



Federal Communications Commission
Washington, D.C. 20554

March 12, 2007

DA 07-1267

In Reply Refer to:

1800B3-LAS

Released: March 13, 2007

James T. Flanders, President
Calvary Emerald Coast, Inc.
151-A Eglin Parkway NE
Ft. Walton Beach, FL 32548

In Re: Calvary Emerald Coast, Inc.
Destin, Florida
Facility ID No. 134683
File No. BNPL-20010614AJN

**Application for New LPFM Station
Petition for Reconsideration**

Dear Mr. Flanders:

This letter refers to the captioned application (the "Application") of Calvary Emerald Coast, Inc. ("CEC") for a new Low Power FM ("LPFM") station in Destin, Florida. National Lawyers Guild Center on Democratic Communications, Microradio Implementation Project, and Prometheus Radio Project (collectively, "Lawyers Guild") filed an Informal Objection ("Objection") to CEC's Application on September 27, 2001.¹ By letter dated February 19, 2004, the Bureau dismissed CEC's Application as inadvertently accepted for filing, and dismissed the Objection as moot.² On March 22, 2004, CEC filed a Petition for Reconsideration and Request for Reinstatement *Nunc Pro Tunc* ("CEC Petition").³ For the reasons set forth below, we grant reconsideration, reinstate and grant the CEC Application, and reinstate and deny the Objection.

Background. CEC and other LPFM applicants located around the country, bearing the name "Calvary" or "Calvary Chapel," 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.⁴ To demonstrate that an applicant is local, Section II Item 4 of FCC Form 318, the LPFM Application form, requires that an applicant certify that it either (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

¹ On October 30, 2001, CEC filed a Motion to Dismiss the Objection. On November 6, 2001, the Lawyers Guild filed an Opposition to the CEC Motion to Dismiss. On November 15, 2001, CEC filed a Reply to the Opposition.

² *Letter to Alan Korn, Esq.*, Ref 1800B3-SS (MB Feb. 19, 2004) ("Letter Decision").

³ On March 29, 2004, Lawyers Guild filed an Opposition to the CEC Petition ("Opposition") and on April 5, 2004, CEC filed a Reply.

⁴ 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.

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. In addition, Section 73.860(a) of the Commission's Rules (the "Rules") prohibits a party from holding an LPFM authorization if it has an attributable interest in a non-LPFM broadcast station.⁵ To demonstrate its compliance with this restriction, Section II Item 5(b) requires the applicant to certify, "No party to this application has an attributable interest in any non-LPFM broadcast 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, set forth in the attribution provisions of Section 73.858 of the Rules, to this ownership limitation for a "local chapter" of a national or other large organization.⁶ The Instructions for FCC Form 318 explain 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.⁷

Each of the Calvary-named applicants, including CEC, submitted information to establish that it qualified under the "local chapter" exemption, certifying its local presence and submitting an exhibit claiming a distinct local purpose. In dismissing the Application, the staff stated that it is undisputed that CEC was separately incorporated and that it has a headquarters within 16.1 km of the proposed transmitter site. However, the staff found that the submitted statement of educational purpose failed to distinguish CEC from the other Calvary applicants which had filed very similar 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.⁸ The staff noted that nothing in the statement referenced Destin, Florida, the proposed community of license, or demonstrated "a local purpose that can be distinguished from the purpose of the national organization with which [CEC] is affiliated." Without this showing, the staff concluded that it could not find that the purported "local chapter" had a distinct local presence and mission. Because of Calvary Chapel's other non-LPFM broadcast authorizations,⁹ the staff determined, pursuant to Sections 73.853 and 73.858 of the Rules,¹⁰ that the Application was patently defective and dismissed it as inadvertently accepted for filing. The staff also dismissed the Objection as moot. On March 22, 2004, CEC filed its Petition.

⁵ 47 C.F.R. § 73.860(a).

⁶ 47 C.F.R. § 73.858, "Attribution of LPFM Station Interests."

⁷ Instructions for FCC Form 318, pp. 5-6.

⁸ See, e.g., <http://www.csnradio.com>.

⁹ For example, Calvary Chapel of Twin Falls operates FM translator Station K202DS in Port Angeles, Washington, and CSN International is the licensee of full-service Station KBLD(FM), Kennewick, Washington.

¹⁰ 47 C.F.R. §§ 73.853 and 73.858.

Discussion. CEC Petition. In its Petition, CEC argues that the Letter Decision incorrectly assumes that CEC is affiliated with other Calvary Chapel churches or the national Calvary Chapel organization. CEC claims that it is completely autonomous, and is neither a local chapter of, nor has any legal relationship with CSN International, Calvary Chapel of Twin Falls, or any other Calvary Chapel Church or organization.¹¹ While we find that CEC qualifies as a locally-based entity¹² and therefore meets the local licensing requirements of Section 73.853 of the Rules, our dismissal of the Application was based on the cross-ownership restrictions, which prohibit LPFM licensees from holding attributable interests in other non-LPFM broadcast stations.¹³ Specifically, our dismissal derived from the assumption that CEC was an affiliate of the national Calvary Chapel radio company, which owns numerous full-service and FM translator radio stations throughout the country. The CEC Petition represents that this is not the case. Therefore, CEC contends, the other media interests of the national Calvary Chapel organization should not be attributed to it.

In the alternative, CEC contends that, even if it is considered a local chapter of a national organization, it qualifies for the attribution exemption under Section 73.858(b) of the Rules because it is separately incorporated and has a distinct local presence and mission in its proposed community of license. In support of this position, CEC provides an Amended Statement of Educational Purpose (“Amended Statement”) that details its distinct local presence and mission in Destin, Florida, and outlines the educational purpose of its proposed LPFM station there.¹⁴ We agree. According to the Amended Statement, CEC has been an active part of the local community of Destin, Florida since it was chartered under the laws of the State of Florida on November 14, 1997, and will continue to invest in the community both by means of education, as well as practical outreach.¹⁵ By way of example, CEC indicates that it provides Destin with a variety of programs and activities, including support of homeless shelters and programs for the needy, a community safety program, career, college and youth counseling, local community cleanup events, as well as support groups for the spouses of deployed servicemen. In addition, as stated above, it is undisputed that CEC is separately incorporated within Destin and maintains its headquarters within the proposed broadcast community. Thus, with the submission of the Amended Statement, we find that CEC has successfully established a distinct local presence and mission within Destin and, therefore, is eligible to hold an LPFM station license. For this reason, we grant the CEC Petition and reinstate the Application.

In its Opposition, Lawyers Guild first claims that CEC’s amendment is inappropriate under Section 73.871(b) of the Rules.¹⁶ CEC’s amendment is considered to be a minor filing under Section

¹¹ CEC Petition at 2-3. In support of this assertion, the CEC Petition includes a Declaration of Pastor James T. Flanders, President of CEC. The Declaration states that CEC is an independent church, with “no oversight whatsoever from any national organization,” and that no “outside organization has any say in the selection of [CEC’s] directors, officers, or pastor.” CEC Petition, Exhibit 1.

¹² See CEC Application, Section II, Item 4(a). In its Informal Objection, Lawyers Guild does not dispute CEC’s certification to this item.

¹³ See, e.g., 47 C.F.R. § 73.860.

¹⁴ Filed March 22, 2004; CEC Petition, Exhibit 2. In its Amended Statement, CEC states that it “attempts to educate people about the source of contemporary social problems ... by presenting teachings and discussions dealing with these specific problems.”

¹⁵ Amended Statement at 1.

¹⁶ 47 C.F.R. § 73.871(b) (Amendments that improve the comparative position of new and major change applications will not be accepted after close of the filing window).

73.871(c)(4) of the Rules.¹⁷ Non-technical minor amendments are not restricted in scope other than for two exceptions, neither of which applies here.¹⁸ Moreover, the proffered amendment addresses CEC's basic qualifications to hold a LPFM authorization and does not improve its comparative position vis-à-vis any other LPFM applicants. Therefore, Section 73.871 of the Rules does not bar its acceptance and the filing of the Amended Statement is permissible under the Rules.

Lawyers Guild further argues that "CEC's 'cookie cutter' exhibit is identical to dozens of other Calvary LPFM applications, evidence that CEC is a chapter of the national Calvary Chapel organization."¹⁹ Lawyers Guild also states that the statement fails to identify any local programming designed to meet any "distinct local purpose," suggesting that CEC "never intended to serve specific issues addressing the surrounding community of Destin."²⁰ We find that CEC's Amended Statement demonstrates that it will serve the community of Destin, and there is no rule requiring LPFM licensees to provide programming responsive to community issues or to maintain a list of issues addressed or specific programs aired.²¹ Moreover, we agree with CEC that, even if it is considered a local chapter of a national Calvary Chapel organization, it qualifies for the attribution exemption of Section 73.858(b). By its amendment, CEC evidences a clear implementation of its educational program mission within its particular community. Thus, we find that CEC has demonstrated a distinct local presence and mission within Destin and is therefore eligible to become an LPFM station licensee.

Lawyers Guild also argues that the Commission should not grant CEC's Application because doing so would not be in keeping with what it refers to as the Commission's goal of creating LPFM "specifically to remedy the increasing consolidation of ownership in the radio industry."²² The Commission has indeed recognized that one of the most important purposes of establishing the LPFM service is to provide small, community-based organizations an opportunity to communicate over the airwaves and expand diversity of ownership.²³ Granting CEC's Application is consistent with that purpose.

¹⁷ 47 C.F.R. § 73.871(c)(4) ("For the purposes of this section, minor amendments are limited to ... other changes in general and/or legal information.").

¹⁸ See *In the Matter of Creation of a Low Power Radio Service*, Second Report and Order, 16 FCC Rcd 8026, 8028-29 (2001) (applicants prohibited from filing amendments that would improve their comparative position; ownership amendments are limited to changes where the original parties retain more than a 50 percent ownership interest in the applications as originally filed).

¹⁹ Opposition at 1.

²⁰ *Id.* at 3.

²¹ See *In the Matter of Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2270 (2000) ("LPFM Report and Order").

²² Opposition at 3.

²³ *LPFM Report and Order*, 15 FCC Rcd at 2257. The goal in creating the LPFM service was to create a class of radio stations designed to serve very localized communities or underrepresented groups within communities, and specifically included community-based schools, churches, and civic organizations.

Lawyers Guild Objection. Reinstatement of CEC’s Application requires us to consider the Lawyers Guild’s Objection, which we reinstate for this purpose.²⁴ The Objection, however, argues that CEC does not qualify for the ownership exception as a local chapter of Calvary Chapel. For the reasons stated above, we believe that it does, and that CEC has demonstrated its qualifications to be the licensee of its proposed LPFM station. Accordingly, we will deny the Objection.²⁵ Further, we have examined the Application and find that it complies with all pertinent statutory and regulatory requirements, and that the public interest, convenience, and necessity would be furthered by its grant.

Conclusion/Actions. Accordingly, Calvary Emerald Coast, Inc.’s Petition for Reconsideration and Request for Reinstatement *Nunc Pro Tunc* IS GRANTED, and its application for a new LPFM station in Destin, Florida (File No. BNPL-20010614AJN) IS REINSTATED. IT IS FURTHER ORDERED, that the Informal Objection of the Lawyers Guild IS REINSTATED and IS DENIED. IT IS FURTHER ORDERED, that the Motion to Dismiss filed by Calvary Emerald Coast, Inc. IS DENIED. IT IS FURTHER ORDERED, that the application of Calvary Emerald Coast, Inc. (File No. BNPL-20010614AJN) for a construction permit for a new LPFM station in Destin, Florida, IS GRANTED.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: Howard M. Weiss, Esq.
National Lawyers Guild Center on Democratic Communications

²⁴ In its Objection, the Lawyers Guild argues that CEC “fails to satisfactorily establish that it has a distinct local mission that can be distinguished from the purpose of the national Calvary Chapel.” Objection at 3. To support this allegation, the Lawyers Guild references portions of CEC’s Statement of Educational Purpose, which it claims is “nearly word-for-word identical to the generic form Exhibits submitted” by various other Calvary Chapel applicants. *Id.* at 4. Therefore, the Lawyers Guild argues, CEC should not be granted a license for a new LPFM station because, unless CEC establishes its distinct local purpose, “it must be considered an affiliate of the National Calvary Chapel under the Commission’s attribution rules.” *Id.* at 5. If considered an affiliate, the Lawyers Guild argues, CEC would hold attributable interests in numerous LPFM, full service, and translator stations, and the grant of an LPFM license would violate Sections 73.855 and 73.860(a) of the Rules. *Id.* at 5-6.

²⁵ In its Motion to Dismiss, CEC argues that the Objection should not have been submitted until CEC had been named a tentative selectee. In opposition, the Lawyers Guild argues that the cited language speaks only to when particular filings will be considered, not when they may be submitted to the Commission. On this procedural point, the Lawyers Guild is correct. An informal objection may be filed at any time before action on a license application. See 47 C.F.R. § 73.3587. We therefore deny CEC’s Motion to Dismiss.