

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	
Table of Allotments	)	MM Docket No. <u>97-178</u>
FM Broadcast Stations	)	RM-8329
(West Hurley, Rosendale, and	)	RM-8739
Rhinebeck, New York, and	)	RM-10099
North Canaan and Sharon, Connecticut)	)	

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**OPPOSITION TO ACCEPTANCE OF SUNY'S OPPOSITION OR, IN THE  
ALTERNATIVE, MOTION FOR LEAVE TO FILE REPLY**

Sacred Heart University, Inc. ("SHU"), by its counsel, hereby opposes acceptance of the Opposition to Petition for Reconsideration filed by State University of New York ("SUNY") on October 25, 2000 in the above-captioned proceeding. The SUNY Opposition was filed twenty days late. In support hereof, SHU states as follows:

1. SHU had been diligently monitoring the Commission's electronic comment filing system in the days following the due date for oppositions, and reasonably concluded that no opposition had been filed. In addition, SHU's counsel had not received any pleading from SUNY by mail. After continuing to check on a daily basis for three weeks after the due date, SHU's counsel stopped checking. SUNY's certificate of service does indicate service to undersigned counsel at the proper address and counsel does not dispute that the pleading was mailed. Instead, counsel became aware of the pleading when a member of the FCC staff called it to counsel's attention.

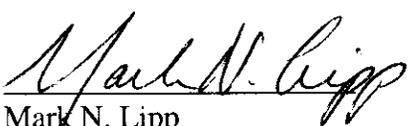
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2. The Commission should not accept SUNY's late-filed opposition. According to SUNY, its tardiness was simply due to unexcused attorney error. That is not good cause for acceptance of a late-filed pleading. *See John H. White*, 9 FCC Rcd 1016 (1994) (attorney error is not good cause for waiving important procedural rules). However, if the Commission accepts SUNY's Opposition for filing, it should also accept the accompanying Reply. The filing of the Opposition was not discovered by SHU in time to file a reply.<sup>1</sup> As indicated, it was only discovered when it was brought to counsel's attention recently. The rules clearly contemplate that a petitioner shall have the opportunity to file a Reply to an Opposition. This Reply is submitted within 10 days of determining that the Opposition was in fact filed.

WHEREFORE, for the reasons stated the Commission should not accept the SUNY pleading. However, for good cause shown, if SUNY's pleading is accepted, the Commission should accept the accompanying Reply to Opposition for filing in the above-captioned proceeding.

Respectfully submitted,

SACRED HEART UNIVERSITY, INC.

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Its Counsel

February 25, 2002

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<sup>1</sup> See 47 C.F.R. § 1.429(f), (g) (date for replies is 10 days after the date for filing oppositions, which in turn is 15 days after public notice).

## CERTIFICATE OF SERVICE

I, Lisa M. Balzer, certify that a copy of the foregoing "Opposition to Acceptance of SUNY's Opposition or, in the Alternative, Motion for Leave to File Reply" was served this 25th day of February, 2002, by hand delivery or first class mail, postage prepaid, to the following:

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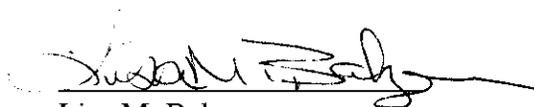
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A handwritten signature in black ink, appearing to read "Lisa M. Balzer", with a long horizontal flourish extending to the right.

Lisa M. Balzer

\* HAND DELIVERY