

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Application of)	
)	
OKLAHOMA STATE REGENTS FOR HIGHER)	File No. BPLIF-951020JM
EDUCATION)	
)	
For Authority to Modify Instructional Television)	
Fixed Service Station WGM91 at Bartlesville,)	
Oklahoma)	

MEMORANDUM OPINION AND ORDER

Adopted: April 22, 2003

Released: April 28, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Memorandum Opinion and Order*, we address the petition for reconsideration filed on August 8, 1997 by Oklahoma State Regents for Higher Education (Oklahoma State) regarding the dismissal of its above-captioned application for authority to modify the Instructional Television Fixed Service (ITFS) Station WGM91, Bartlesville, Oklahoma.¹ By this license modification application, Oklahoma State sought to relocate the transmitting site, increase EIRP by 5 dBW, change transmitting antenna type and direction, and to add Channel C4. For the reasons discussed below, we deny Oklahoma State’s Petition.

2. *Background.* Oklahoma State filed the above-captioned application on October 20, 1995.² On December 7, 1995, Oklahoma State filed a minor amendment submitting an agreement between itself, Broken Arrow Public Schools District No. 3 (Broken Arrow), licensee of ITFS Station WNC515, Tulsa, OK, and Ripley Schools (Ripley), licensee of ITFS Station WNC227, Glencoe, OK. Under the agreement, Broken Arrow and Ripley agreed not to object to Oklahoma State’s application, and the parties agreed to work cooperatively to resolve any interference problems.³

3. Following a review of Oklahoma State’s application, the Commission’s staff dismissed the application on June 30, 1997. Public notice of the dismissal was given on July 8, 1997.⁴ The application was dismissed due to failure to engineer the station to provide co-channel interference protection to Stations WNC227, WNC515, and WNC410, Miami, Oklahoma, licensed to Northeast

¹ Petition for Reconsideration (filed Aug. 8, 1997) (Petition).
² To date, the application has not appeared on public notice as accepted for filing.
³ *Id.*
⁴ See MMB Broadcast Actions Public Notice Report No. 44028 (rel. Jul. 8, 1997).

Oklahoma Area Vocational-Technical School (Northeast Oklahoma).⁵ On August 8, 1997, Oklahoma State filed the instant Petition.

4. In the Petition, Oklahoma State acknowledges that it failed to include “no objection” letters from the affected parties when the application was initially filed with the Commission.⁶ However, it contends that the dismissal of its application is inconsistent with the Distribution Service Branch’s practice in the past, which allowed applicants an opportunity to secure and file consent letters post-application filing.⁷ Petitioner also contends that it has diligently worked to obtain the required consent letters and planned to file them with the Commission as soon as they are available, and that the Commission’s staff had not offered any explanation prior to the dismissal.⁸ On March 6, 1998, petitioner filed a Supplement to Petition for Reconsideration⁹ to submit a consent letter from Northeast Oklahoma.

5. *Discussion.* We reject Oklahoma State’s argument. Consent letters from the affected parties, as a general matter, have been required to be submitted with the original application.¹⁰ Applications for new ITFS stations may be submitted only during a specific period or “window” announced by public notice.¹¹ Pursuant to Section 74.903 of the Commission’s Rules,¹² an application for an ITFS station must protect previously proposed facilities from interference and will not be granted if interference is predicted to occur. Given that applications must be filed only during designated filing windows, it is vital that all necessary consent letters be submitted with the original application. Considering consent letters that did not exist at the time the original application was filed encourages the filing of incomplete applications and places an undue burden on the Commission’s limited resources. While Oklahoma State argues that there was a policy allowing consent letters to be submitted after an application was filed, it does not provide any evidence or citation to precedent to this effect.¹³

6. Even if we would consider consent letters submitted after the application was filed, we would deny Oklahoma State’s Petition because it did not submit a consent letter from the licensee of Station WNC410 until over six months after it filed its Petition. Any supplements to petitions for reconsideration filed more than thirty days after public notice of the action for which reconsideration is sought must be filed with a motion seeking leave to accept the supplement.¹⁴ Oklahoma State did not file a motion for leave to supplement its Petition. The supplement that Oklahoma State filed must therefore

⁵ See Letter from Clay C. Pendarvis, Acting Chief, Distribution Services Branch, Video Services Division, Mass Media Bureau to Oklahoma State Regents for Higher Education (dated Jul. 1, 1997). The letter incorrectly listed the licensee of Station WNC410 as Harold Anglin.

⁶ See Petition at 2-3.

⁷ *Id* at 3.

⁸ *Id* at 3.

⁹ See Letter from A.B. Cruz III to Magalie Roman Salas, Secretary, Federal Communications Commission. (dated Mar. 6, 1998).

¹⁰ See, e.g., Guadalupe Valley Electric Cooperative, *Order on Reconsideration*, 11 FCC Rcd 7434, 7442-43 (1996); In the Matter of 4,330 Applications for Authority to Construct and Operate Multipoint Distribution Service Stations at 62 Transmitter Sites, *Memorandum Opinion and Order on Reconsideration*, 10 FCC Rcd 1335, 1465-66 (1994); Family Entertainment Network, Inc., *Order on Reconsideration*, 9 FCC Rcd 566, 567-68 n.10 (1994).

¹¹ See Amendment of Part 74 of the Commission’s Rules with Regard to the Instructional Television Fixed Service, MM Docket No. 93-24, *Report and Order*, 10 FCC Rcd 2907 (1995).

¹² 47 C.F.R. § 74.903.

¹³ See Petition at 3.

¹⁴ 47 C.F.R. § 1.106(f).

be rejected as untimely.¹⁵ Moreover, such consent letter was filed over two years after the subject application was filed. We therefore conclude, based on the information before us, that the Branch's dismissal of Oklahoma State's application was correct under the circumstances presented.

7. ACORDINGLY, IT IS ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405 and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed by Oklahoma State Regents for Higher Education on August 8, 1997 IS DENIED.

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. § 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

¹⁵ See TPS Utilicom, Inc., *Order on Reconsideration*, DA 03-480 (rel. Feb. 21, 2003) at n.24.