



Federal Communications Commission
Washington, D.C. 20554

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DA 05-2026
In Reply Refer to:
1800B3-Wagner

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In re: Applications for New LPFM Stations
(See Appendix for file and facility
information)

Dear Mr. Martin:

The staff has before it (1) the “Joint Petition for Reconsideration and Request for Reinstatement *Nunc Pro Tunc*” (“Joint Petition”) filed on April 20, 2004, by Calvary Chapel Windward (“Windward”), Calvary Chapel Lake City (“Lake City”), Calvary Chapel of Grants Pass (“Grants Pass”), Calvary Chapel Ruidoso (“Ruidoso”), Calvary Chapel of Helena (“Helena”), Calvary Chapel of Kingman (“Kingman”), Calvary Chapel of Vineland, Inc. (“Vineland”), Calvary Chapel of Bremerton (“Bremerton”), Calvary Chapel of Scottsbluff (“Scottsbluff”), Calvary Chapel of Russell (“Russell”), Calvary Chapel of Knoxville (“Knoxville”), Calvary Chapel of Southern Ocean County (“Southern”), Calvary Chapel of Bowling Green (“Green”) and Calvary Chapel of Republic (“Republic”), (collectively, “Petitioners”). The Joint Petition is directed to the respective March 16, 2004, and March 19, 2004, actions of the Media Bureau (“Bureau”) dismissing the captioned applications for new low power FM (“LPFM”) broadcast stations as inadvertently accepted for filing.¹ Also before the Commission are the Oppositions to the Joint Petition filed on April 29, 2004, by the National Lawyers Guild Center on Democratic Communications (“Lawyers Guild”) and on May 5, 2004, by Hayden Christian Broadcasting Corporation (“Hayden”). The Hayden Opposition is directed specifically to the Lake City application. For the reasons set forth below we (1) grant the Joint Petition and reinstate the applications *nunc pro tunc*, and (2) grant the Grants Pass, Helena, Knoxville, Bowling Green, and Republic applications.

Background

The Petitioners participated in the first round of the LPFM filing windows. The first LPFM filing windows permitted only local applicants to apply for new LPFM stations and limited each non-governmental applicant to a single application filing.² Item 4 requires an applicant to certify that it **either**

¹ *Letter to Listed Applicants*, Reference 1800B3-GDG/SW (MB Mar. 16, 2004) (dismissing the Lake City, Windward, Grants Pass, Ruidoso, Helena, Kingman, Vineland, Bremerton, Scottsbluff, Russell, and Knoxville applications); *Letter to Listed Applicants*, Reference 1800B3-GDG/SW (MB Mar. 19, 2004) (dismissing the Southern, Green, and Republic applications).

² See 47 C.F.R. § 73.853(b). See also FCC Form 318, Section II, Items 4 and 5, and Instructions for FCC Form 318 at 6.

(1) is an educational institution or organization that is physically headquartered within 16.1 kilometers (10 miles) of the proposed transmitter site; (2) is an educational institution or organization with seventy-five percent (75%) of its board members residing within 16.1 kilometers from the transmitter site; or (3) proposes a public safety radio service and has jurisdiction within the service area of the proposed LPFM station. Item 5(a) requires an applicant to certify that “No party to this application has an attributable interest in any non-LPFM station, including any full power AM or FM station, FM translator station, full or low power television station, or any other media subject to the Commission’s ownership restrictions.” There are exceptions to this ownership restriction for “local chapters” of a national or other large organization set forth in the attribution provisions of Section 73.858 of the Commission’s rules.³ The Instructions for FCC Form 318 summarize these exceptions as follows:

Under this provision a local chapter of a national organization will not have the attributable media interests of the national organization attributed to it, provided that the local chapter: (1) is incorporated in its local area separately from the national organization with which it is affiliated; **and** (2) has a distinct local presence and mission. To satisfy the second element of this standard, an applicant must demonstrate that it has significant membership within its local area and that it has a local purpose that can be distinguished from the purpose of the national organization with which it is affiliated.⁴

Each of the Calvary Chapel-named applicants submitted information to establish that it qualified for the “local chapter” exemption, certifying its local presence and submitting an exhibit to demonstrate a distinct local purpose. In dismissing the applications, the staff stated that it is undisputed that each applicant is separately incorporated and that it has a headquarters within the proposed broadcast community. However, the staff found that the submitted statements of educational purpose failed to distinguish the applicant from the other Calvary Chapel applicants which filed identical applications for LPFM stations, or from national Calvary Chapel radio companies such as CSN International and Calvary Chapel of Twin Falls that own numerous full-service and FM translator radio stations throughout the country.⁵ Nothing in the educational purpose of the applications referenced the respective communities of license in any way or demonstrated “a local purpose that can be distinguished from the purpose of the national organization with which it is affiliated.” Without this evidence, the staff could not find that the purported “local chapter” had a distinct local presence and mission. Accordingly, the staff determined, pursuant to Section 73.853(b) and 73.858 of the Commission’s rules, that the applications were patently defective and the applications were dismissed as inadvertently accepted for filing. The informal objections that were filed against these applications were dismissed as moot.⁶ On April 20, 2004, the applicants filed their Joint Petition.

Discussion

³ 47 C.F.R. § 73.858, “Attribution of LPFM Station Interests.”

⁴ Instructions for FCC Form 318, pp. 5-6.

⁵ See, e.g., <http://www.csnradio.com>.

⁶ Informal objections against several of these applications filed by Lawyers Guild alleged that they did not demonstrate a “distinct local presence and mission,” and therefore, they do not fall under the exceptions to the ownership restrictions pursuant to Section 73.858 of the Commission’s rules. These objections were dismissed as moot in the letters dismissing the applications.

Joint Petition. In support of their Joint Petition, Petitioners submit a “Joint Declaration” and state that they are not local chapters of a national organization and that the staff’s “assumption” of affiliation is incorrect. Rather, Petitioners declare that they do not have any legal or financial relationship with each other or with CSN, Calvary Chapel of Twin Falls or any other Calvary Chapel church or organization. They attribute the similarity of the content of their educational purposes to the preparation of their applications by the same communications lawyer or engineer recommended by other churches in their movement.⁷ Nevertheless, Petitioners state that if considered affiliates they qualify for the attribution exemption under section 73.858(b) because each was separately incorporated and has a distinct local presence and mission. In this regard, the Joint Petition includes amendments to each proposal in which each applicant supplements its statement of educational purpose in an attempt to demonstrate that each has a distinct local presence and mission in their respective proposed communities of license.⁸

Lawyers Guild Opposition. In its Opposition to the Joint Petition, Lawyers Guild states Petitioners are local chapters of a national organization because of the “cookie cutter” exhibits that are identical to other Calvary Chapel LPFM applications, and that, referencing Calvary Chapel’s website, states Petitioners’ joint declaration “cannot rebut substantial independent evidence” identifying Petitioners as affiliated with the national Calvary Chapel organization. As such, Lawyers Guild asserts Petitioners must show that they have a local purpose that can be distinguished from the national Calvary Chapel organization. Lawyers Guild maintains that the Commission should not accept the proffered amendments because they improve the comparative positions of the Petitioners in violation of section 73.871(b). Alternatively, Lawyers Guild contends that if the Commission accepts the amendments, Petitioners do not qualify for the attribution exemption under Section 73.858(b), because the amendments fail to establish their distinctly local presence and mission because “they fail to address any specific locally originated programming intended to be broadcast.”

Each of the Petitioners formally and voluntarily identifies itself with the Calvary Chapel organization, has submitted a substantially identical application, uses the communications counsel and consulting engineers, and has cooperated in the joint prosecution of this reconsideration petition. While these facts are highly probative on the issue of whether each applicant should be treated as a “local chapter” of Calvary Chapel, we need not resolve that matter here. We agree with Petitioners that even if they are considered local chapters of a “national” Calvary Chapel organization, they qualify for the attribution exemption of Section 73.858(b) in that the amendments demonstrate that each applicant has a distinct local presence and mission in their respective proposed communities. A review of the amendments shows that each applicant provides its respective community with a variety of programs and

⁷ In their joint declaration, Joint Petitioners declare that: each is an autonomous, “independent locally-governed church”; each paid its own legal bills and prosecuted its application “free from the influence or control” from any outside group; each petitioner is separately incorporated and is governed by its own board and has its own officers and pastor; each owns its own property or leases it property in its own name; each is financed entirely by contributions from its local members and receives no money from any national church organization; the Calvary Chapel movement does not have a parent church or any organizational structure whatsoever; the movement is a “fellowship of local, independent churches which share the same basic theology”; and petitioners have no agreements or understandings of any type with CSN, Calvary Chapel of Twin Falls or any other Calvary Chapel church regarding programming to be broadcast. (Joint Petition, Attachments A and B)

⁸ Joint Petition Attachment C, containing exhibits: Lake City (Exhibit A), Grants Pass (Exhibit B), Helena (Exhibit C), Vineland (Exhibit D), Bremerton (Exhibit E), Knoxville (Exhibit F), Russell (Exhibit G), Kingman (Exhibit H), Scottsbluff (Exhibit I), Republic (Exhibit J), Green (Exhibit K), Southern (Exhibit L), Ruidoso (Exhibit M) and Windward (Exhibit N).

activities in the areas of religious education, fellowship, youth programs and strengthening family and social values. Each applicant, by its amendment, evidences a clear undertaking of the implementation of its educational program mission within its particular community. Thus, we find that each of the Petitioners has demonstrated a “distinct local presence and mission” within their respective communities and is therefore eligible to become an LPFM station licensee.⁹

Hayden Opposition. In its Opposition, which is directed only to the dismissed Lake City application,¹⁰ Hayden challenges Lake City’s provision of an amended statement of its educational purpose. Hayden states that (1) the Lake City amendment should be rejected as untimely filed pursuant to Section 73.871 of the Commission’s Rules, and (2) Petitioners’ reliance on *James River Broadcasting Corporation v. FCC*¹¹ for the proposition that an amendment to cure a fatal application defect can be filed at any time, is not applicable.

The Commission’s rules permit the filing of minor amendments regarding an LPFM applicant’s “legal information” after the close of the filing window.¹² Moreover, with regard to mutually exclusive LPFM applicants, such as Lake City, the Commission explicitly provided for the filing of curative amendments at an even later stage of this application proceeding.

A tentative selectee whose application is found unacceptable for filing will be given a single opportunity to submit a curative amendment, provided that the amendment is minor and the amended application has the same number of points as originally claimed, or more than the points claimed by the next highest applicant. Tentative selectees whose applications remain unacceptable for filing after this opportunity will be removed from their mutually exclusive groups and will not be provided with an additional opportunity to amend.¹³

Thus, Lake City (as well as any other mutually exclusive applicant dismissed for similar reasons) may seek to amend its educational purpose statement and seek reconsideration *nunc pro tunc*. We thus reject Hayden’s argument that the Lake City amendment is untimely under 73.871. Moreover, contrary to Lawyers Guild’s assertion, the amendments are permissible because they relate to the Petitioners’ eligibility to become Commission licensees.¹⁴ Section 73.871(b) is limited to amendments which improve an applicant’s comparative position. Accordingly, the Joint Petition will be granted and the applications will be reinstated *nunc pro tunc*.¹⁵

⁹ As stated above, it is undisputed that each Petitioner was separately incorporated within its respective community.

¹⁰ The Lake City application, if reinstated, would be mutually exclusive with Hayden’s application for a new LPFM station at Hayden, Idaho, File No. BNPL-20010119ADW.

¹¹ 399 F.2d 581(D.C. Cir. 1968)

¹² See 47 C.F.R. § 73.871(c)(4).

¹³ *Creation of a Low Power Radio Service, Report and Order*, 15 FCC Rcd 2205, 2257 n. 209 (2000).

¹⁴ See comparative selection criteria at Section 73.872, “Selection Procedure for Mutually Exclusive LPFM Applications.

¹⁵ The reinstatement of the subject applications also resurrects the Lawyers Guild Informal Objections filed against those applications. Because the Informal Objections raised the same issue Lawyers Guild raised in opposition to the

Conclusion/Actions

We have examined the captioned applications and find that each of the following applications complies with all pertinent statutory and regulatory requirements: Calvary Chapel of Grants Pass (BNPL-20010611ACG, Facility ID No. 133956); Calvary Chapel of Helena (BNPL-20010612AEE, Facility ID No. 134394); Calvary Chapel of Knoxville (BNPL-20010615AQX, Facility ID No. 135475); Calvary Chapel of Bowling Green (BNPL-20010614ABN, Facility ID No. 134776); and Calvary Chapel of Republic (BNPL-20010122AAI, Facility ID No. 132128). We also find that, their immediate grant will further the public interest, convenience, and necessity. Accordingly, these applications hereby ARE REINSTATED, the September 27, 2001 Informal Objections by the National Lawyers Guild ARE DENIED, and the applications ARE GRANTED. The authorizations will follow under separate cover.

Additionally, the following applications hereby ARE REINSTATED:¹⁶ Calvary Chapel Windward (BNPL-20010122AAC, Facility ID No. 132098); Calvary Chapel Ruidoso (BNPL-20010612ADE, Facility ID No. 134318); Calvary Chapel of Kingman (BNPL-20010614ABH, Facility ID No. 134768); Calvary Chapel of Vineland (BNPL-20010614ABR, Facility ID No. 35781); Calvary Chapel of Bremerton, (BNPL-20010614ADW, Facility ID No. 134864); Calvary Chapel of Scottsbluff (BNPL-20010615AJC; Facility ID No. 135313); Calvary Chapel of Russell, (BNPL-20010615AOQ, Facility ID No. 135435); Calvary Chapel of Southern Ocean County (BNPL-20010613AFK, Facility ID No. 134675); and Calvary Chapel Lake City (BNPL-20010122AGW, Facility ID No. 132369).

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: National Lawyers Guild Center on Democratic Communications
Hayden Christian Broadcasting Corporation
Donald E. Martin, Esq.

Joint Petition, they require no further discussion and will be denied in connection with the disposition of the applications.

¹⁶ These applications could not be granted at this time because they were mutually exclusive and/or have not yet been accepted for filing. The mutually exclusive applications will be evaluated under the comparative procedures set forth in Section 73.872 of the Commission's rules, 47 C.F.R. § 73.872. *See also Report and Order*, 15 FCC Rcd 2205 (2000); *Low Power Radio Service, Memorandum Opinion & Order on Reconsideration*, 15 FCC Rcd 19208 (2000); and *Creation of Low Power Radio Service, Second Report & Order*, 16 FCC Rcd 8026 (2001).

APPENDIX

<u>File No.</u>	<u>Facility ID No.</u>	<u>City/State</u>	<u>Applicant</u>
BNPL-20010122AAC	132098	Kailua, HI	Calvary Chapel Windward 25 Kaneohe Drive Suite 202 Kailua, HI 96734
BNPL-20010611ACG	133956	Grants Pass, OR	Calvary Chapel of Grants Pass 235 7 th Street Grants Pass, OR 97526
BNPL-20010612ADE	134318	Ruidoso, NM	Calvary Chapel Ruidoso 433 Sudderth Ruidoso, NM 88345
BNPL-20010612AEE	134394	Helena, MT	Calvary Chapel of Helena 75 Dunbar Ave. Helena, MT 59602
BNPL-20010614ABH	134768	Kingman, AZ	Calvary Chapel of Kingman P.O. Box 843 Kingman, AZ 86401
BNPL-20010614ABR	134781	Vineland, NJ	Calvary Chapel of Vineland, Inc. 930 N. Main Road Vineland, NJ 08360
BNPL-20010614ADW	134864	Bremerton, WA	Calvary Chapel of Bremerton 270 4 th Street Bremerton, WA 98337
BNPL-20010615AJC	135313	Scottsbluff, NE	Calvary Chapel of Scottsbluff 2419 Avenue I Scottsbluff, NE 69361
BNPL-20010615AOQ	135435	Warren, PA	Calvary Chapel of Russell P.O. Box 579, Rt. 62 Russell, PA 16345
BNPL-20010615AQX	135475	Knoxville, TN	Calvary Chapel of Knoxville

BNPL-20010613AFK	134675	West Creek, NJ	2864 Alcoa Highway Knoxville, TN 37920 Calvary Chapel of Southern Ocean City 610 Route 10 West Creek, NJ 08092
BNPL-20010614ABN	134776	Bowling Green, KY	Calvary Chapel of Bowling Green P.O. Box 51702 Bowling Green, KY 42102
BNPL-20010122AAI	132128	Republic, MO	Calvary Chapel of Republic P.O. Box 212 Republic, MO 65738
BNPL-20010122AGW	132369	Coeur D'Alene, ID	Calvary Chapel Lake City 180 W. Clayton Street Coeur D'Alene, ID 83815