



Federal Communications Commission
Washington, D.C. 20554

December 22, 2021

One Ministries, Inc.
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(via electronic mail)

Re: Application For Minor
Modification of Construction
Permit
K03ID-D, Flagstaff, AZ
Fac ID No. 182941
LMS File No. 0000059359

Dear Permittee,

This concerns the above-referenced application filed by One Ministries, Inc. (OMI), permittee of low power television station K03ID-D, Flagstaff, Arizona (K03ID-D or Station) for the minor modification of construction permit (Minor Mod) and related request for waiver. For the reasons below, we deny OMI's waiver request and dismiss the Minor Mod.

Background. On August 25, 2009, as part of the Commission's "rural" LPTV filing window (2009 Rural Window),¹ OMI submitted an application to construct a low power television (LPTV) station specifying a location south of Flagstaff, Arizona, near Rockledge, Arizona.² In order to file for its construction permit, OMI had to specify a transmitting antenna site located more than 121 kilometers (75 miles) from the reference coordinates of the top 100 television markets.³ OMI's construction permit application was granted on July 19, 2010.⁴ Over eight years later, in September 2018, OMI filed its Minor Mod seeking to relocate the facility specified in the Station's construction permit to a site 39 miles

¹ *Commencement of Rural, First-Come, First-Served Digital Licensing For Low Power Television and TV Translators Beginning August 25, 2009*, Public Notice, 24 FCC Rcd 8911 (MB 2009) (2009 Rural LPTV Window Public Notice).

² See CDBS File No. BNPDVL-20090825CAX.

³ See 2009 Rural LPTV Window Public Notice at 8915-17, Appx. A.

⁴ We note that the expiration date of the initial construction permit for K03ID-D was later extended by the Commission to July 13, 2021. See 47 CFR § 74.731(m); see also *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Third Report and Order and Fourth Notice of Proposed Rulemaking, 30 FCC Rcd 14927, 14932-33, para. 9 (2015) (extending the expiration dates of new LPTV construction permits until July 13, 2021 which was 12 months following the completion of the 39-month post-Incentive Auction transition period or 51 months from the completion of the Incentive Auction). OMI subsequently was granted an extension of the expiration date of the initial digital construction permit for K03ID-D to January 10, 2022. See LMS File No. 0000138311.

southwest of the permitted location, to a location near Cottonwood, Arizona.⁵ Pursuant to section 74.787(b)(1)(iii) of the Commission's rules,⁶ in order for a modification application to be considered "minor," it may not propose a change in transmitting antenna location where the change is greater than 30 miles from the reference coordinates of the existing station's antenna location (30-mile rule). In this case, OMI proposed a change in transmitting antenna location of 39 miles. As such, the Minor Mod would be considered a "major change" under section 74.787(b)(1)(ii) of the rules and, because applications for major change for LPTV stations are currently subject to a freeze, it is not permitted.⁷

Request for Waiver. In support of its Minor Mod, OMI asks that the 30-mile rule be waived to allow its proposed 39-mile change in transmitting antenna location to be treated as a minor change. OMI argues that it "has been building low VHF stations and has found that only about 10% as many people can receive low VHF channels as can receiver (sic) UHF channels." OMI continues that its "newly propose(d) site will allow double the population coverage which will allow this station to be viable economically." Finally, OMI argues that it "has hesitated to build out K03ID-D previously for fear that it wouldn't be received by many people." OMI also states that the Commission has allowed other low VHF stations, namely KCSO-LD in Sacramento, California, to "move larger distances for a minor mod in order to better cover its main population area."

Discussion. Upon review of the facts and circumstances presented, we find insufficient facts exist to waive our rules and allow a grant of OMI's Minor Mod. The Commission may waive its rules for good cause shown.⁸ Waiver of the rules is appropriate if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than would strict adherence to the general rule," including "more effective implementation of overall policy."⁹ In determining whether waiver is appropriate, the Commission takes into account "considerations of hardship, equity, or more effective implementation of overall policy."¹⁰ OMI has not shown that its request for waiver meets the Commission's standard for waiver.

OMI argues that allowing it to move more than 30 miles will enable it to ensure that its Station will serve more viewers and be more "viable economically." However, OMI has not shown that its circumstances are in any way unique. OMI filed its original application for the Station in 2009 when the Commission first began accepting applications for new LPTV stations in so-called "rural" areas.¹¹ It chose the location of its proposed Station and the channel. As noted above, in order to file for its construction permit, applications had to specify a transmitting antenna site located more than 121

⁵ We acknowledge that the location being requested by OMI in that instant application is also more than 75 miles from the restricted reference coordinates and would continue to comply with the requirements in the *2009 Rural LPTV Window Public Notice*; however, such a factor alone does not justify waiver.

⁶ 47 CFR § 74.787(b)(1)(iii).

⁷ See *Freeze on the Filing of Applications for New Digital Low Power Television and TV Translator Stations*, Public Notice, 25 FCC Rcd 15120 (MB 2010); *Initiation of Nationwide First-Come, First-Served Digital Licensing for Low Power Television and TV Translators Postponed Until Further Notice*, Public Notice, 25 FCC Rcd 8179 (MB 2010).

⁸ See 47 CFR § 1.3. See also *WAIT Radio v. FCC*, 415 F.2d 1153 (D.C. Cir. 1969) (*WAIT Radio*), cert. denied, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

⁹ *GE American Communications, Inc.*, 16 FCC Rcd 11038, 11042, para. 9 (IB 2001).

¹⁰ *WAIT Radio*, 418 F.2d at 1159.

¹¹ *2009 Rural LPTV Window Public Notice*, 24 FCC Rcd at 8911.

kilometers (75 miles) from the reference coordinates of the top 100 television markets.¹² Therefore, OMI's proposed Station, by necessity, was required to be located in a rural location in order to be accepted. OMI's waiver request goes on to state that, based on its experiences constructing low VHF channel stations, it has come to realize that such channels present a significant reception issue to viewers. Although OMI's factual assertion about low VHF reception is correct, reception difficulties involving digital television broadcasting in the low VHF band were recognized by the television industry and Commission well before OMI applied for the construction permit, and should have been known by OMI at the time of application.¹³ OMI should have considered such factors as the location of its proposed Station, its choice of a low VHF operating channel, and the Station's "economic viability" before it applied for the facility.

Furthermore, we find that allowing OMI to relocate more than 30 miles would undermine the purpose of the minor change rule which is to ensure that low power television applications for "minor change" remain just that, and to ensure that stations provide coverage to its current, or in this case, intended viewers.¹⁴ To waive the rules and allow OMI to relocate its Station 39 miles would fly in the face of the minor change rule and we fail to see how it would constitute "a more effective implementation of overall policy."¹⁵ A permittee realizing, after almost a decade of inaction, that it failed to fully evaluate the viability of its proposed facilities based on facts that should have been known to it at the time of application is not a basis for waiver of the Commission's rules.¹⁶

Because OMI's Minor Mod proposes a change in a transmitting antenna location of greater than 30 miles, its proposal must be deemed a "major change" and is not permitted due to the ongoing freeze on

¹² *Id.* at 8915-17, Appx. A.

¹³ See *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Sixth Report and Order*, 12 FCC Rcd 14588, 14627, para. 82 (1997) ("TV operations on the lower VHF channels 2-6 are subject to a number of technical penalties, including higher ambient noise levels due to leaky power lines, vehicle ignition systems, and other impulse noise sources and interference to and from FM radio service"); *Study of Digital Television Field Strength Standards and Testing Procedures*, Report, 20 FCC Rcd 19504, 19542, para. 82 (OET 2005) (stating that man-made noise on low VHF is caused by devices such as hair dryers, computers, microwave ovens and similar appliances and that the interference can be addressed by making sure such devices are turned off when someone is watching television).

¹⁴ See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Second Report and Order, 26 FCC Rcd 10732, 10759, para. 58 (2011).

¹⁵ *Id.*

¹⁶ As to OMI's argument that the Commission has allowed other Low VHF stations, namely KCSO-LD, Sacramento, CA, to "move larger distances for a minor mod in order to better cover its main population area," we note that KCSO-LD's applications seeking waiver of the minor modification rule, which were filed and acted on back in 2016, were granted in error without Video Division staff ruling on the merits of the waiver requests. See LMS File Nos. 0000010571 and 0000014156. Such an erroneous action would not change the Commission's rules or the outcome in this case. It is a well settled principle of administrative law that the fact that an agency made an error in one instance does not require the agency to repeat the error. See *Renewal Application of Gene A. Smith*, 17 FCC Rcd 13369 (2002) citing *Chem-Haulers, Inc. v. FCC*, 565 F.2d 728, 730 (D.C. Cir. 1977); *Texas International Airlines v. CAB*, 458 F.2d 782, 785 (D.C. Cir. 1971) ("assuming that the Government made a mistake as to (another) in the application of (a) regulation, the law does not require the Government to perpetuate the mistake").

the filing of major change applications.¹⁷ OMI may re-file the application at such time as the filing freeze is lifted or file an application that meets the requirements for a “minor change.”

Accordingly, the above facts considered, One Ministries, Inc.’s request for waiver **IS DENIED**, its application for minor change for K03ID-D, Flagstaff, Arizona **IS DISMISSED**.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁷ See *supra* note 7.