



Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer to:
1800B3-ATS

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In re: **Coventry Rhode Island Public
Schools**
Station WCVY(FM), Coventry, Rhode
Island
Facility ID No. 14229
Application File No. 0000176527

**The Marconi Broadcasting
Foundation**
New NCE FM, Somerset, Massachusetts
Facility ID No. 768458
Application File No. 0000167873

**Informal Objection and Petition for
Reconsideration**

Dear Counsel,

We have before us: 1) the Petition for Reconsideration filed by Rhode Island Public Radio (RIPR)¹ seeking reconsideration of the grant of the license renewal application filed by Coventry Rhode Island Public Schools for Station WCVY(FM), Coventry, Rhode Island;² 2) the application of The Marconi Broadcast Foundation for a construction permit for a new noncommercial educational FM station at Somerset, Massachusetts;³ 3) the Informal Objection to the Marconi Application filed by RIPR;⁴ and 4) related responsive pleadings.⁵ For the reasons set forth below, we dismiss the Coventry Petition and the Marconi Objection as moot, and grant the Marconi Application.

Background. RIPR filed an application for a new NCE FM station at Bradford, Rhode Island, on September 29, 2021, which proposed an involuntary time share arrangement with Station WCVY(FM).⁶ The Bradford Application requested a waiver of section 73.509(a) of the Commission's rules (Rules).⁷ The Marconi Application was filed during the November 2021 NCE FM filing window.⁸ The Media Bureau (Bureau) designated the Marconi Application as part of NCE MX Group 106,⁹ but through a technical amendment filed on December 14, 2021, the application become a singleton.¹⁰ Coventry filed its application to renew the license of Station WCVY(FM) on December 1, 2021. Because the Bradford Application and the Marconi Application are mutually exclusive, and section 73.561(b) requires consideration of the Bradford Application at the same time as the Coventry Application,¹¹ the Bureau withheld processing of both the Marconi Application and the Coventry Application pending a decision on the Bradford Application.¹²

On November 10, 2022, the Bureau issued a letter decision in which it denied RIPR's waiver request and dismissed the Bradford Application for its failure to comply with section 73.509(a).¹³ The

¹ Pleading File No. 0000203874 (filed Nov. 21, 2022) (Coventry Petition).

² Application File No. 0000176527 (Coventry Application).

³ Application File No. 0000167873 (Marconi Application).

⁴ Pleading File No. 0000208716 (filed Jan. 30, 2023) (Marconi Objection).

⁵ Coventry filed an Opposition to the Coventry Petition. Pleading File No. 0000204872 (filed Dec. 6, 2022). RIPR filed a Reply to the Coventry Opposition. Pleading File No. 0000205022 (filed Dec. 12, 2022).

⁶ Application File No. 0000161099 (Bradford Application); *see also* 47 CFR § 73.561(b) (procedures for involuntary time share applications).

⁷ Bradford Application, Attach. "Amended Statement of Program Service December 15, 2021".

⁸ *Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 7449 (MB 2021).

⁹ *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Educational Stations; Opens Window to Accept Settlements and Technical Amendments*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 16452 (MB 2021).

¹⁰ Marconi Application, Amendment (filed Dec. 14, 2021).

¹¹ 47 CFR § 73.561(b) ("action on the [time share] application will be taken only in connection with the renewal of application for the existing station").

¹² The Bureau erroneously granted the Coventry Application on June, 3, 2022. *Actions*, Public Notice, Report No. PN-2-220608-01 (MB June 8, 2022). However, the Bureau rescinded that grant on June 9, 2022, and returned the Coventry Application to pending status. *Actions*, Public Notice, Report No. PN-2-220613-01 (MB June 13, 2022).

¹³ *Rhode Island Public Radio*, Letter Order, DA 22-1183 (MB Nov. 10, 2022) (*Staff Letter*).

Bureau also granted the Coventry Application that same day.¹⁴ RIPR filed a petition for reconsideration of the *Staff Letter* on November 21, 2022, seeking *nunc pro tunc* reinstatement of the Bradford Application.¹⁵ RIPR also filed an amendment to the Bradford Application on that day, in which it cured the section 73.509 defect identified in the *Staff Letter*. RIPR filed the Coventry Petition that same day, in which it argued that grant of the Coventry Application was erroneous because it deprived RIPR the opportunity for its time share proposal to be considered.¹⁶

Subsequently, RIPR filed the Marconi Objection, in which it argued that the Marconi Application should be dismissed because it conflicts with the Bradford Application. RIPR argues that the Bradford Application was entitled to “first come/first served” processing, and subsequent applicants in the 2021 NCE Window were precluded from filing conflicting applications.¹⁷ RIPR argues that because the Marconi Application’s proposed 60 dBu contour is encompassed by the Bradford Application’s proposed 40 dBu contour, the Marconi Application should be dismissed for violating section 73.509 of the Rules.¹⁸

On February 1, 2023, the Bureau issued a letter decision in which it granted the Bradford Petition, reinstated the amended Bradford Application, and dismissed the amended Bradford Application because it violated section 73.510(a) of the Rules.¹⁹ RIPR has not sought reconsideration or Commission review of that decision.

Discussion. The Commission will consider a petition for reconsideration when a petitioner shows either a material error 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.²⁰ Pursuant to section 309(d) of the Communications Act of 1934, as amended,²¹ petitions to deny and informal objections 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.²²

The amended Bradford Application was dismissed on February 1, 2023, and the Bureau gave public notice of that action on February 3, 2023. Any petition for reconsideration or application for

¹⁴ *Actions*, Public Notice, Report No. PN-2-221115-01 (MB Nov. 15, 2022).

¹⁵ Pleading File No. 0000203865 (filed Nov. 21, 2022) (Bradford Petition).

¹⁶ Coventry Petition at 2.

¹⁷ Marconi Objection at 2 (citing *Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2-9, 2021, Window; Limited Application Filing Freeze to Commence on October 5, 2021*, Public Notice, 36 FCC Rcd 11458 (MB 2021); 47 CFR § 73.3573(e)).

¹⁸ Marconi Petition at 3 (citing 47 CFR § 73.509).

¹⁹ *Rhode Island Public Radio*, Letter Order, Ref 1800B3-JDB (MB Feb. 1, 2023); *see also Pleadings*, Public Notice, Report No. PN-3-230203-01 (MB Feb. 3, 2023); *Actions*, Public Notice, Report No. PN-2-230203-01 (MB Feb. 3, 2023); 47 CFR § 73.510(a).

²⁰ 47 CFR § 1.106. *See WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964), *aff’d sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 397 U.S. 967 (1966); *Davis & Elkins Coll.*, Memorandum and Order, 26 FCC Rcd 15555, 15556, para. 5 (MB 2011).

²¹ 47 U.S.C. § 309(d).

²² *See, e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197, n.10 (1990), *aff’d sub nom. Garden State Broad. L.P. v. FCC*, 996 F. 2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

review of that action was due 30 days from the issuance of the public notice on Monday, March 6, 2023.²³ The dismissal of the amended Bradford Application became final on March 15, 2023.²⁴

Both the Coventry Petition and the Marconi Objection rely on the pending status of the Bradford Application—the Coventry Petition arguing that the renewal for Station WCVY cannot be granted without considering the time share proposal in the Bradford Application, and the Marconi Objection arguing that the Bradford Application is entitled to cutoff protection from the Marconi Application. Because the amended Bradford Application has been dismissed—and that dismissal is final—we deny the Coventry Petition and Marconi Objection as moot and grant the Marconi Application.

Conclusion/Action. For the reasons set forth above, **IT IS ORDERED** that the Petition for Reconsideration filed by Rhode Island Public Radio on November 21, 2022 (Pleading File No. 0000203874), **IS DISMISSED AS MOOT.**

IT IS FURTHER ORDERED that the Informal Objection, filed by Rhode Island Public Radio on January 30, 2023 (Pleading File No. 0000208716), **IS DISMISSED AS MOOT.**

IT IS FURTHER ORDERED that the application filed by The Marconi Broadcasting Foundation for a construction permit for a new NCE FM station at Somerset, Massachusetts (Application File No. 0000167873) **IS GRANTED.**

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc (via electronic mail):

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²³ See also 47 CFR § 1.4(b)(4) (defining the term “public notice” and stating that “[i]f the full text of an action document is not to be released by the Commission, but a descriptive document entitled ‘Public Notice’ describing the action is released, the date on which the descriptive ‘Public Notice’ is released.”). The 30-day period ran on Sunday, March 5, 2023. Because Sunday is a holiday as defined by the Rules, a petition for reconsideration or application for review was due on the first business day after March 5, 2023, which was Monday, March 6, 2023. See 47 CFR § 1.4(e)(1).

²⁴ 47 CFR § 1.117(a) (providing for 40 days after public notice of the Bureau’s decision for the Commission on its own motion to order the record before it for review).