ORIGINAL
RECEIVED
FEB 22 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review - Streamlining of Mass Media Applications, Rules and Procedures	)	MM Docket No. 98-43
	)	
Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities	)	MM Docket No. 94-149

TO: The Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

1. Press Communications LLC ("Press") hereby opposes the Petition for Reconsideration filed jointly by Central Florida Educational Television, Inc. ("CFET") and Good Life Broadcasting, Inc. ("Good Life") with respect to the Commission's Report and Order, FCC 98-281, released November 25, 1998 in the above-captioned proceeding.

2. The thrust of the CFET/Good Life Joint Petition is that the Commission's new rules and policies relative to extensions of construction permits constitute unlawful retroactive rule making which harms a certain class of permittees. Actually, though, the Joint Petition is more accurately understood as an effort to secure extraordinary relief for these particular petitioners relative to their own unique, and uniquely unsympathetic, situation.

3. In their Joint Petition, CFET and Good Life claim that CFET is a permittee whose permit should be automatically extended for 12 months. Joint Petition at, e.g., 7-8. The trouble with

No. of Copies rec'd 0+4
List ABCDE

this claim is that it is not accurate. As the Commission's records amply reflect, the CFET permit (for Station WLCB(TV), Channel *45, Leesburg, Florida) was first issued to CFET in 1987 for a full and unimpeded two-year construction term. CFET did not build its station during that period; instead, it sought, and obtained, a series of extensions, the last one of which expired in 1992. In other words, CFET held its permit for some five years -- two-and-one-half times the normal length of initial construction permits at that time, and almost twice as long as the more generous three-year term which the Commission adopted in the instant proceeding.

4. In 1992, the Mass Media Bureau ("Bureau") concluded that CFET had failed to satisfy the criteria of Section 73.3534, and the Bureau consequently cancelled the permit. In September, 1995, the Bureau denied reconsideration of that decision. In October, 1995, CFET filed an application for review of that decision. The Commission has not heretofore acted on that application for review. [1/]

5. As a result, it is inaccurate to say that CFET is a permittee, or that CFET has been a permittee in any way since

---

[1/] As the Commission is aware, in July, 1996 the Bureau purported to reinstate the permit and dismiss the application for review. However, as Press has argued (see, e.g., the Opposition -- copy included as Attachment A hereto and incorporated by reference herein -- filed by Press on February 9, 1999 relative to a waiver request submitted on February 1, 1999 by CFET), the Bureau's "action" was a nullity having no effect at all, since the Bureau had no authority in July, 1996 to act on the application for review or otherwise revisit its 1992 and 1995 decisions to cancel the permit.

1992. Moreover, it is inaccurate to say that CFET has been denied an adequate time within which to construct its station -- to the contrary, CFET held its permit for some five years (from 1987-1992) without obstruction.

6. CFET and Good Life also claim that, while the Bureau supposedly reinstated and extended CFET's permit in July, 1996, CFET really had no authority to construct at that time because "while the Bureau granted [CFET's] request for reinstatement . . ., the FCC never actually issued the permit". Joint Petition at 6 (emphasis in original). As Press has previously pointed out, though, this claim is somewhat far-fetched since Commission records indicate that the Bureau's July, 1996 "action" was deemed to have extended the permit until January, 1997. That is, if the Bureau's "action" had been effective -- as CFET and Good Life claim was the case -- then the permit would have been good only for an additional six months from the date of the "action". This is consistent with the Commission's rules at the time, which mandated that extensions would be issued in six-month increments, Section 73.3534(e).

7. CFET/Good Life's claim that the Bureau might have reinstated the permit, but on some open-ended basis with no expiration date, also runs afoul of Section 319(d) of the Communications Act, which prohibits the granting of indefinite, open-ended permits of the kind that CFET and Good Life seem to posit.

8. In summary, then, whether or not the Commission's new

rules may have any kind of unlawful retroactive effect on other parties, it is clear that CFET and Good Life cannot legitimately claim that CFET is entitled to the extraordinary relief which it is seeking for itself (under the guise of a petition for reconsideration of the overall rule making decision in this proceeding). As a result, even if the Commission were to conclude that that decision does have some inappropriate retroactive effect, the Commission could still not properly extend any such conclusion to CFET and Good Life. The former CFET construction permit was cancelled long ago, for good reason. The Commission's current efforts to streamline its construction permit extension processes afford no legitimate basis on which to breathe the breath of life back into the seven-years-dead CFET permit.

Respectfully submitted,

/s/ Harry F. Cole
Harry F. Cole

Bechtel & Cole, Chartered
1901 L Street, N.W.
Suite 250
Washington, D.C. 20036
(202) 833-4190

Counsel for Press Communications LLC

February 22, 1999

ATTACHMENT A

BECHTEL & COLE
FILE COPY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
FEB - 9 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Request of	)
	)
CENTRAL FLORIDA EDUCATIONAL TELEVISION, INC.,	)
	)
For waiver of revised Section 73.3598	)

TO: The Commission

OPPOSITION TO REQUEST FOR WAIVER

1. Press Communications LLC ("Press") hereby opposes the request for waiver submitted on February 1, 1999, by Central Florida Educational Television, Inc. ("CFET") in connection with former Station WLCB-TV, Leesburg, Florida. As set forth below, the full story of the long-since-cancelled permit of Station WLCB-TV demonstrates clearly that CFET's requested waiver is unwarranted.

2. As Press has previously advised the Commission, Press is the licensee of Station WKCF(TV), Clermont, Florida, whose service area overlaps the projected service area of Station WLCB-TV. As a result, Press would compete for audiences and, to some degree, revenues with Station WLCB-TV, if it were ever to commence operation. Accordingly, Press has standing to object to CFET's request for waiver.

3. In its request CFET is understandably circumspect in the details of the story it presents to the Commission, presumably because full and candid disclosure would establish that no basis exists for the relief requested by CFET. The facts

are as follows.

4. CFET's construction permit was issued in March, 1987, approximately 12 years ago. CFET did not build its station during the initial construction period, nor did it build it in three years' worth of extension periods following the initial expiration of the permit's term. So after somewhat more than five unchallenged years of non-construction, the Mass Media Bureau cancelled the permit in September, 1992.

5. CFET sought reconsideration -- in the Fall of 1992 -- of the Bureau's cancellation of its permit. The Bureau denied reconsideration in September, 1995.

6. In October, 1995, CFET filed an application for review of the cancellation addressed to the full Commission pursuant to Section 1.115 of the Commission's Rules. The Commission has not acted on that application for review.

7. In July, 1996 -- approximately ten months after the Bureau's denial of reconsideration and approximately nine months after the filing of the application for review -- the Bureau issued a letter purporting to reinstate the construction permit. As Press has previously argued to the Commission, Press believes that the Bureau's July, 1996 decision is a nullity because the Bureau had (and has) no authority to act on this matter. See, e.g., Press's Application for Review, filed October 20, 1997.

8. In November, 1996, CFET filed an application (File No. BAPET-961113IA) for consent to the assignment of the permit to Good Life Broadcasting, Inc. ("Good Life"). Press petitioned to deny that application, arguing that there was no permit to

assign because the Bureau's July, 1996 decision had been a nullity and that, unless and until the full Commission acted on CFET's October, 1995 application for review, the permit remained cancelled. Good Life opposed Press's petition, asserting inter alia that grant of the assignment application would "enabl[e] Good Life to commence construction" of the station. Good Life Opposition to Petition to Deny, filed January 24, 1997, at 6.

9. In September, 1997, the Bureau rejected Press's petition to deny and granted the CFET/Good Life assignment application. Press filed an application for review of that decision in October, 1997. That application for review is still pending before the Commission. Good Life opposed Press's application for review, asserting that Press's opposition to the assignment had "served only to delay unnecessarily approval of the assignment of th[e] construction permit and consequently the commencement of construction" of the station by Good Life. Good Life Opposition to Application for Review, filed November 4, 1997, at 5.

10. In November, 1997, Press filed a second petition to deny the assignment application, noting that even if the Bureau's July, 1996 reinstatement of the permit were deemed to have been effective, the permit as supposedly reinstated had expired yet again in January, 1997, and CFET had neither constructed the station nor sought any further extension of the permit. Accordingly, Press argued, even if the permit might have arguably had any continued vitality arising from the July, 1996 Bureau decision, that vitality had long since evaporated.

11. Press's application for review and its second petition to deny are still pending.

12. The foregoing facts establish that no waiver is appropriate here. CFET is seeking a waiver of the Commission's recently-adopted policy which provides each permittee an unfettered initial construction period of three years within which to build and commence operation of the station. See 1998 Biennial Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes ("1998 Biennial Review"), FCC 98-281, released November 25, 1998. But in 1998 Biennial Review, the Commission gave no indication that it intended to extend permits (such as CFET's) which had already had been extant, unchallenged, not for only three years, but for five years, without construction. Nor, for that matter, did the Commission indicate any inclination to reinstate any permits which had long ago been cancelled, under the previous rules, for failure to construct.

13. So for openers, it is clear that CFET is not a prime candidate for any waiver of the deadline for construction.

14. CFET tries to skirt that problem by claiming that, while its permit was supposedly reinstated and extended by the Bureau in 1996, CFET was somehow unable to construct thereafter. This argument is both internally inconsistent and legally flawed.

15. First, as Press has previously argued (in, e.g., its pending application for review), the Bureau's July, 1996 decision was a nullity because the Bureau had no authority to reinstate a permit which had been cancelled nearly a year earlier and as to

which cancellation CFET had an application for review pending before the Commission. The Commission has delegated certain authority to the Bureau (and its component divisions and branches). See Section 0.283 of the Commission's Rules. However, the authority so delegated specifically and expressly excludes authority to act on applications for review. See Section 0.283(b)(3). This exclusion is not a matter within the Commission's discretion. Rather, it is mandated by the Communications Act, which clearly and expressly requires that applications for review "shall be passed upon by the Commission". 47 U.S.C. §5(c)(4). As the Commission itself has observed,

> [t]he authority to entertain review of an exercise of delegated authority is reserved solely to the Commission by Section 5[c] of the Act. The Commission is precluded by that section from delegating authority to review actions taken under delegated authority.

Frank H. Yemm, 39 R.R.2d 1657, 1659, ¶7 (1977). Thus, once an application for review was filed (i.e., as of October, 1995), the matter was before the full Commission and could be resolved only by the full Commission.

16. So CFET is, as a matter of law, wrong to suggest that it has had any permit at all since 1992.

17. But even if the Bureau's July, 1996 decision were deemed arguendo to have been effective (as CFET claims), then CFET should have proceeded promptly with construction. CFET did not do so. Thus, again CFET has effectively forfeited, through inaction, any claim to the permit.

18. In its current waiver request, CFET anticipatorily responds that, in CFET's view at least, CFET was not really

authorized to construct between July, 1996 and the present because, according to CFET, no permit was actually issued. Waiver Request at 2.

19. Putting aside the fact that this claim is inconsistent with the notion (also advanced by CFET) that the Bureau, in July, 1996, reinstated and extended its permit, CFET still faces obstacles to its claim. According to the Commission's own records (not to mention its rules), it is clear that, if the Bureau's reinstatement and extension of the permit had been effective (as CFET assumes), the permit was extended to January 25, 1997.

20. The Commission's public files include a clear and unequivocal listing of January 25, 1997 as the permit's expiration date. See Attachment A (copy of a BAPS screen obtained from the Commission). That expiration should not be surprising, as it is mandated by the Commission's rules, which provided (as of July, 1996 and continuously thereafter) that, if a construction permit is reinstated, the reinstated permit "shall specify a period of not more than 6 months within which construction shall be completed." 47 C.F.R. §73.3534(e). In other words, if the Bureau had properly reinstated the CFET permit on July 26, 1996, under the rules the reinstated permit could have been extended for, at most, six months, i.e., until January 25, 1997 -- the date shown in the BAPS database. [1/]

[1/] The limitations imposed by Section 73.3534(e) further undermine any argument about CFET's supposed non-receipt of any authorization: even if CFET did not receive any authorization from the Commission, (continued...)

21. Moreover, even if the limitations of Section 73.3534(e) were overlooked, the fanciful notion that the Bureau might have really intended to issue an open-ended reinstatement or extension of the CFET permit would run afoul of Section 319(b) of the Communications Act. That section requires that a construction permit "shall show specifically the earliest and latest dates between which the actual operation of [the] station is expected to begin". The Commission is therefore statutorily prohibited from granting the kind of open-ended, indefinite permit which CFET seems to posit.

22. So it is clear that, even if the Bureau's July, 1996 reinstatement and extension of the permit were deemed, arguendo, effective, the permit as supposedly extended thereby expired in January, 1997. But CFET failed to seek any further extension of the permit before (or after) that date. As a result, even if the permit had been reinstated in July, 1996, it expired again more than two years ago. CFET is plainly not a deserving candidate for the extraordinary waiver which it seeks.

23. CFET's claim that it was unable to construct because, e.g., its "hands were tied" (see Waiver Request at 4) cannot be credited. If CFET had really thought that there was any question about its ability to proceed with construction, CFET could and should have investigated the question. For example, CFET could have checked the Commission's files (where it would have found

---

1/ (...continued)
and even if CFET chose not to check on the Commission's BAPS database, it had only to consult the Commission's rules to determine the maximum amount of time its supposedly-reinstated permit would be good for.

the BAPS entry showing a January, 1997 expiration). Or CFET could have checked the Commission's rules, found the six-month provision of Section 73.3534(e), and done the arithmetic (i.e., by counting six months from the July, 1996 date of the Bureau letter). Or failing that, CFET could have inquired of the Commission's staff. In other words, CFET's hands weren't really tied, and if it really believed that the Bureau's July, 1996 decision reinstated and extended its permit, it could have proceeded with construction. [2/]

24. But instead of moving forward with construction, CFET chose simply to sit on its hands -- not surprisingly, because CFET itself has no real intention of building the station. Rather, CFET is trying to peddle its "permit" to Good Life, so that Good Life can build the station. [3/]

25. In its Waiver Request, CFET cites a line of decisions

[2/] Indeed, as noted above, in its November, 1997 opposition to Press's application for review, Good Life itself placed the blame for the delay in construction not on any lack of any piece of paper from the Commission, but rather on the pendency of Press's opposition pleadings: "Press's Petition to Deny and its Application for Review have served only to delay unnecessarily . . . the commencement of construction" of the station by Good Life. Good Life Opposition to Application for Review, filed November 4, 1997, at 5.

[3/] As CFET candidly acknowledges, the Bureau's July, 1996 action was premised not on any thought that CFET would construct the station, but rather on the notion that CFET would seek to assign the permit to Good Life so that Good Life could construct and operate the station. See Waiver Request at 3. In this regard Press is constrained to note that the Commission has long held that a construction permit will not be extended solely to enable the permittee to sell the permit. E.g., High Point Community Television, Inc., 2 FCC Rcd 2506 (1987); David E. Goff, 100 FCC2d 1329 (Mass Media Bureau 1985); Continental Summit Television Corp., 27 FCC2d 945 (Rev. Bd. 1971). Since the sole basis for the Bureau's July, 1996 decision appears to have been the facilitation of the sale to Good Life (and not any construction by CFET), that decision was in any event dramatically inconsistent with established Commission policy. There is no indication that the Commission, in 1998 Biennial Review, altered that policy in any way.

which stand for the proposition that a permittee cannot be faulted for failing to construct "during the pendency of an extension or reinstatement application or while the grant of a construction permit is clouded by judicial or administrative review". Waiver Request at 3. CFET seems to be suggesting that the grant of its construction permit extension has somehow been "clouded" by the fact that Press has challenged CFET's application proposing assignment of the permit to Good Life. But, as indicated above, Press did not oppose, or seek reconsideration of, the Bureau's 1996 supposed reinstatement of the permit. [4/]

26. In summary, then, CFET held its permit for at least five years (from 1987 to 1992), unchallenged, and it did not build its station. If CFET and Good Life are correct that the Bureau could reinstate and extend the permit in 1996, then CFET had an additional six months (from July, 1996 to January, 1997) in which to constrcut, and it did not then build its station, either. Nor did CFET file any further extension request, as a result of which the permit -- if it had been reinstated and extended in July, 1996 -- expired again, more than two years ago.

27. So the permit, issued some 12 years ago, has come and gone, long ago.

28. In 1998 Biennial Review, the Commission has made

[4/] While Press has argued, in various pleadings directed against the CFET/Good Life assignment application, that the Bureau's July, 1996 decision was a nullity, CFET and Good Life have taken the contrary position. Good Life has gone so far as to argue that the Bureau's July, 1996 decision became a final action, immune to any administrative or judicial review, in October, 1996. See Good Life Opposition to Press Petition to Deny, filed January 24, 1997.

unmistakably clear its determination that permits which have been outstanding for more than three "unencumbered" years without construction can and should be cancelled automatically. See 1998 Biennial Review at, e.g., ¶89. CFET's permit was outstanding, unencumbered, for five years before it was cancelled in 1992. If CFET and Good Life are correct in their view that the Bureau reinstated the permit in 1996, it was then outstanding again for another six months, until January, 1997. In the intervening two years, CFET has not constructed the station or sought any further reinstatement of the permit.

29. Clearly, this is precisely the type of situation which mandates automatic cancellation (if the permit were to be deemed still outstanding). Equally clearly, no legitimate basis for any waiver exists here. Accordingly, the Commission must deny the waiver request and reaffirm that the CFET permit is cancelled.

Respectfully submitted,

/s/ Harry F. Cole
Harry F. Cole

Bechtel & Cole, Chartered
1901 L Street, N.W. - Suite 250
Washington, D.C. 20036
(202) 833-4190

Counsel for Press Communications LLC

February 9, 1999

ATTACHMENT A

APPLICATION FOR CALLSIGN - WLCB-TV

File Nbr: BPET - 920501KE **Status:** APPLICATION GRANTED

Type: CONSTRUCTION PERMIT

PROCESSING DATES

Date Disposed: 07/25/96

Received:	05/01/92	**1st-Pet:**	10/16/92	**Docket:**		**Last-PN:**	09/12/96
Accepted:	05/01/92	**Cut-Off:**	00/00/00	**To-Hrg:**	00/00/00	**Last-PC**	09/12/96
PN-Accept:	05/08/92	**Consum:**	00/00/00	**Fr-Hrg:**	00/00/00	**Changed:**	09/12/96
CP-App-Arn:	910920KF	**CP-Expiration:**	01/25/97			**CP-Pta-Date:**	00/00/00
New Station:		**Major:**		**Prior Arn:**		**Amendments:**	0
Accept PN #:	22822	**Action PN #:**	43827			**Submitter:**	SAYERS

Application Description:

CONSTRUCTION PERMIT TO REPLACE EXPIRED CONSTRUCTION PERMIT (BPET-860820KH); CONSTRUCTION PERMIT ORIGINAL GRANT DATE: 03-30-87; CONSTRUCTION PERMIT EXPIRATION DATE: 04-04-92

THIS APPLICATION WAS GRANTED BY APPLICATION FOR REVIEW

STATUS RECORDS

Submitter: RL **Effective Date:** 10/16/92
Status: PETITION FOR RECONSIDERATION FILED
Comment: PETITION FOR RECONSIDERATION

Submitter: RL **Effective Date:** 03/18/93
Status: PLEADING
Comment: SUPPLEMENT TO PETITION FOR RECONSIDERATION

Submitter: GWHITMYE **Effective Date:** 09/11/95
Status: PETITION FOR RECONSIDERATION FILED
Comment: PETITION FOR RECON. OF 10-16-92 IS HEREBY DENIED AS OF 9-11-95

CERTIFICATE OF SERVICE

I, Harry F. Cole, hereby certify that on this 9th day of February, 1999, I have caused copies of the foregoing "Opposition to Request for Waiver" to be hand delivered (as indicated below) or placed in the United States mail, first class postage prepaid, addressed to the following individuals:

Clay C. Pendarvis, Chief
Television Branch
Video Services Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
(by hand)

James F. Miller, Esquire
Miller & Woods, P.A.
1400 Center Park Boulevard
Suite 860
West Palm Beach, Florida 33401
Counsel for Central Florida Educational Television, Inc.

Meredith S. Senter, Jr., Esquire
Sally A. Buckman, Esquire
Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006
Counsel for Good Life Broadcasting, Inc.

/s/ Harry F. Cole
Harry F. Cole

CERTIFICATE OF SERVICE

I, Harry F. Cole, hereby certify that on this 22nd day of February, 1999, I have caused copies of the foregoing "Opposition to Petition for Reconsideration" to be hand delivered (as indicated below) or placed in the United States mail, first class postage prepaid, addressed to the following individuals:

Clay C. Pendarvis, Chief
Television Branch
Video Services Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
(by hand)

James F. Miller, Esquire
Miller & Woods, P.A.
1400 Center Park Boulevard
Suite 860
West Palm Beach, Florida 33401
Counsel for Central Florida Educational Television, Inc.

Meredith S. Senter, Jr., Esquire
Sally A. Buckman, Esquire
Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006
Counsel for Good Life Broadcasting, Inc.

/s/ Harry F. Cole
Harry F. Cole