

FEDERAL COMMUNICATIONS COMMISSION
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APR 03 2000

E. Joseph Knoll, III, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006

In re: NEW(FM), Fergus Falls, MN
Minnesota Public Radio ("MPR")
BPED-19981208MH

Dear Mr. Knoll:

The staff has under consideration the above-captioned application filed by MPR for a new non-commercial/educational FM station to serve Fergus Falls, Minnesota. For the reason stated below, the application will be returned.

An engineering study of the application reveals it would be in conflict with an application filed by Broadcasting for the Challenged, Inc. ("Broadcasting"), for a new FM station to serve Fargo, North Dakota (File No. BPED-19981203MC).¹ We note that Broadcasting's application was filed on or before the cut-off date (December 3, 1998) established for filing applications which are mutually exclusive with an application for a new FM station to serve Fargo, North Dakota filed by Pioneer Public Broadcasting Company (File No. BPED-980427MQ). See *Public Notice*, Report No. A-339, released October 30, 1998. MPR's application was filed after the cut-off date established by the *Public Notice* and, therefore, is unacceptable for filing and subject to return pursuant to the policy stated in *Kittyhawk Broadcasting Corp.*² That policy, known as the *Kittyhawk* doctrine, holds that an application will be considered timely for purposes of the cut-off rule only when it is timely filed with respect to the lead application of a group of conflicting applications.

¹ We note that the application of Broadcasting for the Challenged, Inc. was found to be acceptable for filing and appears on the "B" cut-off Public Notice, Report No. B-234, released October 14, 1999.

² In *Kittyhawk Broadcasting Corp.*, 7 FCC 2d 153 (1967), *appeal dismissed sub nom. Cook, Inc. V. U.S.*, 394 F.2d 84 (7th Cir. 1968), an application for a new AM station at Kettering, Ohio, was cut-off on August 17, 1965. On that date, an application for a new AM station at Bloomington, Indiana, was filed which was mutually exclusive with the Kettering application. Subsequently, an application for a new AM station at Ellettsville, Indiana was filed which, although not directly in conflict with the Kettering application, was directly in conflict with the Bloomington application and was thus indirectly interlinked, or "daisy chained", into mutually exclusivity with the Kettering proposal. The Commission concluded that the Ellettsville application should have therefore been filed by Kettering's cut-off date. Accordingly, the Ellettsville application was returned as untimely.

Accordingly, for the reasons stated above, Application BPED-19981208MH, being unacceptable for filing, IS HEREBY RETURNED. This action is taken pursuant to 47 C.F.R. § 0.283.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward P. De La Hunt". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Edward P. De La Hunt
Assistant Chief
Audio Services Division
Mass Media Bureau

cc: Minnesota Public Radio