



Federal Communications Commission
Washington, D.C. 20554

April 27, 2007

DA 07-1933
In Reply Refer to:
1800B3-JP
Released: April 27, 2007

Mr. Carlos Ramos
Azalea Garden Church of God
1541 Centerville Turnpike
Virginia Beach, VA 23464

In re: Azalea Garden Church of God
(New) LPFM, North Virginia Beach, VA
Facility ID: 125887
File No. BNPL-20000828ABE

**Application for LPFM New Station
Construction Permit**

Dear Mr. Ramos:

We have before us the captioned application of Azalea Garden Church of God ("Azalea Garden") for a construction permit for a new low power FM ("LPFM") station in North Virginia Beach, Virginia. For the reasons set forth below, we dismiss Azalea Garden's application.

Background. Azalea Garden initially applied for a construction permit for a new LPFM station in Hollywood, Virginia, on August 28, 2000. On November 1, 2002, it filed an amendment proposing to construct the LPFM station in North Virginia Beach, Virginia, instead of Hollywood (the "2002 Amendment"). Although the 2002 Amendment proposed a move of the transmitter site more than two kilometers from the originally specified site, it was filed during a major change window for LPFM stations that allowed the filing of such amendments.¹ On October 19, 2004, R. Stuart Snyder ("Snyder") filed an Informal Objection ("Objection") to the application. Subsequently, the staff dismissed the application because Azalea Garden had failed to submit documents with the application that established that it was incorporated at the time of filing.² Azalea Garden filed a timely Petition for Reconsideration on November 24, 2004. The staff reinstated the application on April 12, 2006, but further action on the application was withheld to allow Azalea Garden to fully respond to Snyder's Objection.³

¹ See "Media Bureau to Open Low Power FM Major Amendment Window from October 28, through November 1, 2002, for Certain Pending New Station Applications," Public Notice, DA 02-2178 (Sep. 9, 2002) ("Amendment Public Notice").

² Letter to R. Stuart Snyder and Alicia Perales Espino, Reference 1800B3-SS (MB Nov. 2, 2004).

³ Letter to Aubrey Maye, Reference 1800B3-JP (MB Apr. 12, 2006). Snyder's Objection urged that the Azalea Garden application should be denied because (1) Azalea Garden's proposed transmitter site was located more than ten miles away from its headquarters and was located in a body of water; (2) less than 75 percent of Azalea Garden's board members reside within ten miles of the transmitter site; and (3) there were numerous discrepancies in the contact information provided for Azalea Garden's board members.

On June 22, 2006, Azalea Garden filed a second amendment to the application (the “2006 Amendment”) and an Opposition to the Objection. The 2006 Amendment proposed a transmitter site move of approximately two kilometers from the site proposed in the 2002 Amendment and disclosed changes in the composition of Azalea Garden’s governing board. Azalea Garden concedes that the application, as amended, specifies a transmitter site that is approximately twelve miles from Azalea Garden’s headquarters and that less than 75 percent of Azalea Garden’s board members reside within ten miles of this proposed site.

Discussion. *Local Applicant Requirement.* Section 73.853(b) of the Commission’s Rules (the “Rules”)⁴ states that only local applicants will be permitted to apply for an LPFM station during the first two years after the service is made available. An applicant is considered local if (1) the applicant is physically headquartered within ten miles of the proposed transmitting site; or (2) 75 percent of its board members reside within ten miles of the proposed transmitting site. Because Azalea Garden submitted its original application within the first two years of the LPFM service, it must qualify as a local applicant by meeting one of the above requirements.

As Azalea Garden acknowledges, it does not satisfy either of these local applicant criteria.⁵ Azalea Garden contends that a rule waiver is warranted because: (1) when Azalea Garden originally submitted its application it was in compliance with the requirement; and (2) for “reasons beyond its control” it was required to select a new site that did not fall within the ten-mile limitation.⁶ Additionally, Azalea Garden submits that the ten-mile limitation expired on its own terms after two years and is no longer applicable to Azalea Garden’s application.

Section 73.853(b) of the Rules states that applicants applying within the first two years of the LPFM service must be local applicants. The Commission chose the ten-mile limitation to facilitate a licensee’s “local familiarity” because the LPFM service was adopted as a truly community-based broadcast service.⁷ The Commission has not indicated that it would deviate from or be willing to waive the ten-mile limitation simply because an application is still pending after two years. Azalea Garden submitted its original application within the first two years of the LPFM service and it remains subject to the local applicant limitation. Because Azalea Garden admits it cannot meet either requirement of Section 73.853(b), its application will be dismissed. Because we dismiss Azalea Garden’s application for the above stated reasons, we will dismiss as moot Snyder’s Objection.

⁴ 47 C.F.R. § 73.853(b).

⁵ See Opposition to Informal Objection at 3.

⁶ While Azalea Garden submits that its site change was rendered necessary by a congressional mandate prohibiting LPFM stations on third-adjacent channels to full power broadcasters, it does not explain why it was unable to find a new site that remained compliant with the local applicant rule. See *Amendment Public Notice*.

⁷ See *Creation of a Low Power Radio Service*, Report & Order, 15 FCC Rcd 2205, 2219 (2000).

Conclusion/Actions. Accordingly, IT IS ORDERED, that the application of Azalea Garden Church of God for a new low power FM station in North Virginia Beach, Virginia (File No. BNPL-20000828ABE) is DISMISSED and the Informal Objection of R. Stuart Snyder is DISMISSED AS MOOT.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: David O'Connor, Esquire, Counsel for Azalea Garden Church of God
Mr. R. Stuart Snyder