



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

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***In Reply Refer to:*  
1800B3-CEG**

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In re: **WGHW(FM), Lockwoods Folly Town, NC**  
Facility ID No. 89986  
File Nos. BLED-20150526ACF  
BMPED-20150529AAB

**WZNB(FM), New Bern, NC**  
Facility ID No. 94050  
File No. BPED-20150601AFB

**Petition for Reconsideration**

Dear Counsel and Applicant:

We have before us a petition for reconsideration (Petition) filed by Craven Community College (Craven) on May 16, 2016, seeking reconsideration of a memorandum opinion and order and notice of apparent liability issued by the Audio Division, Media Bureau (Bureau) on April 15, 2016.<sup>1</sup> The *MO&O and NAL, inter alia*: (1) upheld the grant of a modification application filed on May 29, 2015, by Church Planters of America (CPA), licensee of noncommercial educational station WGHW(FM), Lockwoods Folly Town, North Carolina (WGHW) (May 29 Modification Application)<sup>2</sup>; (2) denied an informal objection, construed as a petition for reconsideration, filed by Craven on May 29, 2015, against the May 29 Modification Application (May 29 Petition); and (3) denied a petition for reconsideration filed by Craven on August 7, 2015, seeking reconsideration of the July 7, 2015, dismissal of the above-referenced modification application filed by Craven on June 1, 2015 (Dismissal Petition).<sup>3</sup> The Bureau also issued a Notice of Apparent Liability to CPA for constructing WGHW's antenna facilities at variance from its

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<sup>1</sup> *Church Planters of America*, Memorandum Opinion and Order and Notice of Apparent Liability, 31 FCC Rcd 3607 (MB 2016) (*MO&O and NAL*). No responsive pleadings were filed.

<sup>2</sup> BMPED-20150529AAB (May 29 Modification Application); *Broadcast Actions*, Public Notice, Report No. 48502 (June 3, 2015).

<sup>3</sup> File No. BPED-20150601AFB (Craven Modification Application).

authorization, in violation of Section 319(a) of the Communications Act of 1934 (Act), as amended, and Section 73.1690(c)(1) of the Commission's Rules (Rules).<sup>4</sup> For the reasons set forth below, we dismiss the Petition.

**Background.** The following is a summary of the facts set out in greater detail in the *MO&O and NAL*. On April 2, 2015, CPA applied for a minor modification to its construction permit (April 2 Modification Application), which was granted on April 20, 2015.<sup>5</sup> On May 26, 2015, CPA filed an application for a license to cover the facilities proposed in the April 2 Modification Application (May 26 License Application).<sup>6</sup> At the time the May 26 License Application was filed, there was a freeze on the filing of minor modification applications.<sup>7</sup> In the May 26 License Application, CPA disclosed that “[d]uring construction, it was discovered that the proposed antenna array would need to be moved up approximately 20 feet to allow enough space between existing antennas.”<sup>8</sup> CPA further stated that it would file a construction permit application reflecting this new location as soon as the freeze was over.<sup>9</sup> The May 26 License Application was not granted, and on June 9, 2015, it was dismissed.

On May 29, 2015—the day after the freeze ended and the day before the CPA Permit expired—the following were filed: (1) CPA's May 29 Modification Application; (2) Craven's May 29 Petition; and (3) CPA's application for a license to cover the construction permit resulting from grant of the May 29 Modification Application.<sup>10</sup> The May 29 Modification Application was granted the same day.

In its Petition, Craven contends that the Bureau was required to issue a waiver in order to: (1) expedite grant of the May 29 Modification Application;<sup>11</sup> (2) grant the May 29 Modification Application despite “incorrect, and arguably misrepresentative” certifications in the May 26 License Application;<sup>12</sup> (3) grant the May 29 Modification Application despite CPA's failure to respond to two of the questions on the application form;<sup>13</sup> and (4) grant the May 29 Modification Application despite CPA's alleged failure to include a potential obstruction in the antenna configuration.<sup>14</sup> Craven further argues that the Bureau

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<sup>4</sup> 47 U.S.C. § 319(a); 47 CFR § 73.1690(c)(1).

<sup>5</sup> File No. BNPED-20150402AAT; *Broadcast Actions*, Public Notice, Report No. 48474 (April 23, 2015).

<sup>6</sup> File No. BLED-20150526ACF.

<sup>7</sup> See *Auction 98 Freeze Announced for FM Minor Change Applications*, Public Notice, 30 FCC Rcd 3616 (MB 2015) (establishing a freeze on minor change applications May 18–28, 2015).

<sup>8</sup> May 26 License Application, Exh. 8.

<sup>9</sup> *Id.*

<sup>10</sup> File No. BLED-20150529ADI (May 29 License Application). On June 1, 2015, Craven filed an informal objection (License Informal Objection) to the May 29 License Application. The License Informal Objection was denied and the May 29 License Application granted in the *MO&O and NAL*. In its Petition, Craven does not seek reconsideration of the grant of the May 29 License Application, and, in any case, its arguments touching upon the May 29 License Application are impermissibly repetitious of the License Informal Objection.

<sup>11</sup> Petition at 7-9, 16-18; see also 47 CFR § 1.3 (“The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”).

<sup>12</sup> Petition at 2, 16-18.

<sup>13</sup> Petition at 5, 16-18.

<sup>14</sup> Petition at 3, 16-18.

erred by not using the base forfeiture provided in Section 1.80 for “[c]onstruction and/or operation without an instrument of authorization for the service.”<sup>15</sup> Finally, Craven objects to the Bureau’s forfeiture adjustment criteria,<sup>16</sup> claiming that, instead of considering the minimal change to WGHW’s signal contour caused by the antenna height variance, the Bureau should have focused instead on the fact that the height variance was three times the allowable limit (two meters) for increasing antenna height without prior Commission authorization.<sup>17</sup> Craven also discounts the effect of the Auction 98 freeze, arguing that CPA’s own delay caused its last-minute need to obtain approval for its modified facilities.<sup>18</sup>

**Discussion.** Reconsideration is warranted only if the petitioner shows an error of fact or law in the Commission’s original order, or raises additional facts not known or existing at the time of the petitioner’s last opportunity to present such matters.<sup>19</sup> It is axiomatic that reconsideration will not be granted for the purpose of debating matters on which the Commission has already deliberated and spoken.<sup>20</sup> A petition for reconsideration of an order which has been previously denied on reconsideration may be dismissed by the staff as repetitious.<sup>21</sup> The Commission’s Rules prohibit petitions for reconsideration of interlocutory orders.<sup>22</sup> In the *MO&O and NAL*, the Bureau proposed rather than imposed a forfeiture. That action was interlocutory and therefore not subject to a petition for reconsideration.<sup>23</sup>

Craven’s objections regarding expedited processing, alleged technical deficiencies, and failure to respond to application form questions were fully considered in the *MO&O and NAL* and therefore are also impermissibly raised on reconsideration.<sup>24</sup> Although Craven did not previously make the specific argument that a waiver was required to grant the May 29 Modification Application, this argument could have been raised earlier and in any case is meritless. As Craven acknowledges, Commission staff have

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<sup>15</sup> Petition at 13 (citing *Saver Media, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 29 FCC Rcd 9345, para. 11 (MB 2014)).

<sup>16</sup> See *MO&O and NAL* at 3611-12 (adjusting the forfeiture downward based on: (1) the very slight increase in the station’s predicted signal contour caused by the unauthorized antenna height; (2) the lack of compounding factors such as the creation of air hazards or actual objectionable interference; (3) the short duration of the violation; (4) CPA’s voluntary disclosure of the violation to the Commission; and (5) the delay caused by the Auction 98 minor change freeze).

<sup>17</sup> Petition at 13-14 (citing 47 CFR § 73.1690(c)).

<sup>18</sup> Petition at 14-15.

<sup>19</sup> 47 CFR § 1.106(c) and (d); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964) (*WWIZ*).

<sup>20</sup> See, e.g., *WWIZ*, 37 FCC 685 at 686; *Shaw Communications*, Letter Order, 27 FCC Rcd 6995, 6996, para. 5 (MB 2012).

<sup>21</sup> 47 CFR § 1.106(k)(3); see also, e.g., *Great Lakes Broadcast Academy, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 11655 (2004) (dismissing second reconsideration petition as repetitious). Accordingly, to the extent that the Petition requests reinstatement of the Craven Modification Application, it is dismissed as repetitious of the Dismissal Petition.

<sup>22</sup> 47 CFR § 1.106(a)(1).

<sup>23</sup> *Id.*; see also, e.g., *South Seas Broadcasting, Inc.*, Forfeiture Order, 27 FCC Rcd 4151, 4152 n.7 (MB 2012). In addition, the Petition cannot be considered a response to the notice of apparent liability, as Craven is not the party to whom the notice is directed. See 47 CFR § 1.80(f)(3).

<sup>24</sup> *MO&O and NAL* at 3611.

substantial discretion to manage their workload, including prioritizing items for processing.<sup>25</sup> In any case, the waiver standard set out in *NetworkIP* and similar cases expressly applies only to agency rules and regulations, not practices and procedures.<sup>26</sup> Not only are processing practices not subject to the waiver requirements, but with one exception (acknowledged in the *MO&O and NAL*<sup>27</sup>), the staff's grant of the May 29 Modification Application was not inconsistent with agency practice or processing guidelines. Therefore, we find Craven's waiver argument to be without merit.

Regarding CPA's alleged misrepresentations in the May 26 License Application, Craven does not cite, and we are not aware of, any cases in which the Commission has sanctioned an applicant for misrepresentation despite the applicant's full disclosure of all relevant information within that same application, and we find that the Bureau properly declined to do so here.

**Conclusions/Actions.** For the reasons set forth above, IT IS ORDERED that the petition for reconsideration filed by Craven Community College on May 16, 2016, IS DISMISSED.

Sincerely,



Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>25</sup> Petition at 6-7.

<sup>26</sup> *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008) (quoting *Reuters Ltd. v. FCC*, 781 F.2d 946, 950-51 (D.C. Cir. 1986) for the principles that an agency "must adhere to its own **rules and regulations**," and that "[a]d hoc departures from those **rules**, even to achieve laudable aims, cannot be sanctioned, for therein lie the seeds of destruction of the orderliness and predictability which are the hallmarks of lawful administrative action.") (emphasis added).

<sup>27</sup> *MO&O and NAL* at 3611 (acknowledging staff error in granting the May 29 Modification Application without all required certifications).