

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

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| In the Matter of |) | |
| |) | |
| The Atlanta Channel, Inc. |) | Facility ID No. 65409 |
| |) | |
| Statement of Eligibility for Class A Television |) | |
| Status for Low Power Television Station WTHC- |) | |
| LP, Atlanta, Georgia |) | |

ORDER ON RECONSIDERATION

Adopted: October 7, 2014

Released: October 7, 2014

By the Chief, Media Bureau:

1. The Commission, by the Chief, Media Bureau, pursuant to delegated authority has before it a Petition for Reconsideration filed by Beach TV Properties, Inc., formerly The Atlanta Channel, Inc., licensee of station WTHC-LD (formerly WTHC-LP), Atlanta, Georgia, seeking reconsideration of a Commission decision denying The Atlanta Channel's Application for Review.¹ The Atlanta Channel filed the Application for Review in response to the staff's original and subsequent affirmation of the dismissal of the station's Statement of Eligibility for Class A Television Status.² The Petition for Reconsideration reiterates arguments the Commission has already considered and relies on new arguments that either could have been raised earlier or fail to establish any material error or omission in the *Order on Review*. For the following reasons, we dismiss in part and deny in part the Petition for Reconsideration.

2. **BACKGROUND.** On November 29, 1999, The Community Broadcasters Protection Act of 1999 (CBPA) was signed into law.³ Under the CBPA, low power television (LPTV) licensees that intended to seek Class A designation were required to submit a certification of eligibility within 60 days after the date of enactment of the Act, *i.e.*, by January 28, 2000, certifying compliance with the

¹*The Atlanta Channel, Inc.*, Memorandum Opinion and Order, 27 FCC Rcd 14541 (2012) ("*Order on Review*"). For ease of reference we will refer to the licensee of the station as The Atlanta Channel throughout this *Order on Reconsideration*.

² Letter from Barbara A. Kreisman, Chief, Video Division, to The Atlanta Channel, Inc., 1800E3-JLB (November 20, 2000) (*Reconsideration Decision*). The unpublished letter decision is available at http://licensing.fcc.gov/cgi-bin/prod/cdb/forms/prod/getimportletter_exh.cgi?import_letter_id=34403.

³ Pub. L. No. 106-113, § 5008, 113 Stat. Appendix I at pp. 1501A-594-1501A-598 (1999), codified at 47 U.S.C. § 336(f).

qualification requirements for Class A stations.⁴ Pursuant to the CBPA, an LPTV station submitting a certification of eligibility may qualify for Class A status if, during the 90 days preceding the date of enactment of the statute: (1) the station broadcast a minimum of 18 hours per day; (2) the station broadcast an average of at least 3 hours per week of programming produced within the market area served by the station or the market area served by a group of commonly controlled low power stations that carry common local programming produced within the market area served by such group; and (3) the station was in compliance with the Commission's requirements for LPTV stations.⁵ Alternatively, subsection 336(f)(2)(B) provides that the Commission could determine an LPTV station was eligible for Class A status if it found that it would be in the public interest, convenience, and necessity to do so, or for other reasons determined by the Commission.⁶ The CBPA provides that, "[a]bsent a material deficiency, the Commission shall grant [a] certification of eligibility to apply for Class A status."⁷ The Commission's form entitled "Statement of Eligibility for Class A Low Power Television Station Status," approved by the Office of Management and Budget, required certifications that the station met the three specific eligibility requirements set forth in subsection 336(f)(2)(A), and further required that an exhibit or explanation be provided should an LPTV station fail to meet the statutory requirements enumerated in that section yet seek eligibility pursuant to subsection 336(f)(2)(B).

3. The Atlanta Channel filed a signed Statement of Eligibility for WTHC-LP on December 29, 1999, but failed to certify compliance with any of the programming and operational qualification requirements or provide an exhibit demonstrating how it was otherwise eligible for Class A status under the alternative public interest standard. Consequently, staff dismissed its Statement of Eligibility as materially deficient.⁸ In its June 22, 2000 Petition for Reconsideration, submitted approximately five months after the statutory filing deadline for Statements of Eligibility, The Atlanta Channel filed an amended Statement of Eligibility and argued that the failure to respond to any of the qualification requirements in the original Statement of Eligibility was due to a clerical error. In denying the Petition for Reconsideration, the staff noted that the amended Statement of Eligibility was filed after the statutory deadline, that the Commission does not have general authority to waive or extend the deadline, absent

⁴ 47 U.S.C. § 336(f)(1)(B) ("Within 60 days after [November 29, 1999], licensees intending to seek class A designation shall submit to the Commission a certification of eligibility based on the qualification requirements of this subsection. Absent a material deficiency, the Commission shall grant certification of eligibility to apply for class A status.")

⁵ 47 U.S.C. § 336(f)(2)(A). The statute also establishes continuing compliance with the operating rules applicable to full power stations as a qualification for Class A status. *Id.* at § 336(f)(2)(A)(ii) (station must be in compliance with full power operating rules "from and after" the date of its Class A license application).

⁶ 47 U.S.C. § 336(f)(2)(B). As discussed further below, the Commission established criteria for granting eligibility under the public interest standard, but it did not establish any alternative qualification criteria for specific types of stations. See *Establishment of a Class A Television Service*, Report and Order, 15 FCC Rcd 6355, 6369-70 (2000) (*Class A Order*) (stating that Commission would not adopt alternative criteria but would explore in a separate proceeding whether to establish criteria to allow translator stations to apply for Class A status).

⁷ 47 U.S.C. § 336(f)(1)(B). See also *Class A Order*, 15 FCC Rcd at 6360.

⁸ *Dismissal of LPTV Licensee Certificates of Eligibility for Class A Television Station Status*, Public Notice, 15 FCC Rcd 9761 (MMB 2000) (*Dismissal PN*).

extraordinary circumstances, and that The Atlanta Channel had failed to demonstrate “extraordinary circumstances” justifying waiver of the deadline.⁹

4. In the Application for Review, The Atlanta Channel argued that untimeliness is not an appropriate ground for dismissal of its corrected Statement of Eligibility.¹⁰ The Atlanta Channel maintained that its defective initial submission was timely and was not materially deficient because, even though it failed to certify compliance with any of the qualification requirements, the station had nevertheless met all the programming and technical requirements set forth in the CBPA.¹¹ The Atlanta Channel asserted that the statutory phrase “material deficiency” meant that “the licensee *cannot* certify full compliance with the eligibility criteria” because Congress sought to “maximize, not restrict the conferral of Class A status on deserving low power licensees” and determined that “licensees that have complied in all respects with the qualifying criteria set out in § 336(f)(2)(A) [should be afforded] the valuable protection assured to Class A operations.”¹² Characterizing the staff’s dismissal of its Statements of Eligibility as “draconian” and unduly harsh, The Atlanta Channel stated that *nunc pro tunc* acceptance of its corrected filing “would be entirely consistent with notions of fairness” and would not affect other LPTV licensees who filed timely certifications.¹³ Finally, The Atlanta Channel claimed it will suffer irreparable injury, and viewers will experience reduced service, if its Statement of Eligibility is not reinstated.¹⁴

5. In denying the Application for Review, the Commission concluded that the CBPA intended to provide LPTV stations a single window to convert to Class A status in those instances where a licensee had met the specific statutory criteria and filed a “materially sufficient” certification of eligibility on or before the statutory deadline.¹⁵ The Atlanta Channel’s Statement of Eligibility filed

⁹ *Reconsideration Decision* at 2 (citing *Class A Order*, 15 FCC Rcd at 6361); *Royce International Broadcasting Company v. FCC*, 476 Fed.Appx. 866, 2012 WL 2368703 (C.A.D.C.) (*per curiam*) (“[B]oth this Court and the Commission have consistently held that error by counsel is not an extenuating circumstance justifying waiver of a filing deadline” for petition for reconsideration); *Virgin Islands Telephone Corporation v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993) (miscommunication within law firm does not constitute “extraordinary circumstances” justifying consideration of late-filed petition for reconsideration); *Gardner v. FCC*, 530 F.2d 1086, 1091-92 (D.C. Cir. 1976) (rejection of petition for reconsideration an abuse of discretion where there is a lack of service and party is not represented by counsel). See, also *Order on Review*, 27 FCC Rcd at 14545 n.27 (citing *Communications Vending Corp. of Arizona, Inc. v. FCC*, 365 F.3d 1064, 1075 (D.C. Cir. 2004) (D. C. Circuit has “set a high hurdle for equitable tolling, allowing a statute to be tolled ‘only in extraordinary and carefully circumscribed instances.’ . . . [E]quitable tolling is unwarranted where a litigant has ‘failed to exercise due diligence in preserving his legal rights.’”)).

¹⁰ Application for Review at 2-4.

¹¹ *Id.* at 3.

¹² *Id.* (citing *Congressional Findings Respecting Low-Power Television*, Pub. L. No. 106-113, Div. B., § 1000(a)(9) [S. 1948, Title V, § 5008(b)], Nov. 29, 1999, 113 Stat. 1536, 1537) (emphasis in original).

¹³ Application for Review at 4-6.

¹⁴ *Id.* at 6.

¹⁵ *Order on Review*, 27 FCC Rcd at 14543.

during that time period included no certifications as to whether WTHC-LD met any of the Class A programming and operational qualification requirements, and no explanation as to how it was eligible for Class A status under the alternative public interest standard set forth in subsection 336(f)(2)(B). The Commission found that the term “material deficiency” contained in the CBPA included, as was the case here, the complete omission of the required certifications, regardless of whether the station met the statutory requirements at the time of filing.¹⁶ The Commission stated that to interpret the CBPA otherwise would read “certification” out of the statute entirely.¹⁷ The Commission found that the statutory deadline was non-discretionary, and that under such circumstances, in order to toll the deadline, The Atlanta Channel needed to show that it was unable to meet the deadline due to extraordinary circumstances, despite the exercise of due diligence.¹⁸ The Commission found that The Atlanta Channel failed to take corrective action before the statutory deadline, even though the station had one month to review its filed statement before the 60-day deadline expired. In addition, the Commission noted that The Atlanta Channel offered no reason for its failure to do so.¹⁹ In light of these facts, the Commission determined that The Atlanta Channel had failed to show extraordinary circumstances justifying waiver of a statutory deadline and that it therefore lacked discretion to accept The Atlanta Channel’s attempt to cure the material defects in the Statement of Eligibility filed during the 60-day statutory filing period.²⁰

6. DISCUSSION. Commission rules prescribe limited circumstances under which a party may seek reconsideration of a Commission denial of an application for review. Section 1.106(b)(2) of the Commission’s rules provides that, where the Commission has denied an application for review, a petition for reconsideration will be entertained only if: (i) the petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or (ii) the petition relies on facts unknown to petitioner until his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.²¹ Section 1.106(b)(3) authorizes the Bureau to dismiss as repetitious “[a] petition for reconsideration of an order denying an application for review which fails to rely on new facts or changed circumstances.”²² Section 1.106(p) authorizes staff to dismiss or deny any petition for reconsideration of Commission action that “plainly does not warrant Commission consideration,” for example, because the petition “[f]ail[s] to identify any material error, omission, or reason warranting reconsideration” or relies on “facts or arguments which have not previously been presented to the Commission and which do not meet the

¹⁶ *Id.* at 14544.

¹⁷ *Id.*

¹⁸ *Id.* at 14545 & nn.26-28.

¹⁹ *Id.*

²⁰ *Id.* at 14546.

²¹ 47 C.F.R. § 1.106(b)(2).

²² 47 C.F.R. § 1.106(b)(3); *see also id.* at § 1.106(p)(3) (Bureau may deny or dismiss petition for reconsideration of a Commission decision where the petition relies on “arguments that have been fully considered and rejected by the Commission within the same proceeding”).

requirements of paragraphs (b)(2), (b)(3), or (c) of this section.”²³

7. The Atlanta Channel reiterates its earlier argument that its initial Statement of Eligibility was not materially deficient, despite the lack of any substantive certifications, asserting that the CBPA phrase “material deficiency” refers only to defects in a licensee’s actual conformance with the historical performance standards enumerated in the CBPA, which The Atlanta Channel satisfied.²⁴ The Atlanta Channel also repeats its earlier contention that the Commission erred in refusing to waive the statutory deadline.²⁵ As discussed above, the Commission considered and rejected these arguments.²⁶ Thus, we dismiss these portions of the Petition as repetitive.²⁷

8. In addition to reiterating the arguments raised in its previous filings, The Atlanta Channel makes a number of new arguments: (a) that the staff’s action with regard to WTHC-LD conflicted with other circumstances where the staff accepted incomplete or inaccurate certifications of eligibility;²⁸ (b) that the Commission abused its discretion by refusing to grant eligibility because staff should have known that the omission of certifications was inadvertent;²⁹ (c) that the Commission “erred when it did not mention why acceptance of the amended Statement in the public interest should be unavailable to WTHC when the statute plainly allowed the FCC to confer Class A status for any other reasons”;³⁰ (d) that the Commission erred in asserting that the station was required to comply with the technical rules for full power television stations, and that WTHC-LD, in addition to complying with the initial eligibility criteria, was also in compliance with those rules;³¹ (e) that failure to accept the amended Statement of Eligibility would be an unconstitutional “taking;”³² and (f) that the Commission should have placed LPTV stations on notice that incorrect or incomplete Statements of Eligibility could not be amended in the future.³³ Finally, The Atlanta Channel seeks leave to supplement the record by filing a declaration containing a number of new factual representations.

9. For the reasons set forth below, we reject The Atlanta Channel’s claims that failure to grant Class A eligibility would result in an impermissible taking and that the Commission improperly relied on the finding that the station was not continuously in compliance with the rules applicable to full

²³ 47 C.F.R. § 1.106(p)(1)-(2).

²⁴ Petition for Reconsideration at 6-8.

²⁵ *Id.* at 9-10.

²⁶ *Order on Review*, 27 FCC Rcd at 14544-45.

²⁷ 47 C.F.R. §§ 1.106(b)(3), 1.106(p)(3).

²⁸ Petition for Reconsideration at 17-19 & n.58 (citing *Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965); *McElroy Electronics Corp. v. FCC*, 990 F.2d 1351, 1365 (D.C. Cir. 1993).)

²⁹ *Id.* at 11 (citing *Communications and Control, Inc. v. FCC*, 374 F.3d 1329, 1336 (D.C. Cir. 2004).)

³⁰ *Id.*

³¹ *Id.* at 12-16.

³² *Id.* at 20.

³³ *Id.* at 17, 19-20.

power stations.³⁴ Accordingly, we deny these portions of the Petition for Reconsideration.³⁵

10. The Atlanta Channel's challenge to a footnote in the *Order on Review* regarding compliance with the requirements applicable to full power stations fails to identify a material error in the *Order on Review*, and accordingly we deny this aspect of the Petition.³⁶ The Atlanta Channel is correct in asserting that initial Class A eligibility was not dependent upon compliance with the technical rules for full power television stations prior to the Commission's grant of Class A eligibility and the filing of a Class A license application.³⁷ To the extent the challenged footnote in the *Order on Review* suggested that The Atlanta Channel was ineligible for Class A status because of its failure to adhere to such rules, it was not decisionally significant and therefore was not material, notwithstanding The Atlanta Channel's allegation that the language "colored the Commission's judgment" in the case. Even though The Atlanta Channel was not required to comply with the rules for full power stations prior to the filing of a Class A license application, staff correctly dismissed the initial and late-filed corrected Statements of Eligibility because the initial Statement lacked any substantive certifications or exhibits and the corrected certification was untimely.

11. We also reject The Atlanta Channel's claim that the process whereby the Commission will reclaim spectrum for broadband use, combined with unreasonable delay in the Commission's action on the Application for Review, will result in a "regulatory taking" if The Atlanta Channel is left with no channel from which to broadcast.³⁸ Interests in broadcast licenses are not property interests subject to protection under the Fifth Amendment.³⁹ While the Commission has stated it intends to repurpose some broadcast spectrum, it is unclear at this time how this will affect station WTHC-LD, which continues to operate, notwithstanding the rejection of The Atlanta Channel's Statement of Eligibility.

12. As to The Atlanta Channel's remaining arguments, The Atlanta Channel has not offered any reason for its failure to have raised these arguments earlier in the proceeding. To the extent that The Atlanta Channel relies on those arguments, including statements in the new declaration that it could have

³⁴ *Id.* at 12.

³⁵ 47 C.F.R. § 1.106(p)(1).

³⁶ The Commission noted that the licensee "did not state that it has met the continuing eligibility requirements for Class A stations since dismissal of its first Statement of Eligibility," and that "our records show that it has not filed FCC Form 398 Children's Programming Reports, and there is no main studio of record." *Order on Review*, 27 FCC Rcd at 14542 n.8.

³⁷ Petition for Reconsideration at 13.

³⁸ *Id.* at 20.

³⁹ *Prometheus Radio Project v. FCC*, 373 F.3d 372, 428-29 (3d Cir. 2004); *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 475 (1940) ("The policy of the [1934 Communications] Act is clear that no person is to have anything in the nature of a property right as a result of the granting of a license."); *see also CBS, Inc. v. FCC*, 453 U.S. 367, 395 (1981) (noting that the broadcast spectrum is part of the public domain and that a broadcaster merely has "use of a limited and valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations," *quoting Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994, 1003 (D.C. Cir. 1966); 47 U.S.C. § 301 (broadcast licenses provide for the "use . . . but not the ownership" of channels of communication)).

presented earlier, we dismiss the Petition for Reconsideration.⁴⁰ Alternatively and independently, we consider and reject these arguments on the merits because The Atlanta Channel has failed to identify any material error, omission, or reason warranting reconsideration.⁴¹ The Commission adopted specific criteria pursuant to its authority to grant eligibility in the public interest or for other reasons, which it cited in the initial order dismissing The Atlanta Channel's Statement of Eligibility.⁴² The Atlanta Channel's initial Statement of Eligibility lacked any information supporting eligibility, and its corrected statement was untimely. Each of the cases The Atlanta Channel cites in support of its claim of disparate treatment involved timely filed Statements of Eligibility that provided all information necessary for the Bureau to grant eligibility either on the basis of the statutory programming and operational criteria⁴³ or based on the Commission's alternative public interest standard.⁴⁴ We reject The Atlanta Channel's claim that staff should have reviewed The Atlanta Channel's filing before the deadline to discover patent defects that should have been readily apparent to The Atlanta Channel before it submitted the form to the Commission. The staff's reliance on LPTV filers to ensure that their submissions were complete was

⁴⁰ 47 C.F.R. §§ 1.106(b)(2), 1.106(p)(2).

⁴¹ *Id.* at § 1.106(p)(1).

⁴² *Dismissal PN*, 15 FCC Rcd 9761; *see also Class A Order*, 15 FCC Rcd at 6369 (requiring a showing that the deviation from the statutory standards was "insignificant" or that equity mandated certification in light of "compelling circumstances," such as "a natural disaster or interference conflict which forced the station off the air during the 90 day period before enactment of the CBPA," and declining to adopt alternative criteria for foreign language stations or translators).

⁴³ Letter from Barbara A. Kreisman, Chief, Video Services Division, to Tiger Eye Broadcasting Corp. (Oct. 25, 2001) (granting petition for reconsideration because staff had incorrectly dismissed timely, fully compliant Statements filed for stations KOHC-LP, Oklahoma City, OK, WBMG-LP, Moody, AL, and WOOT-LP, Chattanooga, TN, certifying to the programming and operational eligibility standard) (unpublished, copy available in the Commission's Reference Information Center).

⁴⁴ Letter from Barbara A. Kreisman, Chief, Video Services Division, to Louis E. Jenkins, Jr., Great Oaks Broadcasting Corporation (Aug. 11, 2000) (concluding that KANC-LP's loss of its transmitter site satisfied the Commission's standard for granting eligibility in the public interest where a licensee did not meet the statutory criteria); Letter from Barbara A. Kreisman, Chief, Video Services Division, to Mr. Gerald Benavides (Aug. 11, 2000) (concluding that five-day period of non-compliance by KANG-LP with the statutory criteria was not significant and that the facts set forth in the station's timely filed Statement of Eligibility justified grant under the Commission's public interest criteria); Letter from Barbara A. Kreisman, Chief, Video Services Division, to Harvey Divens, Treasurer, Detroit World Outreach Assembly of God Church (Aug. 11, 2000) (granting initial eligibility to WDWO-LP under the public interest standard "[b]ased upon the representations set forth in [the] statement of eligibility," which explained that the station had been displaced and prior to displacement had satisfied the programming and operational criteria for many years) ("Aug. 11, 2000 WDWO-LP Letter"). The Atlanta Channel claims that staff rescinded an earlier denial of eligibility to WDWO-LP on June 26, 2000 and suggests that the staff relied on a supplement filed by the licensee on June 19, 2000 outlining the station's local programming. The record indicates, however, that on June 26, 2000, the staff rescinded *the initial grant* under the programming and operational standard, Letter from Barbara A. Kreisman, Chief, Video Services Division, to Joseph E. Dunne III, Esq. (June 26, 2000), and subsequently granted eligibility based on information provided in the timely filed Statement of Eligibility. Aug. 11, 2000 WDWO-LP Letter, *supra*. Copies of the referenced Statements of Eligibility and unpublished letters are available in the Commission's Public Reference Room.

entirely reasonable.⁴⁵ Finally, the Public Notice announcing the process for seeking eligibility unambiguously stated that LPTV licensees wishing to convert to Class A status “must *complete*” the Statement of Eligibility and submit it by the statutory deadline.⁴⁶ Unlike the forms at issue in the so-called “letter perfect” cases that The Atlanta Channel cites, the one-page form at issue here was simple and straightforward, and The Atlanta Channel could have readily ascertained for itself that its submitted form was defective.⁴⁷ Thus, The Atlanta Channel had adequate notice of the filing requirements before the statutory deadline.

⁴⁵ The Atlanta Channel’s Statement of Eligibility contained a signature representing that the signer had reviewed the form and verified that it was “true, correct and complete.”

⁴⁶ *Mass Media Bureau Implements Community Broadcasters Protection Act of 1999*, Public Notice, 1999 WL 1138462 (FCC Dec. 13, 1999) (emphasis added). See also *Establishment of a Class A Television Service*, Notice of Proposed Rule Making, 15 FCC Rcd 1173, 1178 (2000) (released prior to the statutory deadline and defining “acceptable certification of eligibility” as “a certification that is complete and that, on its face, indicates eligibility for Class A status pursuant to the eligibility criteria established by statute and any other criteria ultimately approved in this proceeding”).

⁴⁷ See *Salzer v. FCC*, 778 F.2d 869, 875 (D.C. Cir. 1985) (Commission order “left applicants confused as to how and when to provide the newly required information. . . . The FCC cannot reasonably expect applications to be letter-perfect when, as here, its instructions for those applications are incomplete, ambiguous or improperly promulgated”); *Processing of FM and TV Broadcast Applications*, Report & Order, 50 Fed. Reg. 19936, 19946 App. D (May 13, 1985), cited in *JEM Broad. Co., Inc. v. FCC*, 22 F.3d 320, 322 (D.C. Cir. 1994) (listing eight technical requirements, various certifications, and ownership details required for an application to be deemed acceptable for processing). The Atlanta Channel’s reliance on *Communications and Control, Inc. v. FCC*, 374 F.3d 1329, 1336 (D.C. Cir. 2004), is also misplaced. There the Commission refused to allow a licensee to correct a typographical error in the coordinates for its transmission tower, even though the application elsewhere identified the tower location correctly, and the Commission cancelled the license seven years after grant. The Court noted that the Commission had routinely allowed similar corrections in the past and held that the Commission had failed to explain the reason for its departure from that practice. The Atlanta Channel, on the other hand, has not shown that the Commission treated it differently from similarly situated LPTV licensees, nor was there any information in the Statement of Eligibility that would have allowed the Commission to ascertain that WTHC-LP met the substantive statutory criteria.

13. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 1.106(b) and 1.106(p) of the Commission's rules, 47 C.F.R. §§ 1.106(b),(p), the Petition for Reconsideration filed by Beach TV Properties, Inc. IS DISMISSED to the extent it repeats arguments already considered and rejected, IS DISMISSED AND IN THE ALTERNATIVE IS DENIED to the extent it raises new arguments that could have been raised earlier, as discussed herein, and IS DENIED with respect to the arguments concerning regulatory taking and compliance with the rules applicable to full power stations.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau