



Federal Communications Commission
Washington, D.C. 20554

April 30, 2007

DA 07-1938

In Reply Refer to:

1800B3-RDH

Released: April 30, 2007

Mr. Martin L. Hensley
Hoosier Public Radio Corporation
15 Wood Street
Greenfield, Indiana 46140

In re: Carmel/Clay School Corporation
Station WHJE(FM), Carmel, Indiana
Facility ID No. 9004
File No. BRED-20040322ADP

Hoosier Public Radio Corporation
File No. BNPED-20040805ABK

Petition for Reconsideration

Dear Mr. Hensley:

We have before us the "Petition for Reconsideration and Reinstatement Nunc Pro Tunc/Petition for Reconsideration Nunc Pro Tunc WHJE Renewal and License Grant – Motion to Correct Errors/Petition for Hearing" (the "Petition") filed April 4, 2005, by Hoosier Public Radio Corporation ("Hoosier"). The Petition asks us to reconsider our March 2, 2005, *Staff Decision*¹ granting the license renewal application (the "Application") of Station WHJE(FM), Carmel, Indiana, licensed to Carmel/Clay School Corporation ("Carmel/Clay"), and dismissing the application filed by Hoosier seeking time-share operation of the Station.² Also before us is an "Opposition to Petition for Reconsideration" ("Opposition") filed by Carmel/Clay. For the reasons set forth below, we deny the Petition.

Background. A license renewal application for the Station was filed by Carmel/Clay on March 22, 2004. On August 16, 2004, Hoosier filed a "Petition to Deny – Time Share Application³ – Waiver Request."⁴ In the *Staff Decision*, the staff granted the Application, dismissed Hoosier's Share-Time

¹ Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau John Wells King, Esq. and Martin L. Hensley, Reference 1800B3-CLR (Media Bureau, March 2, 2005)("Staff Decision").

² File No. BNPED-20040805ABK (the "Time-Share Application").

³ Hoosier filed the Time-Share Application on August 5, 2004, pursuant to Section 73.561(b) of the Commission's Rules (the "Rules"). The Time-Share Application proposed the involuntary time-share operation of Station WJHE(FM).

⁴ Hoosier subsequently filed a number of other requests, motions and petitions against the Application and other unrelated license renewal applications. See "Motion To Join the Parties, Request For Review and Declaratory Ruling – RICO Act and Sherman Antitrust Act – Market Allocation, Request for Review and Declaratory Ruling –

Application, and denied Hoosier's Petition to Deny and other filings.⁵ The Petition itself is a compendium of claims, both new and previously made.

Discussion. Under Section 1.106 of the Rules, as interpreted by established case law, "reconsideration is appropriate only when the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters."⁶ Petitioner has neither demonstrated material error or omission nor presented such new matters to the staff. Accordingly, we will deny Hoosier's Petition.

As an initial matter, the Petition violates a number of our rules concerning pleading specifications.⁷ With regard to the issues raised by Hoosier in the Petition that were previously addressed in the *Staff Decision*, we note that "[r]econsideration will not be granted to debate matters upon which the Commission has already deliberated and spoken."⁸ The *Staff Decision* fully and accurately addressed Hoosier's Time-Share Application and clearly stated the basis for its dismissal, Hoosier's failure to comply with Section 73.561(b) of the Commission's Rules (the "Rules").⁹ The *Staff Decision* clearly stated:

The Commission will not entertain proposals that do not conform to these requirements. (Footnote omitted.) Hoosier's does not. Despite [Hoosier's] statements to the contrary, (footnote omitted) we find that the record clearly establishes that WHJE operates 24 hours per day and is, therefore, not subject to non-consensual proposals for time sharing. (Footnote omitted.) Thus, Hoosier's application is subject to dismissal.¹⁰

Section 1.106 of the Rules provides that a petition for reconsideration which relies on facts not previously presented to the Commission or designated authority can only be granted where: 1) the petition relies on facts relating to events that have occurred or circumstances which have changed since the last opportunity to present such matters; 2) the petitioner could not, through the exercise of ordinary diligence,

Ex Parte Applicant Communications, Motion To Compel – Request For Discovery, Petition To Deny – Request for Moratorium," filed September 20, 2004.

⁵ Public Notice of the *Staff Decision* was released on March 7, 2005 Public Notice, *Broadcast Actions*, Report No. 45935 (March 7, 2005).

⁶ *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub. nom Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied* 383 U.S. 967 (1966) ("*WWIZ, Inc.*"); *see also National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003). *See also* 47 C.F.R. § 1.106(c).

⁷ Among the procedural rules with which the Hoosier Petition fails to comply are 47 C.F.R. § 1.49(a) (specifying pleading format requirements) and 47 C.F.R. § 1.49(c) (requiring succinct summaries of pleadings that exceed ten pages).

⁸ *WWIZ, Inc.*, 37 FCC at 686; *See also William L. Carroll*, Memorandum Opinion and Order, 8 FCC Rcd 6279 (1993).

⁹ 47 C.F.R. § 73.561(b).

¹⁰ *Staff Decision* at 2.

have learned of the facts prior to its last opportunity to present the facts; or 3) where the Commission or designated authority determines that consideration of the facts relied on is required in the public interest.¹¹

Hoosier raises several new issues not previously presented to the Commission. It asserts that Indiana State law requires that the president or secretary of Carmel/Clay's governing body sign the Application, that Carmel/Clay and Commission staff have engaged in *ex parte* contacts, and that Carmel/Clay's counsel has coerced Commission staff into granting WHJE(FM)'s renewal application. With regard to Hoosier's allegation concerning the signing of the Application, Hoosier now presents a letter dated March 9, 2005, (*i.e.*, seven days after the Commission's decision and two days after Public Notice of that decision was made), from Charles Johnson, III, CPA, State Examiner for the State of Indiana, regarding the execution of contracts pertaining to school corporations. First, this provision of Indiana law appears to have no applicability to Commission license renewal applications, which are not contracts. Second, the Commission has generally declined to consider issues of a licensee's compliance with the requirements of state corporate law where, as here, no challenge has been made before a state court.¹² Third, Hoosier has not demonstrated why this information could not have been provided earlier.¹³ Fourth, Section 73.3513 of the Rules¹⁴ governs the signing of broadcast applications. Carmel/Clay has complied with these requirements. Accordingly, we reject this claim. Additionally, Hoosier presents no specific information concerning the *ex parte* and coercion allegations. It fails to provide us with such information as the dates of the alleged contacts, the parties, or the substance of the contacts. We find that further consideration of these speculative and unspecific allegations is unwarranted.

Conclusion/Actions. For the reasons set forth above, Hoosier Public Radio Corporation's "Petition for Reconsideration and Reinstatement Nunc Pro Tunc/Petition for Reconsideration Nunc Pro Tunc WHJE Renewal and License Grant – Motion to Correct Errors/Petition for Hearing" IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: John Wells King, Esq.

¹¹ 47 C.F.R. § 1.106(b) and (c).

¹² See *Fatima Response, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 18543, 18544 (1999).

¹³ See 47 C.F.R. § 1.106(b) and (c).

¹⁴ 47 C.F.R. § 73.3513.