

Before The
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:)	
)	
RHODE ISLAND PUBLIC RADIO)	Facility ID No. 762615
)	LMS File No. 0000161099
Application for Involuntary Time Share)	Pleading File Nos.
With WCVY (Fac ID 14229), Coventry, RI)	0000204360
)	0000204361

TO: Office of the Secretary
Attn: Chief, Audio Division, Media Bureau

Reply to Oppositions

On November 29, 2022, Radio Sharon Foundation (“Sharon”) and Marconi Broadcasting Foundation (“Marconi”) filed oppositions¹ to the Petition for Reconsideration and Reinstatement Nunc Pro Tunc, Pleading File No. 0000203865, filed November 21, 2022, by Rhode Island Public Radio (“RIPR”), concerning the above-captioned application for a time share facility (the “Application”).

RIPR, by its attorney and pursuant to Section 1.106(h) of the Commission’s Rules, hereby replies to the oppositions as follows:

¹ Opposition To Petition For Reconsideration And Reinstatement Nunc Pro Tunc, Pleading File No. 0000204360 (Sharon), and Opposition To Petition For Reconsideration And Reinstatement Nunc Pro Tunc, Pleading File No. 0000204361 (Marconi).

The oppositions do not challenge the appropriateness of reinstating the Application under the Commission policy on reinstatement of dismissed applications *nunc pro tunc*.² For this reason alone, the oppositions should be denied.

Instead, the oppositions largely rehash claims and assertions made by Sharon in the opposition it filed against the Application on November 9, 2021.³

The oppositions fault RIPR for not substantiating the claim that WCVY failed to meet the minimum operating requirements of Section 73.561. However, the rule requires an application proposing a share time arrangement only to set forth the intent to share time. The Application complies with the requirement of the rule: it states that RIPR proposes a time share facility because WCVY has not met the minimum operating schedule requirements prescribed by Section 73.561.⁴ The statement is made under penalty of perjury. The rule does not require substantiation of the statements made in the application. In the event the Commission requests information in support of the statement, Rhode Island is prepared to supply it.⁵

² *Public Notice*, "Commission Statement of Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications," FCC 84-366, released August 2, 1984, 49 Fed. Reg. 47331, 56 Rad.Reg.2d (P&F) 776 (1984). Under the policy, the Commission will entertain and accept the filing of a minor curative amendment in conjunction with a petition for reconsideration within thirty days of the dismissal of the application.

³ Informal Objection, Pleading File No. 0000167610. Marconi's opposition, with one exception noted below, is a virtual carbon copy of Sharon's opposition.

⁴ The period in question is the eight-year term of the WCVY license that ended April 1, 2022, for which Coventry sought renewal in its application filed December 1, 2021.

⁵ As the Bureau observed in its letter dismissing the Application, Sharon's December 13, 2021, reply to RIPR's opposition conceded that the Application "satisfies the showing for an involuntary time-share arrangement pursuant to section 73.561(b)". Sharon's concession estops it from arguing the contrary now. Moreover, for Sharon, the licensee of a single FM translator station serving Providence, Rhode Island, to have assumed the mantle of a self-appointed ombudsman for Coventry Public Schools is

Sharon attempts to make much of the intention expressed in the Application for RIPR to expand its program service. It is well-settled that a non-commercial applicant is not precluded from owning and operating more than one NCE-FM facility in a market.⁶ At bottom, RIPR seeks to make greater effective use of the frequency, a bedrock principle in the Commission's regulation of the airwaves, and the basis for adoption of the share time rule.⁷

The oppositions fault the timing of the filing of the Application in relation to the November 2021 NCE filing window.⁸ This is ludicrous; Section 73.561(b) permits the filing of a time share application at any time.

Marconi claims that the Application conflicts with its pending proposal for a new NCE facility at Somerset, Massachusetts. The short answer to this is that the Application was filed first, and is accordingly entitled to first-come/first-served protection from the

singularly curious. It makes unverified and unsubstantiated claims about WCVY's hours of operation as to which Coventry itself has been silent. Marconi repeats verbatim the unverified and unsubstantiated claims. Yet, interestingly, although RIPR did not reach a time-sharing agreement with Coventry, Coventry did not object to the filing of the Application.

⁶ *Open Media Corporation*, 8 FCC Rcd 4070, 4073 (1993).

⁷ *Noncommercial Educational FM Broadcast Stations, Second Report and Order*, 43 FR 39704 (September 6, 1978). In this connection, Sharon and Marconi err in their claim that RIPR's petition for reconsideration of the grant of the WCVY license renewal application is out of time. The Commission improvidently granted the renewal on June 6, 2022, which would have violated RIPR's *Ashbacker* rights in the frequency (*Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945)). The renewal grant was rescinded and returned to pending status on June 13, 2022. (*Public Notice, Actions*, Report No. PN-2-220613-01, p. 1.) On November 10, 2022, the day the Commission dismissed the Application, it granted the WCVY license renewal application. (*Public Notice, Actions*, Report No. PN-2-221115-01, p. 2.) RIPR's petition for reconsideration was timely filed on November 21, 2022 (Pleading No. 0000203874).

⁸ *Public Notice*, "Media Bureau Announces NCE FM New Station Application Filing Window; Window Open From November 2, 2021 To November 9, 2021", DA 21-463, April 21, 2021.

Marconi proposal (and also from the other applications that were filed and grouped in MX Group 106).⁹

RIPR renews its request that (1) its petition for reconsideration be granted under the Commission's policy on incomplete and patently defective AM and FM construction permit applications, *supra*, (2) the amendment be accepted, and (3) the Application be reinstated *nunc pro tunc* and processed to grant in accordance with Section 73.561. Additionally, and in light of the foregoing, the oppositions should be denied.

It is so requested.

Respectfully submitted,

RHODE ISLAND PUBLIC RADIO



By: John Wells King
Its Attorney

LAW OFFICE OF JOHN WELLS KING, PLLC
4051 Shoal Creek Lane East
Jacksonville, FL 32225-4792
904-647-9610
John@JWKingLaw.com

December 12, 2022

⁹ RIPR filed the Application September 29, 2021, before the filing freeze that was imposed in order to stabilize the Commission's database in anticipation of the opening of the NCE FM filing window. See *Public Notice*, "Media Bureau Announces NCE FM New Station Filing Procedures And Requirements For November 2 - 9, 2021, Window; Limited Application Filing Freeze To Commence On October 5, 2021", DA 21-885, July 23, 2021. See also 47 CFR Section 73.3573(e).

CERTIFICATE OF SERVICE

The undersigned, principal of the law firm of Law Office of John Wells King, PLLC, do hereby certify that a copy of the foregoing *Petition For Reconsideration And Reinstatement* Nunc Pro Tunc was served this 12th day of December 2022, either by first class United States Mail, postage prepaid, or *electronically, upon the following:

Anthony T. Lepore, Esq.
RADIOTVLAW ASSOCIATES, LLC
4101 Albemarle St. NW #324
Washington, DC 20016-2151

*Audio Division, Media Bureau
Federal Communications Commission
45 L Street NW
Washington, DC 20554

A handwritten signature in blue ink that reads "John Wells King". The signature is written in a cursive, flowing style with a large initial 'J' and 'K'.