



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

October 18, 2011

*In Reply Refer To:*  
1800B3-ATS

James P. Riley, Esq.  
Fletcher, Heald & Hildreth, PLC  
1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, VA 22209

Ms. Rhonda Boyle  
Arizona Community Media Foundation  
2510 S. Rural Rd., Suite 102  
Tempe, AZ 85282

In re: New NCE (FM), Chandler, Arizona  
Arizona Community Media Foundation  
Facility ID No. 173984  
File No. BNPED-20071016AGQ

**Informal Objection  
Petition to Deny**

Dear Mr. Riley and Ms. Boyle:

We have before us (1) the application of Arizona Community Media Foundation ("Arizona"), for a new noncommercial educational ("NCE") FM station in Chandler, Arizona ("Chandler Application"), and (2) an Informal Objection ("Objection") and Petition to Deny ("Petition") filed against the Chandler Application by American Educational Broadcasting ("American").<sup>1</sup> For the reasons set forth below, we will deny the Objection and the Petition.

**Background.** American is the licensee of Station KLKA(FM), Globe, Arizona. On August 3, 2007, it filed a minor modification application ("KLKA Application") to change the station's community of license to Casa Grande, Arizona.<sup>2</sup> The staff accepted the KLKA Application for filing on August 6, 2007, but dismissed the application as technically defective on October 9, 2007.<sup>3</sup> Arizona filed the Chandler Application on October 16, 2007, in the October 2007 NCE filing window. American subsequently filed a Petition for Reconsideration of the *Staff Decision* on November 13, 2007, seeking reinstatement of the KLKA Application *nunc pro tunc*. The staff denied the Petition for Reconsideration

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<sup>1</sup> American filed the Objection on June 27, 2008. Arizona filed an Opposition to Informal Objection on July 11, 2008, and American filed a Reply to Opposition to Informal Objection on July 22, 2008. On October 22, 2008, the staff accepted the Chandler Application for filing. See *Broadcast Applications*, Public Notice, Report No. 26847 (MB 2008). American then filed the Petition on November 21, 2008. Arizona filed a Response to Petition to Deny on December 18, 2008, and American filed a Reply to Opposition to Petition to Deny on December 18, 2008.

<sup>2</sup> File No. BNPED-20070803ACY.

<sup>3</sup> *Letter from Rodolfo F. Bonacci to American Educational Broadcasting*, Ref 1800B3 (MB October 7, 2009) ("*Staff Decision*").

on May 14, 2008.<sup>4</sup> American did not file an application for review, but instead filed a new minor modification application on June 27, 2008.<sup>5</sup>

**Discussion.** Section 309(d)(1) of the Communications Act of 1934, as amended,<sup>6</sup> provides that any party in interest may file a petition to deny an application. In order to assess the merits of a petition to deny, a two-step analysis is required.<sup>7</sup> First, the petition must make specific allegations of fact sufficient to demonstrate that the petitioner is a party in interest and that a grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.<sup>8</sup> This threshold determination is made by evaluating the petition and the supporting affidavits. If the petition meets this threshold requirement, the Commission must then examine all of the material before it to determine whether there is a substantial and material question of fact calling for further inquiry and requiring resolution in a hearing.<sup>9</sup> If no such question is raised, the Commission will deny the petition and grant the application if it concludes that such grant otherwise serves the public interest, convenience, and necessity.

American argues that the Chandler Application should be dismissed because it failed to protect the KLKA Application. Specifically, American avers that the KLKA Application remained pending during the period between its dismissal on October 9, 2007, and the filing of its petition for reconsideration on November 13, 2007. Thus, American contends that at the time of filing the Chandler Application resulted in prohibited overlap to the KLKA Application<sup>10</sup> and concludes that the Chandler Application violated the Commission's cut-off rule<sup>11</sup> and rule prohibiting contingent applications.<sup>12</sup> It requests that the Commission dismiss the Chandler Application.

We disagree with American's argument that Arizona had a duty to protect the KLKA Application after its dismissal. The Commission's Rules provide that actions taken under delegated authority are effective on release of the decision.<sup>13</sup> Thus, at the time Arizona submitted the Chandler Application, the dismissal of the KLKA Application was effective. We agree with American that the submission of the Petition for Reconsideration prevented the dismissal of the KLKA Application from becoming a final action. Accordingly, any action on the Chandler Application would be subject to any action taken on the Petition for Reconsideration.<sup>14</sup> However, the filing of a petition for reconsideration does not

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<sup>4</sup> Letter from James D. Bradshaw to American Educational Broadcasting, Ref 1800B3 (MB May 14, 2008). ("Reconsideration Letter").

<sup>5</sup> File No. BPED-20080627ABN. This application remains pending.

<sup>6</sup> 47 U.S.C. § 309(d)(1).

<sup>7</sup> See, e.g., *Artistic Media Partners, Inc.*, Letter, 22 FCC Rcd 18676, 18676 (MB 2007).

<sup>8</sup> See *id.*; *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

<sup>9</sup> 47 U.S.C. § 309(d)(2).

<sup>10</sup> See 47 C.F.R. § 73.509(a).

<sup>11</sup> See 47 C.F.R. § 73.3573(e).

<sup>12</sup> 47 C.F.R. § 73.3517.

<sup>13</sup> See 47 C.F.R. § 1.102(b).

<sup>14</sup> Had we granted reconsideration, and reinstated and granted the KLKA Application, the Chandler Application would have been subject to dismissal based on the Section 73.509 violation.

automatically stay the decision for which reconsideration is sought.<sup>15</sup> In these circumstances, the Chandler Application did not violate either the cut-off rule or the contingent application rule because American did not request and the Commission did not impose on its own motion a stay of the dismissal of the KLKA Application. Finally, American did not appeal the *Reconsideration Letter*. Therefore, the dismissal of the KLKA Application is now final and American's argument is moot.

**Conclusion/Actions.** After reviewing all of the arguments contained in the Objection and the Petition, we find that American has not raised any substantial and material question of fact regarding the Chandler Application sufficient to warrant its denial.

Accordingly, IT IS ORDERED that the Informal Objection filed on June 27, 2008, by American Educational Broadcasting IS DENIED. IT IS FURTHER ORDERED that the Petition to Deny filed on November 21, 2008, by American Educational Broadcasting IS DENIED.

Sincerely,



Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: John Crigler, Esq. (Counsel for Arizona Community Media Foundation)  
American Educational Broadcasting

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<sup>15</sup> See 47 C.F.R. §1.102(b)(1) and (2). The designated authority *may*, in its discretion, stay the effect of its action pending the disposition of the petition for reconsideration. It is not required to do so and, in the instant case, such a stay was neither requested by American nor granted by the Bureau on its own motion. See also *Great Scott Broadcasting*, Letter, 22 FCC Rcd 4795, 4797-98 (MB 2007) (finding that grant of a subsequently-filed minor change application during the pleading cycle of a dismissed application did not violate earlier applicant's right to seek reconsideration, but that the later-filed applicant proceeded at his own risk).