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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:

Amendment of Section 73.202(b)
Table of Allotments, FM Broadcast
Stations (Rosendale, New York)

MM Docket No. 93-17
RM-8170

To: The Commission

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MOTION TO STRIKE
UNTIMELY OPPOSITION TO APPLICATION FOR REVIEW

State University of New York ("SUNY"), by its counsel, moves to strike the untimely Opposition to Application for Review and accompanying Motion to Accept Opposition to Application for Review, filed June 18, 1996, by Sacred Heart University.

This opposition is grossly untimely. Using the fifteen-day period set forth in Section 1.115(d) of the FCC's Rules, oppositions to SUNY's Application for Review were due on May 8, 1996. SHU's untimely Opposition, filed June 18, 1996, was nearly six weeks overdue. On this basis alone, the pleading should be rejected.^{1/}

^{1/} The Commission demands strict adherence to the time constraints of Section 1.115 of the FCC's Rules. Community Coalition for Media Change, 50 FCC 2d 304, n.1 (1974)(Commission rejected consideration of untimely opposition to application for review). See also Crystal Broadcast Partners, 11 FCC Rcd 4680 (1996)(discussing Commission's strict enforcement of its processing rules and denying petition to accept late-filed pleading); Warren Price Communications, 6 FCC Rcd 4424 (1991)(dismissing an untimely application for review filed one day late where petitioner failed to show why it could not have filed timely or requested

The excuses offered by SHU for its tardy pleading are ridiculous. SHU admits receiving service, albeit belatedly, of SUNY's Application for Review.^{2/} However, instead of requesting that SUNY consent to a commensurate extension of time for SHU's Opposition pleading due to the delayed service, SHU did nothing for weeks. SHU also blames the lack of an FCC Public Notice announcing the filing of SUNY's Application for Review. This argument contravenes the clear language of Section 1.115 of the Commission Rules, which provides that "Oppositions shall be filed within fifteen days after the application for review is filed." Section 1.115 makes no mention of a Public Notice for purposes of calculating due dates for Opposition pleadings. SHU's misplaced reliance on a non-compulsory Public Notice and its decision to sit on its pleading rights do not excuse its inattention to the procedural requirements of Section 1.115.

SHU is represented by experienced FCC counsel. Between May 8, 1996 and June 18, 1996, SHU had received at least four related pleadings subsequent to SUNY's April 23, 1996 Application for Review (all of which were timely filed).^{3/} Two of these pleadings contained

^{2/} SUNY mailed a service copy to its SHU's FCC counsel at a previous mailing address, as obtained from prior SHU pleadings in this proceeding. At the request of SHU, SUNY faxed a copy of its Application for Review to SHU on May 3, 1996. Thus, while SHU received belated service, it had adequate notice of SUNY's Application for Review, at the very least, to file a request for an extension of time to file its opposition pleading before the May 8, 1996 opposition deadline. SHU was not prejudiced by the service delay.

SHU also notes that only two of the ten applicants for Channel 273A at Rosendale were served with SUNY's Application for Review. SUNY served all parties to the previous rule-making proceeding, as required by Section 1.115(f)(1) of the Commission's Rules. The unserved applicants for Channel 273A at Rosendale are not parties to this proceeding and have not made the showing required for non-parties to intervene.

^{3/} SHU admits that it is "aware of several other filings that have been made by other parties since the filing of the Application for Review." These filings include:

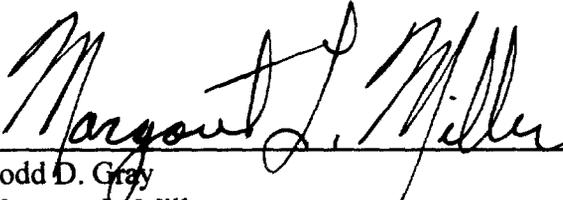
- * Opposition to Application for Review, filed May 8, 1996, by Aritaur Communications,

footnotes that calculated with specificity the May 8, 1996 due date for oppositions. Even assuming SHU originally and mistakenly thought that an FCC Public Notice would be released and that this Notice would trigger its opposition pleading deadline, SHU had more than adequate notice of its misconception by virtue of these pleadings. SHU chose to ignore the ongoing pleading cycle that continued without SHU's participation. It should not now be permitted to plead ignorance of the required due date for its opposition pleading.

For these reasons, we respectfully request that the FCC deny SHU's Motion to Accept Opposition to Application for Review and strike the Opposition filed by SHU. The record in this proceeding is now closed, and should stay that way.

Respectfully submitted,

STATE UNIVERSITY OF NEW YORK

By: 

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July 2, 1996

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- Inc.
 - * Statement in Support of Application for Review, filed May 8, 1996, by WMHT Educational Telecommunications
 - * Reply to Statement in Support of Application for Review, filed May 20, 1996, by Aritaur Communications
 - * Reply, filed May 22, 1996, by State University of New York

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Motion to Strike" was served this 2nd day of July, 1996 by first class United States mail, postage prepaid, upon the following:

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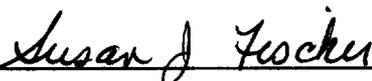
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