

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

In the Matter of)	
)	
Lighthouse Christian Center)	NAL/Account No.: MB-201741410010
WLCQ-LP, Feeding Hills, Massachusetts)	FRN: 0010722700
)	File Nos. BLL-20061106AAA, BPL-
)	20151102AHI and BSTA-20151102AHI
)	Facility ID No. 133854

MEMORANDUM OPINION AND ORDER

Adopted: August 23, 2017

Released: August 24, 2017

By the Chief, Media Bureau:

I. INTRODUCTION

1. We have before us a Petition to Revoke License (Petition) filed by Saga Communications of New England, LLC (Saga) and opposed by Lighthouse Christian Center (Lighthouse). The Petition urges us to revoke Lighthouse's license to operate low power FM (LPFM) station WLCQ-LP, Feeding Hills, Massachusetts (Station). Also before us are an application to make minor changes to the licensed facilities of the Station (2015 Permit Application) and a request for special temporary authority (STA) to operate at a variance from the Station's license (STA Request). Both the Application and the STA Request were filed by Lighthouse in response to the Petition and are opposed by Saga. For the reasons set forth herein, we grant in part, dismiss in part and otherwise deny the Petition, deny Saga's Informal Objection to the 2015 Permit Application and its Opposition to the STA Request, adopt the attached Consent Decree, and grant the STA Request.

II. BACKGROUND

2. Lighthouse filed an application for the Station's original construction permit (2001 Permit Application) during the first LPFM filing window in 2001. The Commission granted this application in 2005. Lighthouse proceeded to construct the Station and file an application for license to cover the Station's facilities (License Application),¹ which we granted in November 2006.²

3. Nearly nine years later, Saga filed the Petition, which urges us to revoke the Station's license. Saga alleges that the Station interferes with the signal of one of its stations, is not operating from the location or with the antenna specified in its license, and has violated the law and rules governing underwriting announcements. In addition, Saga asserts that Lighthouse failed to comply with the Commission's environmental and historic preservation review requirements and falsely certified that the facilities specified in the 2001 Permit Application were excluded from such review. Saga further contends that Lighthouse falsely certified, in the License Application, that the Station's facilities were constructed as authorized in the Station's construction permit.

4. Lighthouse responded to the Petition, filing the 2015 Permit Application and the STA Request along with an Opposition to Petition to Revoke (Opposition). Saga replied to the Opposition. It

¹ File No. BLL-20061106AAA.

² *Broadcast Actions*, Public Notice, Report No. 46369 (MB Nov. 27, 2006).

also filed an Informal Objection to the 2015 Permit Application and an Opposition to Request for Special Temporary Authority. In these subsequent pleadings, Saga references the Petition and again makes environmental processing and false certification allegations. Saga also asserts that, in the STA Request, Lighthouse should have specified both the antenna being used and the proposed transmitter power output (TPO) but failed to include that information. Lighthouse has responded to these pleadings with additional pleadings of its own.³ We consider all of these pleadings and matters below.

III. DISCUSSION

5. For the reasons set forth below, we reject Saga's interference allegations as unsupported. We also find no merit to Saga's claims that Lighthouse failed to comply with the Commission's environmental and historic preservation review requirements or its allegations that Lighthouse made false certifications regarding its compliance with these requirements. We do find that the Station is not operating from the location or with the antenna specified in its license, and has violated the law and rules governing underwriting announcements. Lighthouse itself admits the former and acknowledges at least some violations of the latter. We adopt a Consent Decree that addresses these violations.

A. Interference

6. Saga asserts that the Station interferes with the signal of its station, WLZX(FM), Northampton, Massachusetts, which operates on a second-adjacent channel from the Station.⁴ Saga, however, does not submit any evidence in support of its interference claim.⁵ Indeed, Saga itself admits that the Station satisfies the second-adjacent channel spacing requirements set forth in Section 73.807 of the Commission's rules with respect to WLZX(FM).⁶ In any event, Saga acknowledges that "under the interference protection to full service FM stations provisions of § 73.809, WLZX(FM) has no recourse against this interference"⁷ For these reasons, we deny those portions of the Petition related to Saga's interference claims and do not consider those claims further.

B. Environmental and Historic Preservation Review

7. The Commission has established rules and processes that implement the requirements of the National Environmental Policy Act, as well as a series of other federal laws related to the environment. As part of this, the Commission has identified those facilities that ordinarily may have a significant impact on the environment and that require preparation of environmental assessments (EAs).⁸ Conversely, it has categorically exempted from environmental review those facilities that will not have a significant environmental impact and comply with the Commission's radiofrequency exposure limits.⁹ In addition, the Commission has incorporated into its environmental rules and processes the requirements of the National Historic Preservation Act of 1966, as amended (NHPA).¹⁰ Thus, regardless of whether the Commission has found that a facility is categorically excluded from environmental review, an applicant

³ Specifically, Lighthouse filed a Reply to Opposition to STA Request and an Opposition to Informal Objection. Saga filed a Reply to Opposition to Informal Objection, to which Lighthouse responded with a Statement for the Record.

⁴ Petition at 2-3.

⁵ For instance, Saga claims that "personnel have been receiving reports from listeners of WLZX ... that they are receiving interference to reception of that station due to the presence of WLCQ-LP ..." Petition at 2, but does not include any actual listener complaints of interference.

⁶ Petition, Attach. B at 2 ("WLCQ-LP remains fully spaced under § 73.807(a)(1) toward WLZX(FM)").

⁷ *Id.*

⁸ 47 CFR 1.1307.

⁹ 47 CFR 1.1306.

¹⁰ 47 CFR 1.1307(a)(4).

may still need to submit an EA if the facility may adversely affect properties listed or eligible for listing in the National Register of Historic Places.¹¹

8. *2001 Permit Application.* In the 2001 Permit Application, Lighthouse certified that the Station's proposed facilities were excluded from environmental processing. In its Petition, Saga asserts that the facilities proposed in that application should have undergone both environmental and historic preservation review.¹² Saga essentially seeks reconsideration of our grant of the 2001 Permit Application. The time period for filing petitions for reconsideration is prescribed by statute and expired in 2005.¹³ As a result, we may not, with one extremely narrow exception not applicable here, waive or extend the filing period.¹⁴ Accordingly, we find this indirect challenge to our grant of the 2001 Permit Application constitutes an impermissible collateral attack and is properly denied.¹⁵

9. *2015 Permit Application.* When Lighthouse filed the 2015 Permit Application, it acknowledged the need to complete historic preservation review of the Station's proposed facilities and indicated it had retained a consultant to complete an "NPA study."¹⁶ Lighthouse subsequently amended the Application to include this study, which concludes that the proposed facilities will not affect properties within the scope of Section 1.1307(a)(4).¹⁷ The Massachusetts Historical Commission has

¹¹ 47 CFR 1.1306 Note 1. *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Notice of Proposed Rulemaking, 28 FCC Rcd 14238, 14260 para. 58 (2013) (explaining that "Note 1 to Section 1.1306, which provides a categorical exclusion for collocations on an existing building or antenna tower for most purposes under NEPA, does not extend to review under Section 106" of the NHPA); *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, Notice of Proposed Rulemaking and Order, 27 FCC Rcd 15594, 15639 para. 140 (2012) ("Antennas mounted on an existing building or antenna tower are generally excluded from review for environmental effects other than RF exposure or, in some instances, effects on historic properties.").

¹² Petition at 4-6. We note that, for purposes of this argument, Saga treats the 2001 Permit Application as proposing to install the Station's tower and antenna on Lighthouse's church building. Petition at 5 (discussing "the 19th century church building" and noting the building "on which the roof-mounted tower/antenna remains mounted was constructed in 1900"). As discussed later in this decision, the 2001 Permit Application actually included the wrong coordinates, specifying a site 364 feet from the church. Given that Lighthouse has stated it always intended to locate the Station's tower and antenna on the church building, Opposition to Petition to Revoke at 2-3 and Attach. A, for the purposes of our consideration of the environmental and historic preservation review issues raised by Saga, we treat the location of the Station's tower and antenna as being on top of the church building.

¹³ 47 U.S.C. § 405(a) ("A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report or action complained of."); *Citylight Ministry Center*, Memorandum Opinion and Order, 20 FCC Rcd 10179 (2005).

¹⁴ See *Reuters Ltd. v. FCC*, 781 F.2d 946, 95 (D.C. Cir. 1986) ("[W]e conclude that the Commission acted beyond its lawful authority when it entertained the belated petition for reconsideration."). See also *Metromedia Inc.*, Memorandum Opinion and Order, 56 FCC 2d 909, 909-10 para. 2 (1975) (Commission may not waive 30-day filing period to accept a petition for reconsideration filed one day late); *Fortuna Systems Corp.*, Order on Reconsideration, 3 FCC Rcd 5122, 5123 para. 9 (CCB 1988). Specifically, the courts have held that the Commission may not accept untimely reconsideration petitions in the absence of extremely unusual circumstances. See, e.g., *Virgin Islands Tel. Corp. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993).

¹⁵ See, e.g., *MCI Telecommunications Corp. v. Pacific Northwest Bell Telephone Co.*, Memorandum Opinion and Order, 5 FCC Rcd 216, 228 n.38 (1990), *recon. denied*, 5 FCC Rcd 3463 (1990), *appeal dismissed sub nom. Mountain States Tel. and Tel. Co. v. FCC*, 951 F.2d 1259 (10th Cir. 1991) (*per curiam*).

¹⁶ Opposition to Petition to Revoke at 4.

¹⁷ File No. BPL-20151102AHI, Attach. 14 (DEA Report). Saga criticized the DEA Report, pointing out that Lighthouse and/or DEA had stated that the proposed facilities had not yet been constructed in communications with certain Native American Tribes, one municipality, one historical association, and the Massachusetts Historical Commission. Reply to Opposition to Informal Objection at 3-4. In response, Lighthouse submitted a revised

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concluded in this finding.¹⁸ Despite this, Saga argues that Lighthouse must prepare and submit an EA that addresses both historic preservation concerns and the threatened species and migratory birds that are present in the Station's community of license.¹⁹ We address and reject Saga's arguments below, concluding that no EA is required for the facilities proposed in the 2015 Permit Application.

10. To reach its conclusion that an EA is required to address historic preservation concerns,²⁰ Saga cites Part V of the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (Collocation Agreement).²¹ Not only does Saga focus on the wrong part of the Collocation Agreement but it misunderstands the agreement's requirements.²² Part IV, not Part V, of the agreement applies. Part IV generally exempts the "mounting or installation of an antenna" on a tower constructed after March 16, 2001, from historic preservation review but requires such review if an applicant proposes to install its antenna on a "twilight tower." A "twilight tower" is a tower constructed after March 16, 2001, that did not undergo historic preservation review prior to construction.²³ Part V, in contrast, applies to the mounting of an antenna on a building or non-tower structure. Here, the antenna is mounted on a tower as that term is defined in the Collocation Agreement.²⁴ Thus, Part V does not apply.²⁵

11. Because the Station's tower was constructed after March 16, 2001, but did not undergo historic preservation review prior to construction, under Part IV of the Collocation Agreement, Lighthouse must complete the historic preservation review process before we can grant the Application.²⁶

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version of the report. Statement for the Record, Attach. A. The revised report documents additional communications with these parties. These communications did not affect the conclusion DEA reached in the study.

¹⁸ DEA Report, Appx. 1. DEA submitted a follow up letter to the Massachusetts Historical Commission clarifying that the antenna at issue was an existing antenna, not a proposed installation. At the time DEA prepared its revised study, the Massachusetts Historical Commission had not notified DEA (or Lighthouse) of any changes to its initial concurrence in DEA's finding.

¹⁹ Petition at 6; Informal Objection at 2-3.

²⁰ Petition at 5; Informal Objection at 2.

²¹ 47 CFR pt. 1, App. B (Collocation Agreement). See also *Wireless Telecommunications Bureau Announces Execution of Programmatic Agreement with Respect to Collocating Wireless Antennas on Existing Structures*, Public Notice, 16 FCC Rcd 5574 (WTB 2001). Saga also relies on the Collocation Agreement in its Opposition to STA Request. Opposition to STA Request, Attach. at 3.

²² Lighthouse itself also misreads the Collocation Agreement. It asserts that the agreement did not and does not apply to its construction of the tower on which the Station's previous antenna was—and its current antenna is—mounted. Opposition to Petition to Revoke at 3. According to Lighthouse, the Collocation Agreement applies to "co-location of wireless antennas, not broadcast facilities." *Id.* Lighthouse is incorrect. The Collocation Agreement "applies to wireless and broadcast facilities and is intended to streamline procedures for review of collocations of wireless and broadcast antennas and associated equipment ... on existing towers and other structures under the National Historic Preservation Act." *Fact Sheet Regarding the Implementation of the Nationwide Programmatic Agreement with Respect to Collocating Wireless and Broadcast Facilities on Existing Towers and Structures*, 67 Fed. Reg. 5282 (Feb. 5, 2002) (*Fact Sheet*).

²³ Collocation Agreement, Part IV.A.1. See also *Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission*, 47 CFR Part 1, App. C. at Part I.A (NPA).

²⁴ The Collocation Agreement defines a tower as "any structure built for the sole or primary purpose of supporting antennas and their associated facilities used to provide FCC-licensed service." Collocation Agreement, Part I.A.

²⁵ The fact that the tower is built on top of a building does not change that fact.

²⁶ Saga asserts that its Petition constitutes a complaint that triggers historic preservation review under Part V.A.4. of the Collocation Agreement. As explained in the text, Part V of the Collocation Agreement is not applicable to the facilities proposed in the 2015 Permit Application. A similar provision, though, is set forth at Part IV.A.4. Because

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To do so, it must follow the procedures set forth in the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission (NPA).²⁷ Contrary to Saga's assertion, though, this does not necessarily involve preparation of an EA. That is required only if the proposed facility may have an adverse effect on a historic property.²⁸ If the facility will have "no effect" or "no adverse effect" on any historic properties, no EA is required.²⁹ As noted, Lighthouse hired a consultant to undertake a historic preservation review of both the existing tower and the new antenna specified in the Application.³⁰ The consultant recommended a finding of "no effect on historic property" and the Massachusetts Historical Commission concurred, stating "it has been determined that this project is unlikely to affect significant historic or archaeological resources."³¹ Accordingly, Lighthouse need not file an EA as part of the historic preservation review process.

12. Likewise, no EA is required despite the presence of two threatened species and seventeen migratory birds in the Station's community of license. The Commission generally excludes antennas mounted on existing buildings or antenna towers from environmental review "even if an environmentally sensitive circumstance identified in Section 1.1307(a) is present."³² While the facilities here involve both a tower which is attached to an existing building and an antenna mounted on that tower, we find they are excluded from environmental review under Note 1 to Section 1.1306 of the Rules. This view is consistent with the Commission's statement that "the mounting of antennas on existing buildings or antenna towers generally is environmentally preferable to the construction of a new facility, a preference which is reflected in [Note 1 to Section 1.1306 of the Rules]."³³

13. *STA Request.* Saga argues that Lighthouse falsely certified in the STA Request that the proposed facilities are excluded from environmental and historic preservation review.³⁴ According to Saga, if Lighthouse indicated that the proposed facilities were not excluded in the 2015 Permit Application, it should have reached the same conclusion with respect to the STA Request.³⁵ Saga, however, ignores a key difference between the facilities proposed in the STA Request and those proposed in the 2015 Permit Application. While the facilities proposed in both are technically identical, the facilities proposed in the STA Request are temporary in nature and those proposed in the 2015 Permit Application are permanent. Lighthouse correctly certified that the facilities proposed in the STA Request

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we find historic preservation review is required under Part IV.A.1., we do not herein determine whether Saga's Petition constitutes a complaint under this provision.

²⁷ See NPA, Part I.C. (stating that NPA "does not apply to Antenna Collocations that are exempt from Section 106 review under the Collocation Agreement" but does "apply to collocations that are not exempt from Section 106 review under the Collocation Agreement").

²⁸ *Fact Sheet*, 67 Fed. Reg. at 5283.

²⁹ *Id.* at 5283 n.4.

³⁰ Opposition to Informal Objection, Attach. A at 1.2 (stating that Lighthouse "has installed a Low Power FM (LPFM) broadcast antenna and support pole on an existing church building rooftop").

³¹ Opposition to Informal Objection, Attach. A at 13.

³² *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865, 12883 para. 38 (2014) (*Wireless Infrastructure Report and Order*).

³³ *Amendment of the Commission's Environmental Rules*, Order, 3 FCC Rcd 4986, 4986 para. 7 (1988). See also, *Wireless Infrastructure Report and Order*, 29 FCC Rcd at 12883 para. 38 ("Note 1 reflects a preference first articulated by the Commission in 1974, and codified into Note 1 in 1986, that "[t]he use of existing buildings, towers or corridors is an environmentally desirable alternative to the construction of new facilities and is encouraged.").

³⁴ Opposition to STA Request at 2-3.

³⁵ *Id.*

are excluded from environmental and historic preservation review. As discussed, these facilities—whether temporary or permanent in nature—are excluded from environmental processing pursuant to Note 1 of Section 1.1306. Further, the NPA specifically excludes the temporary facilities proposed in the STA Request from historic preservation review.³⁶

C. Misrepresentations

14. A misrepresentation is a false statement of fact³⁷ or false certification³⁸ made with intent to deceive the Commission. Intent to deceive is established if a licensee or applicant knowingly makes a false statement (or false certification)³⁹ and can also be inferred when the surrounding circumstances clearly show the existence of intent to deceive.⁴⁰ The Commission may disqualify an applicant who deliberately makes misrepresentations.⁴¹ In addition, Section 1.17(a)(2) of the Rules provides that no person may provide, in any written statement of fact, “material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.”⁴² Thus, even absent an intent to deceive, a false statement of fact or false certification may constitute an actionable violation of Section 1.17 of the Rules if it is provided without a reasonable basis for believing that the statement or certification is correct and not misleading.⁴³

15. Saga argues that Lighthouse made false certifications in the 2001 Permit Application, the License Application, and the STA Request.⁴⁴ While we herein dismiss Saga’s other claims regarding the 2001 Permit Application, we must consider the allegations that Lighthouse made false certifications in these applications. This is so because Lighthouse’s character is relevant to our consideration of the 2015 Permit Application and the STA Request.⁴⁵ For the reasons set forth below, we find that Saga has not raised a substantial and material question of fact related to Lighthouse’s character qualifications.

³⁶ NPA, Part III.C.1 (excluding “[a] Tower or Antenna authorized by the Commission for a temporary period, such as any Facility authorized by a Commission grant of Special Temporary Authority”). The NPA defines “temporary” as “for no more than twenty-four months duration.” NPA, Part III.C.

³⁷ *Fox River Broadcasting, Inc.*, Order, 93 F.C.C.2d 127, 129 (1983).

³⁸ *San Francisco Unified School District*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334 nn.40-41 (2004) (subsequent history omitted).

³⁹ *Leflore Broadcasting, Co., Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980).

⁴⁰ See *American International Development, Inc.*, Memorandum Opinion and Order, 86 FCC 2d 808, 816 n.39 (1981), *aff’d sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983).

⁴¹ *Contemporary Media, Inc., v. FCC*, 214 F.3d 187, 196 (D.C. Cir. 2000).

⁴² 47 CFR § 1.17(a)(2).

⁴³ See *Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, 18 FCC Rcd at 4017 (stating that the revision to Section 1.17 is intended to “prohibit incorrect statements or omissions that are the result of negligence, as well as an intent to deceive”).

⁴⁴ Petition at 8 (alleging false environmental certification in 2001 Permit Application and false certification that Station was constructed as authorized in License Application); Informal Objection at 2.

⁴⁵ See, e.g., *Lazer Licenses, LLC*, Memorandum Opinion and Order, 30 FCC Rcd 6357, 6359 para. 5 (MB 2015) (considering character-related allegations related to earlier application in evaluating later-filed ones); *Applications for Consent to Transfer of Control from License Subsidiaries of Allbritton Communications Co. to Sinclair Television Group, Inc.*, 29 FCC Rcd 9156 (MB 2014) (same); *Apple 107.1, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 15722 (MB 2013) (considering allegations of misrepresentation or lack of candor with respect to an earlier application when evaluating a later-filed one).

16. To start, we reject Saga's assertion that Lighthouse made a false environmental certification in the STA Request. As discussed above, the temporary facilities proposed therein are excluded both from environmental and historic preservation review. Lighthouse correctly certified that this exclusion was applicable to its case.

17. We next find that Lighthouse did not make a misrepresentation when it certified in the License Application that the Station was constructed as authorized. Not only was the Station operating with the antenna specified in its construction permit at that time but Lighthouse believed the Station had been constructed at the location specified in that permit.⁴⁶ Saga has offered no evidence suggesting that Lighthouse intended to deceive the Commission about the location of the Station's transmitter. Indeed, it would be hard to demonstrate such intent when, as Lighthouse notes, the location at which the Station has been operating—and from which it proposes to continue to operate—"meets all LPFM allocation criteria."⁴⁷ We further determine Lighthouse did not violate Section 1.17 of the Rules in the context of the License Application because it had a reasonable basis—the representations of its engineering consultant⁴⁸—for believing that it had constructed the Station at the location specified in the construction permit.

18. Finally, we find Saga has not raised a substantial and material question of fact regarding Lighthouse's certification that the facilities proposed in the 2001 Permit Application were excluded from both environmental and historic preservation review. Like the 2015 Permit Application, the 2001 Permit Application was excluded from environmental review under Note 1 to Section 1.1306 of the Rules.⁴⁹ Thus, Lighthouse correctly certified the 2001 Permit Application was exempt from environmental review. In terms of historic preservation review, at the time Lighthouse filed the 2001 Permit Application, the Collocation Agreement did not apply⁵⁰ and the NPA did not exist.⁵¹ Thus, Lighthouse was tasked with evaluating whether the facilities proposed in the 2001 Permit Application might "affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places."⁵² Saga has

⁴⁶ Opposition to Petition to Revoke at 2 and Attach. A.

⁴⁷ *Id.* at 2.

⁴⁸ *Id.* at 2 and Attach. A.

⁴⁹ *See, supra*, para. 12.

⁵⁰ While the Collocation Agreement was effective in 2001, it did not apply to the 2001 Permit Application. The Collocation Agreement applies only to "collocations," which it defines as "the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. Collocation Agreement, I.A. and II.A. Because Lighthouse constructed the tower on which the Station's antenna was mounted when it constructed the Station, the installation of the Station's antenna on the tower could not be considered a "collocation" and thus was outside the provisions of the Collocation Agreement.

⁵¹ The NPA—which Saga asserts applied to the 2001 Permit Application and necessitated historic preservation review—was not effective until March 7, 2005. Reply to Opposition to Petition to Revoke at 2-3. *Nationwide Programmatic Agreement for Review under the National Historic Preservation Act*, 70 Fed. Reg. 556 (Jan. 7, 2005). Further, although, the 2001 Permit Application was pending at the time the NPA was adopted, the NPA applied "prospectively" only. *See also Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Review Process*, Report and Order, 20 FCC Rcd 1073, 1133-34 para. 167 (2004) (finding that NPA applied "prospectively" only and noting that applying the NPA "to all pending cases would cause confusion and potentially impose unreasonable burdens on SHPOs/THPOs.").

⁵² 47 CFR § 1.1307(a)(4) (2001). While the Commission has modified Section 1.1307(a)(4), this portion remains the same today. 47 CFR § 1.1307(a)(4).

not alleged that Lighthouse failed to undertake this evaluation.⁵³ Further, as discussed herein, the most recent historic preservation review related to the same location found the Station's facilities have no adverse effect on properties listed or eligible for listing in the National Register of Historic Places.⁵⁴ Given this, we find Saga has not raised a substantial and material question regarding the accuracy of Lighthouse's certification that the facilities proposed in the 2001 Permit Application were excluded from historic preservation review. This, in turn, means Saga has not raised a substantial and material question regarding whether Lighthouse falsely made this certification or lacked a reasonable basis for making it.

D. Antenna and TPO Information

19. Saga asserts that, in the STA Request, Lighthouse should have specified both the antenna being used and the proposed transmitter power output (TPO) but failed to include that information. However, as Lighthouse notes, the Commission's Engineering STA form does not require the disclosure of such information. We decline to require the submission of this additional information.

E. Consent Decree

20. As part of this Order, we are adopting a Consent Decree entered into by the Media Bureau (Bureau) and Lighthouse. The Consent Decree resolves issues related to Lighthouse's violation of the law and rules governing underwriting announcements, its construction of the Station at an unauthorized location, and its operation of the Station with an unauthorized two-bay antenna. The Consent Decree stipulates that Lighthouse violated Sections 301 and 399B of the Act and Sections 73.503(d), 73.845 and 73.875 of the Rules. For these violations, Lighthouse will pay a civil penalty to the United States Treasury of eight thousand eight hundred dollars (\$8,800). Lighthouse will also implement a three-year compliance plan to avoid future violations of the law and rules governing underwriting announcements.

21. We conclude that nothing in the record before us creates a substantial or material question of fact whether Lighthouse possesses the basic qualifications to be a Commission licensee. After reviewing the terms of the Consent Decree, we find that the public interest would be served by its approval and by terminating the Bureau's investigation of Lighthouse's violations of the Act and Rules in connection with Saga's Petition, the Permit Application and the STA Request, subject to the terms of the Consent Decree. We note that, given Lighthouse's acknowledgment that it did – as Saga alleges – violate the law and rules governing underwriting announcements, and operate the Station from an unauthorized location and with unauthorized equipment, we grant the Petition in part. As provided in the Consent Decree,⁵⁵ however, we otherwise deny the Petition.

IV. CONCLUSION/ACTIONS

22. Section 312(a) permits the Commission to revoke a station's license or construction permit for, among other things, false statements knowingly made either in the application or in any statement of fact; conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit; willful or repeated failure to operate substantially as set forth in the license; and willful or repeated violation of, or willful or repeated failure to observe any provision of the Act or any of the Commission's rules. Lighthouse has stipulated that it violated the law and rules governing underwriting announcements, and operated the Station at a variance from its authorized parameters in violation of Section 301 of the Act and Sections 73.845 and 73.875 of the Rules. However,

⁵³ 36 CFR § 60.4 (2001). Indeed, it is worth noting that the Advisory Council on Historic Preservation has stated that ordinarily properties owned by religious institutions "shall not be considered eligible for the National Register." National Register Bulletin, How to Apply the National Register Criteria for Evaluation https://www.nps.gov/nr/publications/bulletins/nrb15/nrb15_2.htm (last visited Feb. 27, 2017).

⁵⁴ See, *supra*, para. 9.

⁵⁵ See Consent Decree at paras. 8 and 10.

despite these violations of the Act and the Rules, we do not believe revocation of the Station's license is appropriate.⁵⁶ Accordingly, the Petition to Revoke License filed by Saga Communications of New England, LLC, on October 7, 2015, IS GRANTED IN PART, DISMISSED IN PART AND OTHERWISE DENIED.

23. In addition, for the reasons set forth above, IT IS ORDERED that the Informal Objection filed by Saga Communications of New England, LLC, on May 11, 2016, IS GRANTED IN PART AND OTHERWISE DENIED.

24. IT IS FURTHER ORDERED that the Opposition to Request for Special Temporary Authority filed by Saga Communications of New England, LLC, on November 5, 2015, IS GRANTED IN PART AND OTHERWISE DENIED, AND the request for special temporary authority (BSTA-20151102AHI) filed by Lighthouse Christian Center on November 2, 2015, IS GRANTED.

25. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,⁵⁷ and by the authority delegated by Sections 0.61 and 0.283 of the Commission's rules,⁵⁸ the Consent Decree attached hereto IS ADOPTED.

26. IT IS FURTHER ORDERED that the investigation by the Media Bureau of the matters noted above IS TERMINATED.

27. IT IS FURTHER ORDERED that copies of this Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to Lighthouse Christian Center, 522 Springfield Street, Feeding Hills, MA 01030, its counsel, Matthew H. McCormick, Esq., Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, VA 22209, and counsel for Saga Communications of New England, LLC, Gary S. Smithwick, Smithwick & Belendiuk, P.C., 5028 Wisconsin Avenue, Suite 301, Washington, DC 20016.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Media Bureau

⁵⁶ Indeed, an underwriting violation "typically results in the imposition of a fine or admonishment." *WQED Pittsburgh*, Memorandum Opinion and Order, 15 FCC Rcd 202, 209 para. 12 (1999). The same is true for the other violations at issue here. See, e.g., *Power Radio Corp.*, Forfeiture Order, 21 FCC 6940 (EB 2007) (imposing a forfeiture for violation of Section 73.875); *Enforcement Bureau Field Offices List of Notices of Apparent Liability Issued*, Public Notice, 18 FCC Rcd 1803 (EB 2003) (noting issuance of a Notice of Apparent Liability for Forfeiture related to violations of, among other things, Section 73.1350, which governs transmission system operation for full service radio stations just as Section 73.875 governs transmission system operation for LPFM stations). We reject Saga's attempt to analogize this case to *United Television Co.*, 55 FCC 2d 416 (1975) (*United Television*), and *United Broadcasting Co. of Florida, Inc.*, Decision, 55 FCC 2d 832 (1975) (*United Broadcasting*). Reply to Opposition to Petition to Revoke at n.2. Those cases involved findings of "a flagrant disregard of Commission policy," "protracted misconduct" and repeated violations over "a prolonged period of time," which led the Commission to conclude that the licensee's "past representations were of no value," "no reliance can be placed on [licensee's] present promises of future compliance," and/or there was "little to indicate" that the licensee was "prepared to assume [its] obligation[] of responsible supervision." *United Television*, 55 FCC 2d at 422 paras. 11 and 13, and 424-25 para. 16; *United Broadcasting*, 55 FCC 2d at 837 para. 12, 840 paras 17-18, and 841 para. 20. We have not and, on the record before us, could not make such findings about Lighthouse and its operation of the Station.

⁵⁷ 47 U.S.C. §§ 154(i).

⁵⁸ 47 CFR §§ 0.61, 0.283.

CONSENT DECREE**I. INTRODUCTION**

1. This Consent Decree is entered into by and between the Bureau and Licensee, by their respective authorized representatives, for the purpose of resolving certain issues related to whether Licensee violated Sections 301 and 399B of the Act and Sections 73.503(d), 73.845 and 73.875 of the Rules with regard to the Station.

II. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended.¹
 - (b) "Bureau" means the Media Bureau of the Federal Communications Commission.
 - (c) "Commission" or "FCC" means the Federal Communications Commission.
 - (d) "Communications Laws" means, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which each Commission licensee is subject by virtue of its being a Commission licensee, including but not limited to the Underwriting Laws.
 - (e) "Compliance Plan" means the compliance obligations, program and procedures set forth in the Appendix to this Consent Decree.
 - (f) "Effective Date" means the date on which the Bureau releases the Order.
 - (g) "Execution Date" means the date on which this Consent Decree is executed by the latter of the Parties to do so.
 - (h) "Licensee" means Lighthouse Christian Center.
 - (i) "Order" means the Order of the Bureau adopting this Consent Decree.
 - (j) "Parties" means Licensee and the Bureau, each of which is a "Party."
 - (k) "Petition" means the Petition to Revoke License filed by Saga Communications of New England, LLC on October 7, 2015, alleging violations of the Underwriting Laws, Section 301 of the Act and Sections 73.845 and 73.875 of the Rules.²
 - (l) "Permit Application" means the pending application to modify the Station's license (File No. BPL-20151102AHI).
 - (m) "Rules" means the Commission's rules, found in Title 47 of the Code of Federal Regulations.
 - (n) "Station" means low power FM station WLCQ-LP, Feeding Hills, Massachusetts (Facility ID 133854).
 - (o) "Underwriting Laws" means, individually or collectively, Section 399B of the Act, Section 73.503(d) of the Rules,³ and the decisions and orders of the Commission interpreting these provisions.

¹ 47 U.S.C. § 151 *et seq.*

² 47 U.S.C. § 301; 47 CFR §§ 73.845, 73.875.

³ 47 U.S.C. § 399b; 47 CFR § 73.503(d).

- (p) "Violations" means violations of the Underwriting Laws, Section 301 of the Act and Sections 73.845 and/or 73.875 of the Rules.

III. BACKGROUND

3. The Underwriting Laws define advertisements as program material broadcast "in exchange for any remuneration" and intended to "promote any service, facility, or product," of for-profit entities.⁴ Section 399B(b)(2) specifically provides that noncommercial educational stations may not broadcast advertisements.⁵ Although contributors of funds to such stations may receive on-air acknowledgements of their support, the Commission has held that such acknowledgements are for identification purposes only, and must not promote the contributors' products, services, or businesses.⁶ Specifically, such announcements must not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent, or lease.⁷

4. Section 301 of the Act requires that no person use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license. Section 73.845 of the Rules makes each LPFM licensee "responsible for maintaining and operating its broadcast station in a manner that complies with the technical rules set forth elsewhere in this part and in accordance with the terms of the station authorization." Section 73.875 addresses modification of an LPFM station's transmission system. It permits an LPFM station to, without prior authorization, replace "an antenna with one of the same or different number of antenna bays, provided that the height of the antenna radiation center is not more than 2 meters above or 4 meters below the authorized values." Should a station make such a change, it must submit a modification of license application within 10 days of commencing program test operations."

5. The Petition alleges Licensee violated the Underwriting Laws by airing advertisements on the Station. It also alleges that the Station is not operating from the location or with the antenna specified in its license in violation of Sections 73.845 and 73.875 of the Rules. Upon investigation of these allegations, the Bureau determined that Licensee violated the Underwriting Laws, Section 301 of the Act, and Sections 73.845 and 73.875 of the Rules. In light of these compliance issues, the Parties have agreed to enter into this Consent Decree by which both Licensee and the Bureau intend to be legally bound.

IV. AGREEMENT

6. The Parties acknowledge that any proceeding that might result from the Bureau's investigation of the Violations could be time-consuming and require substantial expenditure of public and private resources. In order to conserve such resources, resolve the matter, and promote Licensee's compliance with the Communications Laws, especially the Underwriting Laws, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

7. The Parties agree to be legally bound by the terms and conditions of this Consent Decree. Both Licensee and the Bureau each represent and warrant that its signatory is duly authorized to enter into this Consent Decree on its behalf. Licensee agrees that the Bureau has jurisdiction over it and the matters contained in the Consent Decree.

⁴ 47 U.S.C. § 399b(a).

⁵ 47 U.S.C. § 399b(b)(2).

⁶ See *Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice, 7 FCC Rcd 827 (1986) ("1986 Public Notice").

⁷ See *id.*; see also *Xavier Univ.*, Memorandum Opinion and Order, 5 FCC Rcd 4920, 4921, para. 6 (1990), citing 1986 Public Notice, 7 FCC Rcd at 827.

8. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Licensee and the Bureau concerning the Violations at the Station, as discussed herein.

9. In express reliance on the covenants and representations in this Consent Decree, the Bureau agrees that it will not use the Violations in any action against the Licensee, provided that the Licensee satisfies all of its obligations under this Consent Decree. In the event that Licensee fails to satisfy any of its obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to the Violations, and or the violation of this Consent Decree.

10. As part of the Order, the Bureau shall terminate its investigation of the Violations and grant the Petition in part and dismiss or deny it in all other respects.

11. Licensee stipulates that it broadcast advertisements on the Station in violation of the Underwriting Laws and that the Station did not operate from the location or with the antenna specified in its license in violation of Section 301 of the Act and Sections 73.845 and 73.875 of the Rules.

12. In light of the Violations, Licensee agrees to pay a civil penalty to the United States Treasury in the amount of eight thousand eight hundred dollars (\$8,800) within thirty (30) calendar days after the Effective Date. Licensee will also send electronic notification of payment to Heather.Dixon@fcc.gov on the date said payment is made. Such payment will be made without further protest or recourse to a *trial de novo*, by a check or similar instrument, wire transfer or credit card and must include the Account Number and FRN referenced in the caption to the Order. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed FCC Form 159) must be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank -- Government Lockbox # 979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank: TREAS NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed FCC Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the FCC Form 159 to authorize the credit card payment. The completed FCC Form 159 must then be mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank -- Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

13. The Bureau agrees to grant the Permit Application, after the Effective Date, provided that the following conditions have been met: (1) the Licensee has fully and timely satisfied its obligation to pay the civil penalty referenced in paragraph 12 of this Consent Decree; and (2) there are no issues other than the Violations that would preclude grant of the Permit Application.

14. The Licensee represents that, in addition to its existing policies and procedures, it has adopted, is currently in the process of implementing, and agrees to abide by the Compliance Plan for the purpose of ensuring compliance with the Communications Laws, including the Underwriting Laws. The Licensee agrees, to the extent it has not already done so, to implement this Compliance Plan at the Station

no later than ninety (90) calendar days after the Effective Date and to keep such Compliance Plan in effect for two (2) years after the Effective Date.

15. The Licensee agrees that it is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that the Licensee fails to satisfy any condition or Commission Rule, in the absence of Commission alteration of the condition or Rule, it will be deemed noncompliant and may be subject to possible enforcement action, including, but not limited to, revocation of this Consent Decree, designation of the matter for hearing, letters of admonishment and/or forfeitures.

16. The Consent Decree will be binding on Licensee's successors-in-interest and assigns. The Licensee agrees that any future application to assign or transfer control of the Station will include a statement executed by an authorized representative of the proposed assignee or transferee consenting to assumption of the responsibilities and duties set forth in this Consent Decree with regard to the Station.

17. The Licensee waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge the validity of this Consent Decree and the Order, provided the Order adopts the Consent Decree without change, addition or modification.

18. The Licensee agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. Section 504 and 47 C.F.R. Section 1.1501 et seq., relating to the matters discussed in this Consent Decree.

19. The Licensee and the Bureau agree that if the Licensee, the Commission or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither the Licensee nor the Commission will contest the validity of the Consent Decree or Order, and the Licensee and the Commission will waive any statutory right to a trial *de novo* with respect to any matter upon which the Order is based (provided in each case that the Order is limited to adopting the Consent Decree without change, addition, or modification), and will consent to a judgment incorporating the terms of this Consent Decree.

20. The Licensee and the Bureau agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Order, provided the Order adopts the Consent Decree without change, addition or modification.

21. The Licensee and the Bureau agree that, in the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it will become null and void and may not be used in any manner in any legal proceeding.

22. This Consent Decree may be signed in counterparts and/or by telecopy and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed by telecopy or by original signatures.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Media Bureau

Date

LIGHTHOUSE CHRISTIAN CENTER



Timothy D. Moe, President
Lighthouse Christian Center

August 10, 2017

Date

APPENDIX

COMPLIANCE PLAN

Licensee, or its successor-in-interest, as appropriate will institute the following procedures to ensure compliance with the Underwriting Laws. Unless otherwise provided, all terms defined in the Consent Decree apply to this Compliance Plan.

I. COMPLIANCE OFFICER

1. Within thirty (30) calendar days after the Effective Date, Licensee shall designate a management-level employee to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as Compliance Officer shall be responsible for implementing, and administering this Compliance Plan and ensuring that Licensee complies with the terms and conditions of this Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Underwriting Laws before assuming his/her duties.

II. COMPLIANCE EFFORTS.

2. Within sixty (60) calendar days after the Effective Date, if the Compliance Officer is not an FCC regulatory counsel or in-house counsel, Licensee shall consult with outside FCC regulatory counsel regarding Licensee's overall compliance with the Underwriting Laws. Such consultations shall occur on a biannual basis, if not more frequently.

3. Within sixty (60) calendar days after the Effective Date, Licensee shall establish standard, internal operating procedures and compliance policies (Operating Procedures) that all employees and agents of Licensee who perform, or supervise, oversee or manage the performance of duties related to Licensee's responsibilities under the Communications Laws, including the Underwriting Laws (Covered Employees), must follow to help ensure Licensee's compliance with the Communications Laws, including the Underwriting Laws. Licensee's Operating Procedures shall include internal procedures and policies specifically designed to ensure that Licensee complies with the Underwriting Laws. The Compliance Officer, or a management-level employee of Licensee directly supervised by the Compliance Officer, shall review all scripts of underwriting announcements prior to broadcast. Licensee shall develop an Underwriting Compliance Checklist that describes the steps that a Covered Employee must follow to ensure that all material approved for broadcast is consistent with relevant past Commission precedent regarding the Underwriting Laws

4. Within ninety (90) calendar days of the Effective Date, Licensee shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Underwriting Laws, and set forth the Operating Procedures that the Covered Employees shall follow to help ensure Licensee's compliance with the Communications Laws, including the Underwriting Laws.

5. Licensee shall establish and implement a Compliance Training Program on compliance with the Underwriting Laws and the Operating Procedures. As part of the Compliance Training Program, Licensee shall advise Covered Employees of Licensee's obligation to report any noncompliance with the Underwriting Laws under paragraph 8 of this Compliance Plan and shall instruct on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Licensee shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

6. Licensee shall summarize the Underwriting Laws for each prospective client before accepting any contract with a prospective client to air underwriting announcements over the Station, and shall prepare the underwriting announcement for the underwriter's review. Licensee shall have its Compliance Office review all underwriting announcements before they air. Licensee shall not broadcast over any Station any announcement that does not comply with the Underwriting Rules.

III. REPORTING

7. Licensee shall report any noncompliance with the Underwriting Laws and with the terms and conditions of this Compliance Plan within thirty (30) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Licensee has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Licensee has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Peter.Doyle@fcc.gov and Heather.Dixon@fcc.gov.

8. Licensee shall file Compliance Reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of Licensee's efforts during the relevant period to comply with the terms and conditions of this Compliance Plan and the Underwriting Laws. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent and on behalf of Licensee, stating that the Compliance Officer has personal knowledge that Licensee: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in Paragraph 8 of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.⁸
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent and on behalf of Licensee, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that Licensee has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Licensee has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Audio Division, Media Bureau, Federal Communications Commission, Room, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Peter.Doyle@fcc.gov and Heather.Dixon@fcc.gov.

⁸ See 47 C.F.R. § 1.16.