



Federal Communications Commission
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DA 06-319
In Reply Refer to
1800B3-SS

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In re: NEW LPFM, Hillsboro, Oregon
Heritage Christian School
Facility ID No. 134266
File No. BNPL-20010612AHG

NEW LPFM, Dayton, Oregon
Western Oregon Radio Club, Inc.
Facility ID No. 135128
File No. BNPL-20010615AHF

Dear Counsel and Mr. Scott:

This letter refers to the captioned applications filed by Heritage Christian School ("HCS") for a new low power FM ("LPFM") station at Hillsboro, Oregon and by Western Oregon Radio Club, Inc. ("WORC") for a new LPFM station at Dayton, Oregon.¹ Pursuant to established procedures, the Commission published notice of the applications' tentative selectee status.² On April 12, 2004,

¹ The applications of Hillsboro Hope Radio, Inc. (File No. BNPL-20010612AAW); Hillsboro Spanish Radio (File No. BNPL-20010615AQL); Forest Grove Spanish Ave (File No. BNPL-20010615AQV); and Tualatin Valley Community Access (File No. BNPL-20010615BDG) were dismissed by Bureau staff, respectively, on February 28, 2005; July 13, 2004; February 28, 2005; and March 30, 2005.

² See *Creation of a Low Power Radio Service, Report & Order*, 15 FCC Rcd 2205 (2000); *Creation of a 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). *Public Notice* of the applicants' tentative selectee status and the invitation for petitions to deny the proposals for LPFM mutually exclusive Group 83 was released on March 12, 2004. *Public Notice*, "Closed Groups of Pending Low Power FM Mutually Exclusive Applications Accepted for Filing," 19 FCC Rcd 4624 (MB Mar. 12, 2004).

Hillsboro Hope Radio, Inc. (“HHR”) filed Petitions to Deny each of the applications, which HCS and WORC each opposed on April 26, 2004. For the reasons set forth below, we deny the HHR petitions and grant the HCS and WORC applications pursuant to a time-sharing agreement originally filed on April 13, 2004.³

Petitions to Deny. In its petitions to deny, HHR states that HCS and WORC have “failed to document the facts that would entitle . . . [it] to a point in the comparative point analysis for having an established community presence.” Specifically, HHR states that HCS and WORC did not submit in their applications an “Exhibit 7” containing all of the information that the Commission may need to evaluate the applicants’ proposals.⁴ It further states that WORC’s application, in particular, lacked an “affidavit from someone with personal knowledge of the facts.”⁵ A conclusion that either applicant is not entitled to a point for “established community presence” would remove that applicant from the list of tentative selectees for LPFM Group 83 and render it ineligible for a share-time agreement.⁶

In opposition, HCS argues that its application contains all of the necessary information in which to properly claim a point for “established community presence” and that this information was certified in the application by an officer of HCS.⁷ Further, HCS argues that its “original founding” in February 1996 is documented in the public record, attaching its Articles of Incorporation to its responsive pleading.⁸

In its opposition, WORC argues that its application contains all the necessary information in which to claim a point for “established community presence” and because the application was signed by an officer of WORC, it asserts that no affidavit is necessary.⁹ WORC also states that it attached to its original application the initial pages of its Articles of Incorporation bearing a February 28, 1994, date stamp from the Oregon Secretary of State. In the spirit of caution, WORC also attaches to its pleading an exhibit documenting its date of incorporation,¹⁰ February 28, 1994, and its current active status.

In order to assess the merits of a petition to deny, a two step analysis is required. First, Section 309(d)(1) of the Communications Act requires that the petition to deny contain specific allegations of fact that, if true, are sufficient to show that a grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.¹¹ If the petition meets this threshold requirement, the Commission must then examine all of the material before it to determine whether there is a substantial and material question of fact requiring resolution in a hearing.¹² Based on the foregoing, we find that

³ See 47 C.F.R. § 73.561. HCS and WORC amended the share-time agreement on February 22, 2005.

⁴ See HHR Petition to Deny (filed Apr.12, 2004) at 2.

⁵ See HHR Petition to Deny (filed Apr.12, 2004) at 2.

⁶ See 47 C.F.R. § 73.872(c) (voluntary time-sharing by applicants with the same point totals).

⁷ See HCS Opposition (filed Apr. 26, 2004) at 2.

⁸ See *id.* at 1; see also Attachment.

⁹ See WORC Opposition (filed Apr.26, 2004) at 2-3.

¹⁰ See *id.* at Attachments.

¹¹ See 47 U.S.C. Sections 309(d)(1) and (d)(2).

¹² See *Astroline Communications Co. v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988).

HHR has not established a *prima facie* case that grant of the HCS and WORC applications at this time would be inconsistent with the public interest.

In the proceeding establishing the low power FM service,¹³ the Commission discussed the underpinning for its provision that applicants must make a threshold showing that it existed two years prior to filing its application. Therein, the Commission stated that the criterion for demonstrating established community presence favors organizations that have been operating in the communities where they propose to construct an LPFM station and thus have track records of community service and established constituencies within their communities. Thus, the Commission indicated that it would prefer “organizations that have been in existence and physically present in the community for two years.”¹⁴ The Commission believed that such applicants, because of their “longstanding organizational ties” to their communities, are likely to be more attuned to, and have “organizational experience” addressing, the needs and interests of their communities.¹⁵

HHR is incorrect in this case because both the HCS and WORC applications specify that the applicants were incorporated under the laws of the state of Oregon. The signature of an officer of the entity filing the application is adequate certification. There is no requirement that LPFM applicants submit their articles of incorporation or affidavits, and the applicants here provide the exact date of their incorporation. Further, the record before us in this case indicates that HCS was incorporated on February 5, 1996, and that that WORC was incorporated on February 28, 1994. Thus, each applicant was incorporated more than two years before its application filing date. We find, therefore, that the captioned applicants have properly certified that they have been in existence for more than two years, and we reject HHR’s claims that they have failed to document the facts entitling them to the point for “established community presence.” Accordingly, we will deny the HHR petitions, and we find that both HCS and WORC are entitled to a point for “established community presence.” We further conclude that grant of the HCS and WORC applications pursuant to the share-time agreement discussed below would serve the public interest, convenience and necessity.

Share-time Agreement. A time-share agreement was submitted by HCS and WORC on April 13, 2004 and amended on February 22, 2005. Under the terms of the agreement, WORC shall operate the station each day between the hours of 6:00 pm and 6:00 am local time. HCS shall operate the station each day between the hours of 6:00 am and 6:00 pm local time. We conclude that the acceptance of HCS’ and WORC’s voluntary time-share agreement, which also aggregates their points, and fully complies with the requirements of Section 73.872,¹⁶ would serve the public interest, convenience and necessity. The terms of this time-share agreement will also be made part of the authorization issued to each of these applicants.

Conclusion. Accordingly, IT IS ORDERED that the April 12, 2004, Petition to Deny filed by Hillsboro Hope Radio, Inc., against the application of Heritage Christian School IS DENIED, and all related pleadings ARE DISMISSED. IT IS FURTHER ORDERED that the April 12, 2004, Petition to Deny filed by Hillsboro Hope Radio, Inc., against the application of Western Oregon Radio Club, Inc. IS DENIED, and all related pleadings ARE DISMISSED.

¹³ *Report and Order, supra*, 15 FCC Rcd 2205.

¹⁴ *Id.* at 2260 ¶ 140.

¹⁵ *Id.*

¹⁶ *See* 47 C.F.R. § 73.872.

IT IS FURTHER ORDERED, that the applications of Heritage Christian School (File No. BNPL-20010612AHG) and Western Oregon Radio Club, Inc. (File No. BNPL-20010615AHF) ARE GRANTED. These authorizations are subject to the following condition:

Pursuant to 47 C.F.R. Section 73.872(c), the Agreement between Heritage Christian School and Western Oregon Radio Club, Inc., as amended, is hereby made a part of the terms and conditions of this authorization.

The authorizations are enclosed and specify the following hours of operation: WORC from 6:00 p.m. to 6:00 a.m. local time each day and HSC from 6:00 a.m. to 6:00 p.m. local time each day.

Sincerely,

Peter H. Doyle
Chief , Audio Division
Media Bureau

cc: Hillsboro Hope Radio, Inc.
Heritage Christian School
Western Oregon Radio Club, Inc.