

FEDERAL COMMUNICATIONS COMMISSION

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JUN 16 2009**

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University of Massachusetts
100 Morrissey Boulevard
Boston, MA 02125

Light of Life Ministries, Inc.
160 Bangor Street
Augusta, ME 04330

In re: NEW(FM), Gloucester, MA
Facility ID No. 174558
University of Massachusetts ("UOM")
BNPED-20071019AUQ
Petition for Reconsideration

NEW(FM), Rockport, MA
Facility ID No. 176844
Light of Life Ministries, Inc. ("Light")
BNPED-20071022ASE
Petition to Deny

Dear Applicant:

This is in reference to: (1) the above-captioned application file by UOM dismissed November 8, 2007, (2) the Petition for Reconsideration filed by UOM on November 21, 2007, (3) the Petition to Deny filed by UOM against Light's application on October 10, 2008 and (4) all other related pleadings. UOM requests reconsideration of the staff's November 8, 2007 dismissal of the above-captioned application. For the reasons stated below, we deny the Petition for Reconsideration, dismiss the Petition to Deny, and grant BNPED-20071022ASE.

By letter dated November 8, 2007, the staff informed UOM that the application, as originally filed, was in violation of 47 C.F.R. § 73.515. Specifically, the proposed 60 dBu contour failed to cover at least 50 percent of the community of license of Gloucester, MA. Consequently, the application was dismissed pursuant to 47 C.F.R. § 73.3566.

On November 21, 2007, UOM submitted a petition for reconsideration requesting reinstatement *nunc pro tunc* and an amendment. UOM also filed a Petition to Deny stating that its application and Light's application are mutually exclusive and that the staff should defer processing on Light's application pending the outcome of the petition for reconsideration. UOM claims that the original application contained a typographical error and requests that the coordinates be corrected from 42° 37' 28" to 47° 37' 28". However, a change in coordinates to this degree for a noncommercial educational ("NCE") FM application results in a major amendment:¹ such an amendment can only be filed during an application

¹ Pursuant to 47 C.F.R. Section 73.7573(a)(1), a major amendment occurs when the amended 60 dBu contour fails to

filing window required for NCE new and major change applications.² Consequently, your amendment and request for reinstatement cannot be accepted and processed under the terms of the Commission's August 2, 1984 *Public Notice*.³

In addition, your petition for reconsideration does not qualify for consideration under Section 1.106(c) of the Commission's rules. No good cause has been demonstrated that would warrant acceptance of an amendment. You have not shown that the staff's dismissal was in error, nor that facts and circumstances have occurred that could not have been discovered earlier using ordinary diligence. Indeed, the petition acknowledges that the error was solely the applicant's. It is the applicant's responsibility to ensure that *all* portions of its application are correct before filing the application.⁴ The staff cannot be responsible for correcting errors made, inadvertently or not, in applications. Furthermore, the corrective amendment was filed after the October 22, 2007 close of the noncommercial educational FM application filing window period, and so, must protect all applications properly filed during the window period.⁵ Making the coordinate correction sought for in the present application brings this proposal into direct conflict with window application BNPED-20071022ASE, Rockport, MA.⁶ Any application, as amended, that proposes to create a new application conflict with another application filed in this NCE window will not be accepted.

In light of the above, the November 21, 2007 Petition for Reconsideration filed by the University of Massachusetts IS HEREBY DENIED, the October 10, 2008 Petition to Deny IS HEREBY DISMISSED, and application BNPED-20071022ASE IS HEREBY GRANTED. These actions are taken pursuant to 47 C.F.R. § 0.283. Please note, pursuant to the terms of the August 2, 1984 *Public Notice*, this constitutes UOM's one opportunity to amend the application and request reinstatement *nunc pro tunc*. UOM is not entitled to another attempt to amend the application.

Sincerely,



Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: John F. Garziglia, Esq.

overlap the originally filed 60 dBu contour.

² See *Letter from Peter H. Doyle, Chief, Audio Division, to Plus Charities*, DA 09-441 (rel Feb. 25, 2009) (rejected the contention that the staff should treat its proposed amendment correcting a coordinate discrepancy as a "minor" amendment.)

³ *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, FCC 84-366, 56 RR 2d 776, 49 FR 47331 (rel Aug 2, 1984).

⁴ See *Letter from Peter H. Doyle, Chief, Audio Division, to Plus Charities*, DA 09-441 (rel Feb 25, 2009) (In the event of any discrepancies between data in the Tech Box and data submitted elsewhere in an application, the data in the Tech Box must be used.)

⁵ See *Window Opened to Expedite Grant of New NCE FM Station Construction Permits; Bureau Will Accept Settlements and Technical Amendments*, Public Notice, 22 FCC Rcd. 19438 (2007)

⁶ This application was accepted for filing on September 11, 2008.