



Federal Communications Commission  
Washington, D.C. 20554

August 19, 2013

**DA 13-1773**

*In Reply Refer to:*

1800B3-SS

Released: August 19, 2013

Mr. Edward A. Schober  
402 10<sup>th</sup> Avenue  
Haddon Heights, NJ 08035

**In re: NEW FM Translator Station,  
Denton, MD**  
Facility ID No. 141493  
File No. BNPFT-20130325ABA

**NEW FM Translator Station,  
Denton, MD**  
Facility ID No. 141483  
File No. BNPFT-20130325ABK

**Petitions for Reconsideration**

Dear Mr. Schober:

This letter concerns the referenced March 25, 2013, applications (“Denton Applications”) filed by Edward A. Schober (“Schober”) for construction permits for new FM translator stations at Denton, Maryland. The staff dismissed the Denton Applications on April 9, 2013.<sup>1</sup> On May 1, 2013, Schober filed two nearly identical Petitions for Reconsideration (collectively, the “Petitions”), seeking reinstatement of each of the Denton Applications as well as leave to amend those applications. For the reasons set forth below, we deny the Petitions.

**Background.** Schober filed applications<sup>2</sup> for construction permits for two new FM translator stations at Rio Grande, New Jersey, in the March 2003 FM non-reserved band FM translator (Auction 83) filing window.<sup>3</sup> The Rio Grande Applications were determined to be “singletons,” and Schober was invited to file a Form 349 long-form construction permit application for each facility.<sup>4</sup> On March 25, 2013, he filed the two long-form Denton Applications in which he: (1) proposed a minor change in the transmitter sites of each of the Rio Grande Applications; (2) specified Denton, Maryland, as the proposed stations’ community of license; and (3) changed the primary stations to be rebroadcast. Each newly-

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<sup>1</sup> See *Broadcast Actions*, Public Notice, Report No. 47966 (rel. Apr. 12, 2013).

<sup>2</sup> See File Nos. BNPFT-20030311ACN and BNPFT-20030311ACG (the “Rio Grande Applications”).

<sup>3</sup> See *FM Translator Auction Filing Window and Application Freeze*, Public Notice, 18 FCC Rcd 1565 (MB/WTB 2003). The filing window was subsequently extended to March 17, 2003. *FM Translator Auction Filing Window and Application Freeze Extended to March 17, 2003*, Public Notice, 18 FCC Rcd 3275 (MB/WTB 2003).

<sup>4</sup> See *Media Bureau Announces FM Translator Auction 83 Filing Window and Filing Procedures*, Public Notice, 28 FCC Rcd 1500, 1510 at Appendix A (MB 2013) (“*Filing Window PN*”).

proposed Denton site was in the “buffer zone” of the spectrum-available “Appendix B” market of Ocean City/Salisbury, Maryland.<sup>5</sup> The *Public Notice* announcing the filing window and filing procedures for Auction 83 applicants detailed the market-specific FM translator application processing policies designed to effectuate the Local Community Radio Act.<sup>6</sup> It specifically stated that any Form 349 proposal which differs from the original tech box proposal, as is the case here, and proposes a transmitter site at a location within the 39-kilometer “buffer” of any defined “Market Grid,” as is the case here, would be required to file a Preclusion Showing. The deadline for these showings, demonstrating that the FM Translator application, if granted, would not preclude any protected LPFM licensing opportunities<sup>7</sup> was March 28, 2013.<sup>8</sup> The Media Bureau (“Bureau”) issued a follow-up *Public Notice* on March 18, 2013, reiterating this filing requirement.<sup>9</sup> Schober failed to submit a Preclusion Showing for either Denton Application by the filing deadline, and the staff dismissed the referenced applications on April 9, 2013. On May 1, 2013, he filed the Petitions.

On reconsideration, Schober contends that the reason he failed to timely file Preclusion Showings is because the Commission’s procedures for processing Auction 83 FM translator applications “are spread out over thousands of pages” and are “confusing.”<sup>10</sup> He also argues that the deadline should be waived because he did not receive the *Guidance PN* “due to travel” and because it was released “long after [he] had prepared the long form application[s].”<sup>11</sup> Accordingly, Schober argues that the Bureau should accept his untimely Preclusion Showings. Schober claims that it would be “unfair” to preclude an applicant from perfecting an application when the deficiency is due to a “misinterpretation of complex standards which are not codified into the rules.”<sup>12</sup> Finally, Schober claims that reinstatement and amendment of the Denton Applications would serve the public interest by improving local radio service in this rural area.<sup>13</sup>

**Discussion.** The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts, not

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<sup>5</sup> *Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364 (2012) (“*Fourth Report and Order*”).

<sup>6</sup> Pub. L. No. 111-371, 124 Stat. 4072 (2011).

<sup>7</sup> See *Fourth Report and Order*, 27 FCC Rcd at 3385-86.

<sup>8</sup> See *Filing Window PN*, 28 FCC Rcd at 1501. The term “Market Grid” is the 30x30 or 20x20 minute grid specified in Appendices A and B for each studied market. See *Fourth Report and Order*, 27 FCC Rcd at 3398-3406. The Denton Applications are 32 kilometers from the nearest grid point of the Ocean City/Salisbury buffer zone.

<sup>9</sup> See *Media Bureau Provides Additional Guidance on Preclusion Showing Filing Requirements for Auction 83 FM Translator Applicants*, Public Notice, 28 FCC Rcd 2840 (MB 2013) (“*Guidance PN*”) (“A Preclusion Showing is required . . . [i]f an applicant has filed a Technical Amendment . . . [and] the proposal is within 39 km of a Spectrum Available Market Grid . . .”).

<sup>10</sup> Petitions at 2.

<sup>11</sup> *Id.*

<sup>12</sup> Petition at 2-3. We note that this argument is made only in the Petition seeking reinstatement of File No. BNPFT-201300325ABK.

<sup>13</sup> Petitions at 3.

known or existing at the time of the petitioner's last opportunity to present such matters.<sup>14</sup> Schober has not met this burden.

Initially, we note that under the procedures established for the processing of short-form FM translator applications, applicants in certain circumstances were permitted to file minor amendments to their tech box proposals ("Technical Amendments"), e.g., changes in power, height, directed pattern channel, etc., at designated times.<sup>15</sup> The Bureau was very clear that any Form 349 proposal which differs from the original tech box proposal and proposes a transmitter site within a 39-kilometer "buffer zone," as here, must file a Preclusion Showing.<sup>16</sup> The Bureau also was very clear that "a [P]reclusion [S]howing may not be submitted, amended, corrected, completed or resubmitted for further consideration after the Application Deadline [of March 28, 2013]."<sup>17</sup> It is well established that applicants are required to comply with filing requirements set forth in public notices but not codified in the Rules.<sup>18</sup> Accordingly, Schober's argument to the contrary is without merit.

We also reject Schober's assertion that a waiver of the Preclusion Showing filing deadline is warranted due to his "confusion."<sup>19</sup> It is well settled that applicants are charged with knowledge of the Commission's processing rules.<sup>20</sup> A professed lack of knowledge of and/or failure to understand the Commission's rules and policies do not excuse the failure to meet a filing deadline.<sup>21</sup> We note that the *Filing Window* and *Guidance PNs* contain contact information for Bureau representatives to assist applicants requiring additional guidance.<sup>22</sup> Moreover, permitting Schober to file a Preclusion Showing at this point would frustrate the processing efficiencies which the filing deadline was designed to promote and would be unfair to the many applicants who fully complied with all filing requirements.<sup>23</sup>

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<sup>14</sup> See 47 C.F.R. § 1.106(c),(d). See also *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*, 387 U.S. 967 (1966).

<sup>15</sup> See *Fourth Report and Order*, 27 FCC Rcd at 3385-86; see also *Guidance PN*, 28 FCC Rcd at 2841.

<sup>16</sup> *Id.*

<sup>17</sup> See *Filing Window PN*, 28 FCC Rcd at 1502.

<sup>18</sup> See *Community Religious Broadcasting, Inc.*, Letter, 23 FCC Rcd 15363, 15364 (MB 2008) (incumbent upon applicants to monitor Public Notices and adhere to their requirements), citing *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101 (2007) (applicant's failure to file a point supplement by the deadline because it had not monitored Commission public notices is not an excuse for late-filing).

<sup>19</sup> Petitions at 2.

<sup>20</sup> See, e.g., *L.T. Simes II and Raymond Simes*, Letter, 21 FCC Rcd 1421, 1422 (MB 2006) (burden of providing information and demonstrating qualifications by the applicable deadline falls upon the applicant).

<sup>21</sup> See *Alamo Navajo School Board, Inc.*, Forfeiture Order, 25 FCC Rcd 17057, 17059 (MB 2010) (rejecting argument that late-filing should be excused because licensee's staff was "simply daunted and confused by the arcane requirements of the [Commission's] electronic filing system"); *Community-First Broadcasters, Inc.*, Forfeiture Order, 23 FCC Rcd 10923, 10923-24 (MB 2008) (same, for licensee who was "flummoxed" by the Commission's electronic filing procedures).

<sup>22</sup> *Filing Window PN*, 27 FCC Rcd at 1502; see also *Guidance PN*, 28 FCC Rcd at 2842.

<sup>23</sup> See *Glorious Communications Channel Broadcasting, LLC*, Letter, 20 FCC Rcd 11887, 11888 (MB 2005) (waiver request denied where applicant, aware of filing deadline but "distracted by personal problems," failed to make submission); see also *Gregg P. Skall, Esq.*, Letter, 20 FCC Rcd 11889, 11890 (MB/WTB 2005) ("The Commission's auction rules are best served by applying deadlines in a fair and consistent manner. By having an (continued . . .)

Finally, we reject Schober's claim that reinstatement of the Denton Applications would be in the public interest because the proposed stations would improve local service to the rural area here. Our engineering staff has determined that currently there are at least five stations providing service to the area proposed by the Denton Applications.<sup>24</sup>

**Conclusion/Actions.** We find that Schober has not set forth an error of fact or law, or presented new facts or changed circumstances which raise substantial or material questions of fact that otherwise warrant reconsideration of the staff's action. Accordingly, for the reasons set forth above, IT IS ORDERED, that the two May 1, 2013, Petitions for Reconsideration filed by Edward A. Schober ARE DENIED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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announced procedure which applies uniformly, we created a predictable and fair procedure for all applicants in [the Auction . . . .”).

<sup>24</sup> WKNZ(FM), Harrington, Delaware; WSCL(FM), Salisbury, Maryland; WRDX(FM), Dover, Delaware; WCEI-FM, Easton, Maryland; and WTDK(FM), Federalsburg, Maryland.