FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
December 5, 2007

In Reply Refer To:
1800B-IB

Keith J. Leitch, Engineer
One Ministries, Inc.
3178 Calistoga Road
Santa Rosa, CA 95404

Julie Akins, Executive Director
Petaluma Community Access
333 Casa Grande Rd.
Petaluma, CA 94954

In re: KQSL-LP, Penngrove, CA
Facility No. 123918
File Nos. BNPL-20000605AAY
BMPL-20070924AAX

KPCA-LP, Petaluma, CA
Facility No. 124742
File No. BNPL-20000608ADE

Dear Mr. Leitch and Ms. Akins:

We have under consideration the unopposed September 27, 2007 request of One Ministries, Inc. ("OMI"), as supplemented on October 9, 2007, for additional time to complete construction of KQSL-LP. We also have before us a similar October 1, 2007 request from Petaluma Community Access ("PCA"), which has a time share agreement with OMI. For the reasons below, we are denying your requests.

The construction period for low power FM ("LPFM") stations is 18-months.[1] The Commission granted the subject construction permits on August 25, 2004, pursuant to a voluntary, three-way time share between OMI's predecessor,[2] PCA, and a third entity Sonoma State University ("SSU") (collectively the "Partners"). The stations were to complete construction by February 25, 2006. In March 2005, the Commission released a Further Notice of Proposed Rulemaking seeking comment on the possibility of granting LPFM stations construction periods of three years rather than 18 months.[3] The Commission recognized, however, that some LPFM construction permits would expire while it is considering this possibility. Therefore, the Commission adopted an interim waiver policy to increase the likelihood that such permittees will complete construction and commence operation. Under this interim policy, the staff had authority to waive the LPFM construction period for applicants that cannot complete construction within the allotted 18 months but reasonably expect to complete construction within an additional 18 months.[4]

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[1] 47 C.F.R. Section 73.3598(a).

[2] The Commission approved the assignment of the construction permit from Redeemer Presbyterian Church to OMI in August 2005.

[3] *See Creation of a Low Power Radio Service*, 20 FCC Rcd 6763 (2005).

[4] On November 27, 2007, the Commission adopted a series of wide-ranging rule changes to strengthen and promote the long-term viability of the LPFM service, and the localism and diversity goals provided by this service. The

The Partners requested additional time in early 2006 under the interim policy, those requests were granted, and the construction deadline for each station was revised to August 25, 2007. At the time of the request under the interim policy, OMI and PCA indicated that they had all necessary equipment but were waiting for SSU, which had experienced storm damage to its campus. In July 2007, the Partners requested yet additional time. They stated that all stations would share the same studio and transmitter site, the power company had not yet brought electricity to the site but was expected to do so shortly, and that they had the necessary equipment to construct as soon as power was established. We granted each of the Partners a waiver to provide an additional month to complete construction, bringing the construction deadline to September 25, 2007. Shortly thereafter, OMI and PCA filed the instant requests for yet additional time due to a breakdown of the time share arrangement. OMI and PCA report that, one week before the revised construction deadline, SSU unexpectedly decided that it no longer wished to construct or operate an LPFM station, and withdrew from the time share agreement. SSU, in an e-mail to the staff with copies to OMI and PCA, has confirmed its September 17, 2007 withdrawal, which SSU attributed to contractual, lease, and insurance issues among the Partners that could not be resolved by the construction deadline.

PCA and OMI each request additional time based on SSU's withdrawal, which they characterize as rare and exceptional circumstances beyond their control. PCA contends that SSU's action has created a need for the remaining partners to use a different studio and possibly a different transmitter site. PCA believes that these matters could be resolved if the remaining Partners were allowed an additional three months. OMI adds further details. It reports that it proposed that OMI and PCA proceed to build without SSU, but that PCA was unwilling due to financial concerns. According to OMI, PCA preferred to "tie the antenna to the Eucalyptus tree" at the authorized site temporarily in an attempt to save the permit, and move to a less costly permanent site in Petaluma. OMI, which could not provide adequate service to its own community from PCA's suggested site in Petaluma, located its own new site, filed a modification application on September 24, 2007 (the day before permit expiration), and requested expedited treatment of that application. OMI suggests that the Commission's failure to act on the application prior to expiration contributed to its inability to meet the construction deadline. OMI further states that it has spent $12,000 on equipment and could construct within a week following grant of its pending modification application.

The broadcast construction period can be "tolled" for certain "encumbrances" beyond the permittee's control, as follows: acts of God, administrative or judicial review of a permit grant, failure of a condition precedent on the permit, or judicial action related to necessary local, state, or federal requirements.[5] The Commission has also recognized that there may be "rare and exceptional circumstances beyond a permittee's control" other than those delineated above that could warrant a waiver of the construction period rule.[6] Neither PCA nor OMI qualify for tolling of the 18-month construction period pursuant to Section 73.3598(b) of our rules, because each has already received time in excess of that permitted by rule. Moreover, OMI and PCA's construction has not been directly delayed by natural disaster, litigation, or a challenge to the grant of the original permit. Therefore, each must demonstrate that it qualifies for a waiver of the 18 month period. Both permittees already received an additional 18 months under the interim LPFM policy, and therefore we consider their request for

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Commission declined to revise the LPFM construction period to three years and ended the interim policy, but directed the staff to consider requests for waiver of the 18-month LPFM construction period upon a showing of good cause.

[5] *See Wendell & Associates*, 17 FCC Rcd 18576, 18577 (2002) ("*Wendell*"). *See also* 47 C.F.R. § 73.3598(b).

[6] *See 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes*, 14 FCC Rcd 17525, 17541 (1999) ("*Streamlining MO&O*"); *Texas Grace Communications*, 16 FCC Rcd 19167 (2001). *But see Wendell*, 17 FCC Rcd at 18577 (waiver denied when permittee failed to prosecute diligently its modification application and commence preliminary construction efforts).

additional time under the ordinary standard for waivers of broadcast construction periods – whether rare and exceptional circumstances beyond the permittee's control prevented construction.[7] Neither has demonstrated such circumstances.

The facts presented by the Partners demonstrate that the primary factors preventing completion of construction in the most recent period were disputes among themselves which they were unable to resolve by the construction deadline. The withdrawal of SSU one week prior to permit expiration may have exacerbated the internal problems among the remaining permittees, but did not prevent the remaining permittees from constructing as authorized. There is a time share agreement, but each party has a permit as a separate station, with authority to construct the authorized facilities. By the time of SSU's withdrawal, the parties had received more than double the LPFM construction period and their construction should have been well underway and nearing completion. Instead of constructing and bringing service to the public, however, the remaining parties made voluntary business choices to pursue new, separate alternate sites for which they held no permit. Thus, at the construction deadline, both parties were essentially "back at square one," having purchased equipment but not having assembled it in any immediately useable and authorized form.

We reject the suggestion that the Commission is partially responsible for OMI's circumstances. Action on a modification application requires an engineering review. It would be unreasonable to expect, even with expedited review, that the Commission would be able to act on a modification request the day after it is filed, as OMI urges the Commission should have done. Accordingly, OMI's and PCA's waiver requests are denied. Their permits expired on September 25, 2007 and will be deleted from our database. OMI's modification application is dismissed as moot.

The Commission recently indicated that the next filing window it opens will be for LPFM applications. It must resolve several pending issues involving the LPFM service and process recently-filed noncommercial FM applications prior to such an LPFM filing window. When the new LPFM window opens, OMI and PCA each may apply.

Sincerely,

Irene B. Lewis

for Peter H. Doyle
Chief, Audio Division
Media Bureau

[7] *See Streamlining MO&O,* 14 FCC Rcd at 17541.