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In Reply Refer to:
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In re: **Glory Communications**
WEAF(AM), Camden, SC
Facility ID No. 24146
File No. BP-20090421ABJ

Praise Communications, Inc.
WTUA(FM), St. Stephen., SC
Facility ID No. 23895
File No. BPH-20090421ABK

**"Petition for Rescission of
Construction Permits"**

Dear Counsel:

We have before us an October 26, 2009, "Petition for Rescission of Construction Permits" (Petition), filed by Thomas B. Daniels, Jr. (Daniels) and related responsive pleadings.¹ Daniels seeks reconsideration of the staff's grant of the referenced applications for minor change to the licensed facilities of Stations WEAF(AM), Camden (Station), and WTUA(FM), St. Stephen, South Carolina, filed by Glory Communications, Inc. (Glory), and Praise Communications, Inc. (Praise), respectively (WEAF 2009 Application and WTUA 2009 Application). For the reasons set forth below, we treat the Petition as a timely Petition for Reconsideration of the Application grants and dismiss it.

¹ Daniels is licensee of competing Stations WZJY(AM) and WAZS(AM), Charleston, South Carolina. On November 16, 2009, Glory filed a "Motion to Strike Petition for Rescission of Construction Permits." On March 2, 2010, Daniels filed an "Opposition to Motion to Strike Petition for Rescission," to which Glory filed a pleading styled, "Motion to Strike Opposition Pleading" on March 31, 2010.

Background. On April 21, 2009, Glory filed the WEAFF 2009 Application for a construction permit to change the Station's community of license from Camden to St. Stephen, South Carolina. It was a contingent application filed pursuant to Section 73.3517(e) of the Commission's Rules (Rules)² in conjunction with Praise's WTUA 2009 Application for a construction permit for change of the community of license of Station WTUA(FM) from St. Stephen to Pinopolis, South Carolina. In the WEAFF 2009 Application, Glory certified that "[t]he proposed facility is excluded from environmental processing under 47 C.F.R. Section 1.1306 (*i.e.*, [t]he facility will not have a significant environmental impact and complies with the maximum permissible radio frequency electromagnetic exposure limits for controlled and uncontrolled environments)."³ The staff published the required *Federal Register* notice for the applications on June 26, 2009,⁴ and subsequently granted the uncontested WEAFF and WTUA 2009 Applications on September 22, 2009 (WEAFF Permit and WTUA Permit, respectively).⁵

On October 26, 2009, Daniels filed the Petition, arguing that: (1) Glory falsely certified in the WEAFF Application that its proposed facility was excluded from environmental processing and that its proposal would have no significant environmental impact;⁶ (2) the WEAFF Application violated Section 106 of the National Programmatic Agreement (NPA)⁷ because Glory never contacted the South Carolina State Historical Preservation Organization (SHPO) to review the historical or archaeological impact, if any, of construction of Glory's proposed new broadcast tower;⁸ and (3) Glory's false certification raises questions of misrepresentation in violation of Section 1.17 of the Rules.⁹ Daniels also argues that the WEAFF 2009 Application was prematurely granted and that action, and the grant of the WTUA 2009 Application, must be rescinded pursuant to Section 73.3517 of the Rules.¹⁰

In opposing the Petition, Glory argues that compliance with the NPA was not required because its proposed tower is less than 200 feet high and located in an industrial area.¹¹ Glory also makes the

² 47 CFR § 73.3517(e).

³ See WEAFF Application at Section III-A, Item 11.

⁴ 74 Fed. Reg. 30572 (Jun. 26, 2009).

⁵ See *Broadcast Actions*, Public Notice, Report No. 47078 (rel. Sep. 25, 2009).

⁶ Petition at 1; see also 47 CFR § 1.1306.

⁷ See *National Historic Preservation Act of 1966*, as amended, 54 U.S.C. § 306108 (formerly codified at 16 U.S.C. § 470f); *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act*, 47 CFR Pt. 1, App. C, § III.C ("NPA"); *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, 20 FCC Rcd 1073, Appendix B, Section III.C (2004) ("*NPA Report & Order*"); see also 47 CFR § 1.1307(a)(4).

⁸ Petition at 2-7. Daniels also attaches the Declaration -- made under penalty of perjury -- of Chip Early, technical director of Jabar Communications, Inc., who states that he contacted Caroline Wilson of the South Carolina SHPO who stated that she could find no record of Glory submitting a proposal of its new tower for review. See "Declaration of Chip Early" at 1.

⁹ Petition at 2; see also 47 CFR § 1.17.

¹⁰ Petition at 8; see also 47 CFR § 73.3517.

¹¹ Motion to Strike at 1. We note that Glory states that the proposed tower "is located in a previous sand mine, which is considered industrial in nature." *Id.* at 2.

somewhat inconsistent claim that, because the WEAf 2009 Application was in full compliance with the NPA, “there was no misrepresentation” in the WEAf 2009 Application.”¹²

In its Opposition to the Motion to Strike, Daniels reasserts the arguments made in his Petition. Additionally, he argues that although Glory alleges its site is “industrial in nature,” the site is not in an “industrial park,” as defined by the NPA, and therefore, Glory violated the NPA by not submitting its tower proposal to the South Carolina SHPO.¹³

Subsequently, Glory modified the WEAf Permit to specify different site coordinates,¹⁴ but it ultimately did not construct those facilities or file a covering license application, and the WEAf Permit expired by operation of law on September 22, 2012, pursuant to Section 73.3598(e) of the Rules.¹⁵ Glory and Praise re-filed their contingent proposals on September 21, 2012¹⁶ – the day before the WEAf and WTUA Permits were to expire – with Glory specifying the same antenna site as the Modification Application. The staff published notice of the WEAf 2012 Application in the *Federal Register* on October 15, 2012, and granted the unopposed WEAf 2012 Application on January 17, 2013, specifying an expiration date of January 17, 2016.¹⁷

Discussion/Action. Daniels styles the Petition as a “Petition for Rescission of Construction Permits.” Neither the Act nor the Commission’s rules specifically create the right of third parties, such as Daniels, to file petitions to rescind an authorization.¹⁸ However, rather than dismiss the pleading as unauthorized, we shall treat it as a timely petition for reconsideration.¹⁹

¹² *Id.* at 2.

¹³ Opposition to Motion to Strike at 2.

¹⁴ See File No. BMP-20120604ADN (Modification Application). See also *Broadcast Actions*, Public Notice, Report No. 47811 (rel. Aug. 28, 2012), p.6. The coordinates specified in the WEAf 2009 Application were: 32° 27’ 03” NL; 79° 58’ 58” WL. Those specified in the Modification Application were 33° 26’ 26” NL; 79° 59’ 49” WL.

¹⁵ 47 CFR § 73.3598(e). Glory did not construct the facilities authorized in the WTUA Permit, and therefore, the WTUA Permit expired on that same day.

¹⁶ See File Nos. BP-20120921AET (WEAf 2012 Application) and BPH-20120921AEU (WTUA 2012 Application).

¹⁷ See *Broadcast Actions*, Public Notice, Report No. 47910 (rel. Jan. 23, 2013). The staff also granted the unopposed WTUA 2012 Application on January 22, 2013. See *Broadcast Actions*, Public Notice, Report No. 47912 (rel. Jan. 25, 2013). Glory has not filed a covering license application for the WEAf 2012 Application, and it appears that the permit issued pursuant to that application has expired. 47 CFR § 73.3598(e).

¹⁸ See, e.g., *Radio Para La Raza*, Memorandum Opinion and Order, 40 FCC 2d 1102, 1106, para. 11 (1973) (unlike Section 309 of the Act, Section 312 does not create rights in third parties but reserves for the Commission the authority to institute revocation proceedings).

¹⁹ *Anderson Radio Broad., Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 578 n.8 (2008) (“Petition for Rescission of Construction Permit” treated as timely petition for reconsideration). Additionally, we will treat Glory’s “Motion to Strike” as an Opposition to the Petition, and we will treat Daniels’ “Opposition to Motion to Strike” as a Reply to Glory’s Opposition. See, e.g., *Atlantic Morris Broad., Inc.*, 11 FCC Rcd 4723 n. 3 (“Motion to Add Misrepresentation Issue” treated as a “Reply” pursuant to Section 1.45). These are the only pleadings authorized by 47 CFR § 1.45. Any additional pleadings after Daniels’ constructive Reply could be filed only with the Commission’s permission and should have been accompanied by a petition for leave to file the unauthorized pleading. No such motion was filed with respect to Glory’s “Motion to Strike Opposition Pleading,” and it will not be considered.

Nevertheless, when treated as a petition for reconsideration, Daniels' Petition is procedurally deficient pursuant to Section 1.106(b)(1) of the Rules.²⁰ Daniels did not object to the WEAFF or WTUA 2009 Applications prior to their grants, even though they were pending for more than five months and had been published in the *Federal Register*, and Daniels has not demonstrated in the Petition why he could not have done so. Additionally, the WEAFF Permit, as modified to specify a new site, expired by its own terms without having been constructed. Accordingly, the issues raised by Daniels are now moot.²¹ We therefore will dismiss the Petition on these grounds.

ACCORDINGLY, IT IS ORDERED that, the Petition for Rescission of Construction Permits filed on October 26, 2009, by Thomas B. Daniels, Jr., treated herein as a petition for reconsideration, IS DISMISSED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Thomas B. Daniels, Jr.
Glory Communications, Inc.
Praise Communications, Inc.

²⁰ 47 CFR § 1.106(b)(1) (if the petition is filed by a person not a party to the proceeding, it shall state the manner in which the person's interests are adversely affected by the action taken and shall show good reason why it was not possible to participate in the earlier stages of the proceeding).

²¹ Although we do not rule on Daniels' allegations, we have reviewed the facts presented in the Petition and have concluded that, even if a violation were adjudicated based on those facts, such a violation would not result in our finding either that Glory is not qualified to be a Commission licensee or that reconsideration of the Permit grants would have been warranted.