



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

August 1, 2013

In Reply Refer to:
1800B3-PPD

Dr. Jon A. Gerbracht
Edinboro Early School, Inc.
380 Jumpers Hole Road
Severna Park, MD 21146

In re: **NCE MX Group 113**

New NCE (FM), Ocean City, Maryland
Edinboro Early School
Facility ID No. 173444
File No. BNPED-20071012AJU

WEES-LP, Ocean City, Maryland
Facility ID No. 123612
File No. BPL-20080304AAC

Second Petition for Reconsideration

Dear Dr. Gerbracht:

We have before us a second Petition for Reconsideration (“Petition”)¹ filed by Edinboro Early School, Inc. (“Edinboro”). This second Petition is in response to the Media Bureau’s (“Bureau”) November 3, 2011, decision (“NCE Decision”) dismissing Edinboro’s application for a new noncommercial educational (“NCE”) FM station at Ocean City, Maryland. For the reasons stated below, we dismiss the Petition as repetitious.

Background. The Petition seeks reconsideration again of the Bureau’s decision to dismiss Edinboro’s application for a construction permit (“CP”) for a new NCE FM station in Ocean City, Maryland. The Bureau determined Edinboro had not shown that it is a non-profit organization as required by Section 73.503(a)² of the Commission’s rules and was therefore ineligible to be the licensee of an NCE station. Specifically, it found that Edinboro was not recognized by the State of Maryland as a non-profit entity because the State’s database for the Department of Assessments and Taxation indicates that the company is a for-profit stock corporation.³

¹ Edinboro filed its Petition in CDBS through its LPFM license. However, the Petition addresses the Bureau’s decision regarding the NCE CP application, thus we are treating the Petition as a reconsideration petition for the Bureau’s dismissal of Edinboro’s NCE application.

² 47 C.F.R. § 73.503(a).

³ See Letter to Dr. Jon A. Gerbracht, Ref. No. 1800B3 (Audio Div., November 3, 2011) (“*Staff Decision*”); *Edinboro Early School*, Letter, 25 FCC Rcd 15094, 15096 (MB 2010).

In its first Petition for Reconsideration, Edinboro argued it had always operated as a non-profit organization and as proof provided a copy of its bylaws, which state that the corporation is a non-profit entity. It also claimed that it distributes its earnings to members of its staff as annual bonuses and has never distributed dividends or earnings to its owners.⁴ Edinboro also argued the Bureau had “proof” of Edinboro’s “non-profit status” since it first granted Edinboro’s low power FM (“LPFM”) construction permit on April 12, 2001.⁵

The Bureau determined it was irrelevant that Edinboro’s bylaws state that it operates as a nonprofit or that its practice is to distribute its “earnings” to its employees.⁶ Rather the key issue was whether the State of Maryland recognizes Edinboro as a non-profit corporation,⁷ and Edinboro had not shown that it does.⁸ Moreover, we determined the Bureau’s previous grant of Edinboro’s LPFM applications were based on Edinboro’s incorrect certifications of its status rather than any independent review of corporate records.⁹

Edinboro’s latest Petition again argues it has always operated as a non-profit organization. This time, it also provides Edinboro’s federal tax records as proof of its non-profit status and states it has “never distributed or inured earning to an individual or stockholder.”¹⁰

Discussion. Reconsideration is warranted only if the Petitioner sets forth an error of fact or law, or presents new facts or changed circumstances which raise substantial and material questions of fact that otherwise warrant reconsideration of the prior action.¹¹ It is Commission policy that petitions for reconsideration are not to be used for rearguing points previously advanced and rejected.¹² Moreover, the Commission’s rules allow the staff to dismiss as “repetitious” any petition for reconsideration of an order which has previously been denied on reconsideration.¹³

Edinboro does not provide any new information that it did not already have in its possession, and thus the Petition is subject to dismissal. Even assuming that the facts it alleges are true, Edinboro fails to show that either language in its by-laws or the manner in which it distributes “earnings” establishes its non-profit status as required by state law. Our inquiry regarding Edinboro’s eligibility is dictated by Edinboro’s status with the State of Maryland,¹⁴ and Edinboro does not dispute the fact that it is now and was at the time it filed its application for an NCE permit legally incorporated as a for-profit corporation under the laws of the State of Maryland. This fact is dispositive in this case. Accordingly, we find that the *Staff Decision* properly concluded that Edinboro is not eligible to hold an NCE licensee.

⁴ *Staff Decision* at 1.

⁵ *Id.*

⁶ *Id.* at 2.

⁷ See, e.g., *Hammock Environmental and Educational Community Services*, Letter, 25 FCC Rcd 12804 (MB 2010) (“*Hammock*”) (finding that an applicant for a new NCE FM station was eligible to hold an NCE FM license where it was recognized as a non-profit corporation under Florida state law).

⁸ Although the Bureau specifically cited the relevant State of Maryland database, Edinboro made no attempt to rebut this finding or provide contrary information.

⁹ See, e.g., WEES-LP Application, Section II. The grant of that application is a final order and will not be revisited here. However, this matter will be referred to the Enforcement Bureau for its review and consideration.

¹⁰ Petition at 1.

¹¹ See 47 C.F.R. § 1.106.

¹² See *Southern Adventist University*, Letter, 27 FCC Rcd 2567, 2568 (MB 2012).

¹³ 47 C.F.R. § 1.106(k)(3).

¹⁴ See *Hammock*, 25 FCC Rcd at 12806.

Conclusion. Accordingly, for the reasons set forth above, IT IS ORDERED, that Edinboro Early School, Inc.'s second Petition for Reconsideration IS DISMISSED as repetitious.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter H. Doyle".

Peter H. Doyle
Chief, Audio Division
Media Bureau