on questions of fact or law not previously presented to the Bureau.<sup>46</sup>

20. IT IS FURTHER ORDERED that the Application for Review filed by Massasoit Community College on December 29, 2014: (1) IS DISMISSED, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, and Section 1.115(c) of the Commission's Rules, to the extent that it relies on questions of fact or law not previously presented to the Bureau; and (2) otherwise IS DENIED, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, and Section 1.115(g) of the Commission's Rules.<sup>47</sup>

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*