

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re:)
)
Application for Minor Change of Licensed)
Facility of WEMC(FM), Harrisonburg, VA)
(FIN-4308))
)
Filed by Board of Trustees of Eastern)
Mennonite University)

To: Office of the Secretary
Attn: Audio Division, Media Bureau

BPED-20110211AAO

FILED/ACCEPTED

MAY 16 2011

Federal Communications Commission
Office of the Secretary

**REPLY TO OPPOSITION TO
PETITION FOR RECONSIDERATION**

Stu-Comm, Inc. ("Stu-Comm"), by its attorney and pursuant to Section 1.106 of the Commission's Rules,¹ hereby replies to the Opposition to Petition for Reconsideration filed by the Board of Trustees of Eastern Mennonite University's ("EMU") in the above-captioned matter. As EMU makes crystal clear, it filed a new application for a minor modification on the very same day that the previous WEMC(FM) construction permit expired.² As such, its application is inconsistent with the Commission's policy and practice of requiring that applicants in such circumstances file on the next business day after the expiration of a construction permit. Therefore, the grant of the above-captioned application should be rescinded and the application dismissed as premature. Anything less would be inequitable and a departure from the Commission's consistent treatment of similarly situated applicants in the past.

¹ 47 C.F.R. § 1.106.

² See FCC File No. BPED-20070907AAU, which expired on February 11, 2011. It is noted that it has been the FCC staff's practice over the years to treat construction permits as expiring at 11:59 PM local time on the date of expiration, despite the language on the face of the permit that it expires at 3 AM local time. This point, however, is not critical to the point at hand, as in any event, the Commission's policy has been to require that applicants in this situation file on the next business day after the expiration of the prior permit.

Given the Commission's well-established practice in such circumstances, Stu-Comm had more than a reasonable expectation that the WEMC application would be returned as unacceptable for filing, and thus, Stu-Comm did not need to submit an informal objection to raise this procedural point. Further, Stu-Comm's interests were not injured until the Commission acted to grant, rather than dismiss, the WEMC application. Accordingly, it is reasonable that Stu-Comm did not file an informal objection while the WEMC application was pending, as there was every indication that the Commission would adhere to its long-established procedures and under its processing guidelines the application would be returned as unacceptable for filing.

In any event, regardless of Stu-Comm's standing, the Commission should reconsider its action in this matter *sua sponte*, and enforce its established policy and procedures under its own motion. To allow the grant of WEMC's application to stand would be inequitable and contrary to the Commission's consistent guidance to prior applicants and licensees. Accordingly, Stu-Comm respectfully requests that the Commission reconsider its action in this matter and rescind the grant of the above-captioned application to modify WEMC(FM).

Respectfully submitted,

STU-COMM, INC.

By: 
Brendan Holland

Its Attorneys

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Dated: May 16, 2011

CERTIFICATE OF SERVICE

I, Rhea Lytle, a secretary with the law firm of Davis Wright Tremaine LLP, do hereby certify that I have this 16th day of May 2011, mailed by first-class United States mail, postage prepaid, copies of the foregoing **"REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION"** to the following:

Peter H. Doyle*
Chief, Audio Division
Media Bureau
Federal Communications Commission
audiodivisionpleadings@fcc.gov

Twila K. Yoder
Board of Trustees of Eastern Mennonite University
1200 Park Road
Harrisonburg, VA 22802



Rhea Lytle

*Stamp & Return copy to be provided the following day upon receipt from the Secretary's Office.