



Federal Communications Commission
Washington, D.C. 20554

November 30, 2012

In Reply Refer to:
1800B3-AP

Ms. Kathleen Amuso
Pittsfield Public School Committee
269 First Street
Pittsfield, MA 01201

In re: WTBR-FM, Pittsfield, MA
Facility ID No. 52749
File No. BRED-20060418ABG

Application for Review

Dear Ms. Amuso:

We have before us a letter (“Letter”), received August 1, 2011, addressed to Chairman Genachowski and submitted on behalf of the Pittsfield Public School Committee (“Pittsfield”), licensee of Station WTBR-FM, Pittsfield, Massachusetts (“Station”). The Letter requests that the Chairman review the June 29, 2011, *Memorandum Opinion and Order*¹ by the Media Bureau (“Bureau”) reducing Pittsfield’s forfeiture from \$7,000 to \$5,600.² For the reasons discussed below, we dismiss Pittsfield’s Letter as procedurally defective pursuant to Section 1.115(d) of the Commission’s Rules (“Rules”).

Background. On October 17, 2007, the Bureau notified Pittsfield of its apparent liability for forfeiture (“NAL”) in the amount of \$7,000 for Pittsfield’s willful violation of Section 73.3539 of the Rules, by failing to timely file a license renewal application for the Station, and willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, by engaging in unauthorized operation of the Station after its license expired.³ Pittsfield submitted a response to the *NAL*, arguing that financial hardship and the Station’s new policies for ensuring future compliance with the Rules warranted a reduction of the proposed forfeiture. The Bureau rejected these arguments in the *Forfeiture Order*, finding that Pittsfield had failed to provide appropriate documentation for its inability to pay the forfeiture and that its corrective actions did not modify or mitigate its violation.

On November 19, 2010, Pittsfield submitted a petition for reconsideration of the *Forfeiture Order* (“Petition”), which the Bureau considered in the *MO&O*. The Bureau rejected Pittsfield’s arguments that it did not violate Section 301 – the Station continued to operate pending consideration of its renewal application although it failed to request an STA to do so – and that paying the forfeiture would be a

¹ *Pittsfield Public School Committee*, Memorandum Opinion and Order, 26 FCC Rcd 9305 (MB 2011) (“*MO&O*”).

² *Pittsfield Public School Committee*, Forfeiture Order, 25 FCC Rcd 14555 (MB 2010) (“*Forfeiture Order*”).

³ *Pittsfield Public School Committee*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18565 (MB 2007) (“*NAL*”).

financial burden,⁴ but reduced the forfeiture amount from \$7,000 to \$5,600 based on Pittsfield's history of compliance with the Rules.

In the Letter, Pittsfield again argues for a cancellation or reduction of the forfeiture amount because: (1) payment of the forfeiture would be a financial burden on the Pittsfield school system; (2) the Station turned the transmitter off when it discovered it had not filed its renewal application and it remained off until the Station filed the renewal application; and (3) the Station has a history of compliance with the Rules. The Letter includes a November 19, 2010, declaration from Larry Kratka, "Chief Operation and Class Advisor" for the Station," (declaring that the Station's transmitter "remained off and disconnected from its antenna until the WTBR license renewal application was received by the Federal Communications Commission on April 18, 2006"); a report of the Station's expenditures and its "donation account"; and a timeline of activities related to the Station's renewal application ("WTBR Timeline").

Discussion. Although the Letter does not call itself an application for review, because it apparently seeks Commission review of a Bureau action under delegated authority, it is effectively an application for review governed by 47 C.F.R. § 1.115.⁵ Section 1.115(d) of the Rules states that "the application for review and any supplemental thereto shall be filed within 30 days of public notice of such action."⁶ In this case, the "action" of which the Letter is requesting review is the *MO&O*, which was released on June 29, 2011.⁷ Thus the deadline for filing the Letter was July 29, 2011. The Letter was filed three days late, on August 1, 2011. Consequently, Pittsfield's Letter will be dismissed as untimely.⁸

Additionally, were we to consider its merits, Pittsfield's Letter is defective because, as an application for review, it fails to specify with particularity from among specific factors which warrant Commission consideration.⁹ To warrant the Commission's consideration, the Letter must demonstrate at least one of the following:

that the action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy; that the action involves a question of law or policy which has not previously been resolved by the Commission; that the action involves application of a precedent or policy which should be overturned or revised; an erroneous finding as to an important or material question of fact; or prejudicial procedural error.¹⁰

⁴ The Bureau held that Pittsfield had provided documentation only relating to the Station's budget, but it provided no information regarding Pittsfield's own finances. *MO&O*, 26 FCC Rcd at 9306-07.

⁵ See, e.g., *Fireside Media and Jet Fuel Broadcasting*, Memorandum Opinion and Order, 27 FCC Rcd 10694, 10696 (2012). The Letter also would be untimely if it were treated as a petition for reconsideration of the *MO&O*. See 47 U.S.C. § 405(a). However, our Rules do not permit a party to seek reconsideration of a Bureau decision denying reconsideration of a Bureau action. See 47 C.F.R. § 1.106(k)(3).

⁶ 47 C.F.R. § 1.115(d).

⁷ See 47 C.F.R. § 1.4(b)(2) (providing that "public notice" means the release date for a memorandum opinion and order issued by the Bureau).

⁸ See *Francisco Montero, Esq.*, Letter, 27 FCC Rcd 6386, 6387-89 (MB 2012).

⁹ *Id.* at 6388.

¹⁰ 47 C.F.R. 1.115(b)(2).

The Letter requests only that the forfeiture be eliminated or reduced, and for the Chairman to review the attached documentation. Because the Letter does not attempt to make any of the showings delineated in Section 1.115(b)(2) of the Rules, it is procedurally defective.

Conclusion/Action. Accordingly, IT IS ORDERED that the Application for Review filed on August 1, 2011, by the Pittsfield Public School Committee is DISMISSED.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" followed by a stylized initial "H".

Peter H. Doyle
Chief, Audio Division
Media Bureau