



Federal Communications Commission
Washington, D.C. 20554

January 9, 2009

DA 09-18

In Reply Refer to:

1800B3-JWR

Released: January 9, 2009

Mr. William Crozier
8 LaFluer
Union City, Oklahoma 73090

Cary S. Tepper, Esq.
Booth, Freret, Imlay & Tepper, P.C.
7900 Wisconsin Avenue, Suite 304
Bethesda, Maryland 20814-3628

In re: KMSI(FM), Moore, OK
Facility ID No. 14436
File No. BRED-20050124AER
Application for Renewal of License

Petition for Reconsideration

Gentlemen:

We have before us the petition for reconsideration ("Petition")¹ filed on August 21, 2007, by William Crozier ("Crozier") directed to the action of the Chief, Audio Division, Media Bureau, denying his informal objection and granting the above-referenced application ("Application") filed on January 24, 2005, by Creative Educational Media Corporation, Inc. ("Creative") for renewal of the license of noncommercial educational "(NCE)" Station KMSI(FM), Moore, Oklahoma (the "Station").² For the reasons set forth below, we dismiss the petition for reconsideration.

Background. Creative filed an application to renew the KMSI(FM) license on January 24, 2005. On April 29, 2005, Crozier filed an informal objection³ alleging that Creative lacked local programming and challenging its non-profit status. Creative filed its opposition on May 12, 2005, and on July 13, 2007, the staff released the *Staff Decision* which both denied Crozier's Objection and granted the Application.

¹ Creative filed an Opposition on September 5, 2007.

² See *Letter to Creative Educational Media Corporation, Inc. et al.*, 22 FCC Rcd 12947 (MB 2007) ("*Staff Decision*").

³ Crozier filed a letter titled "Informal Objection for License Renewal of KMSI-FM - Moore, Oklahoma" (the "Objection"). While his Objection was filed within the requisite time period for petitions to deny the Application, Crozier states that his filing "is an Informal Objection" and it was considered as such.

In rejecting Crozier's programming arguments, the staff stated, *inter alia*, that ". . . ultimately, Crozier's objections amount to little more than a difference of opinion with Creative over what types of programming best serve the needs of the community of Moore, Oklahoma," and that there was no substantial and material question of fact that grant of the Application would be *prima facie* inconsistent with the Act.⁴ It also found that the Commission has traditionally declined to consider issues of a licensee's compliance with the requirements of state corporate law where no challenge has been made in state court and the determination is one that is more appropriately a matter of state resolution.

In support of his Petition, Crozier states, in essence, that he could have filed a reply to the Opposition and "better address" his "misstatements and misunderstandings" of the Commission's rules and policies if Creative had responded to his request for information from KMSI(AM)'s public inspection file. Crozier asserts that Creative's alleged non-responsiveness, for two years, should be sufficient to establish the requisite substantial and material question of fact in this case, and requests the Commission to compel Creative to now provide the information.⁵

Discussion. Crozier's Petition was late-filed and we will dismiss it on that basis. Section 405 of the Act provides that "petitions for reconsideration must be filed within thirty days from the date upon which public notice is given of the action . . . complained of."⁶ The *Staff Decision* was released on July 13, 2007. A petition for reconsideration was due 30 days later, on August 13, 2007.⁷ Thus, the Petition, filed eight days thereafter, was untimely. The Commission will only accept late-filed petitions for reconsideration if the petitioner shows that extraordinary circumstances warrant overriding the statutory filing deadline. As the D.C. Circuit has explained, "[a]lthough section 405 does not absolutely prohibit FCC consideration of untimely petitions for reconsideration, we have discouraged the Commission from accepting such petitions in the absence of extremely unusual circumstances."⁸ Consistent with the D.C. Circuit's decisions, the Commission in applying that standard has focused on whether the Commission has failed to adhere to its procedural rules for providing notice of its decisions.⁹ No such circumstances are present here.

⁴ *Staff Decision*, 22 FCC Rcd at 12949.

⁵ We note that Creative did apparently attempt to comply with Crozier's request Petition, but delivery could not be completed because of an address discrepancy. See letter dated August 2, 2005, attached to the Petition.

⁶ 47 U.S.C. § 405(a).

⁷ See 47 U.S.C. § 405; 47 C.F.R. §§ 1.106(f); see also *Frederick Gauthier De Castro*, Letter, 22 FCC Rcd 5401 (MB 2007).

⁸ *Virgin Islands Telephone Corp. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993), citing *Reuters Limited v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986). See *21st Century Telesis Joint Venture v. FCC*, 318 F.3d 192, 199-200 (D.C. Cir. 2003).

⁹ See *Emmis Radio License Corp.*, Memorandum Opinion and Order, 17 FCC Rcd 14733 n.4 (2002) and *Adelphia Communications Corporation*, Memorandum Opinion and Order, 12 FCC Rcd 10759, 10760 n.9 (1997) (both citing *Gardner v. FCC*, 530 F.2d 1086, 1090 (D.C. Cir. 1976) and dismissing petitions for reconsideration where in each case the petitioner did not allege that there was defective notice that made it impossible to meet the filing deadline for requesting reconsideration).

Conclusion. Accordingly, the William Crozier petition for reconsideration IS HEREBY DISMISSED as late filed.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Creative Educational Media Corporation, Inc.