

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of:
CALVARY CHAPEL OF GAINESVILLE, INC.
For a Construction Permit for a New LPFM Station at Gainesville, FL
CIVIC MEDIA CENTER AND LIBRARY, INC.
For a Construction Permit for a New LPFM Station at Gainesville, FL
FAITH PRESBYTERIAN CHURCH OF GAINESVILLE, INC.
For a Construction Permit for a New LPFM Station at Gainesville, FL
UNIVERSITY OF FLORIDA STUDENT GOVERNMENT
For a Construction Permit for a New LPFM Station at Gainesville, FL
File No. BNPL-20010615AAU
Facility ID No. 135119
File No. BNPL-20010613AGD
Facility ID No. 133958
File No. BNPL-20010615AAG
Facility ID No. 135063
File No. BNPL-20010615AGA
Facility ID No. 135241

MEMORANDUM OPINION AND ORDER

Adopted: May 17, 2005

Released: May 27, 2005

By the Commission: Commissioners Copps and Adelstein issuing a joint statement.

I. INTRODUCTION

1. The Commission has before it the captioned mutually exclusive applications of Calvary Chapel of Gainesville, Inc. ("CCG"); Civic Media Center and Library, Inc. ("Civic Media"); Faith Presbyterian Church of Gainesville, Inc. ("Faith Presbyterian"); and University of Florida Student Government ("UFSG") seeking construction permits in the Low Power FM ("LPFM") Broadcast Service at Gainesville, Florida. In accordance with our procedures, the Commission published notice of the applications' tentative selectee status. National Lawyers Guild Center on Democratic Communications,

1 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).

Microradio Implementation Project, and Prometheus Radio Project (“Lawyers Guild”) filed an informal objection against CCG’s application on September 27, 2001. Additionally, Florida Minority Educational Media Association (“FMEMA”)³ filed a “Petition to Deny” against each of the other captioned applications on May 13, 2004.⁴ However, petitions to deny the captioned Gainesville applications were due April 12, 2004.⁵ We will, therefore, treat the FMEMA filings as informal objections pursuant to Section 73.3587.⁶ For the reasons set forth herein, we deny the Lawyers Guild informal objection and the FMEMA informal objections, and we grant the CCG, Civic Media, and Faith Presbyterian applications, pursuant to a time-share agreement as discussed below.

II. DISCUSSION

2. *Lawyers Guild Informal Objection.* In its informal objection to CCG’s application, Lawyers Guild alleges, among other things, that CCG does not demonstrate a “distinct local presence and mission,” and therefore does not fall under the exceptions to the ownership restrictions pursuant to Section 73.858 of the Commission’s rules. The first LPFM filing windows permitted only local applicants to apply for new LPFM stations.⁷ These provisions are manifested in Section II, Items 4 and 5 of FCC Form 318.⁸ 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. The Instructions for FCC Form 318 state,

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.⁹

² See *Public Notice, Closed Groups of Pending Low Power FM Mutually Exclusive Applications Accepted for Filing*, DA 04-679, (rel. Mar. 12, 2004).

³ FMEMA’s application (File No. BNPL-20010614AIU), a former member of this mutually exclusive group, was dismissed by Commission staff on Jan. 15, 2005.

⁴ On Oct. 28, 2004, Faith Presbyterian filed a “Response” to FMEMA’s informal objection; on Nov. 1, 2004, Civic Media filed a “Response” to FMEMA’s informal objection; on Oct. 30, 2004, CCG filed a motion to dismiss Lawyers Guild’s informal objection; on Nov. 15, 2004, CCG filed a “Response” to Lawyers Guild’s informal objection and FMEMA’s informal objection (“CCG Response”); on April 19, 2005, FMEMA filed separate Replies to the Responses of Faith Presbyterian and CCG; and on May 3, 2005, FMEMA filed a Reply to Civic Media’s Response.

⁵ See n.2, *supra*.

⁶ 47 C.F.R. § 73.3587.

⁷ See 47 C.F.R. §§73.853(b).

⁸ See, e.g., FCC Form 318. Item 4 requires an applicant to 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 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.

3. CCG certified its local presence and submitted an exhibit to its application which sufficiently demonstrated a distinct local purpose. In a “Declaration” attached to CCG’s November 15, 2004, response, CCG distinguishes itself from the other numerous Calvary Chapel organizations throughout the country by declaring the following under penalty of perjury: “CCG is not part of a national organization but is an independent organization, with no financial or ownership ties to any other organization . . . [and] no controlling entity . . . has legal or financial authority over CCG; and further that CCG is not affiliated in any way with any other Calvary Chapel organization, other than through a spiritual fellowship. . . .”¹⁰ CCG has demonstrated that “it has a local purpose that can be distinguished from the purpose of the national organization with which it is affiliated.”¹¹ The “Educational Purpose” statement submitted as Attachment 2 to CCG’s application contains acceptable, but mostly general, educational objectives. However, the exhibit also indicates that CCG’s “purpose and objective in establishing the proposed station is to expand on programs reaching out into the Gainesville community through the media. . . .” The information contained in the Educational Purpose statement, coupled with the fact that CCG has been physically headquartered in the city of Gainesville, Florida, since its incorporation in 1995 persuades us that CCG can be considered to have a local purpose distinguishable from any “national” Calvary Chapel entity.¹² We find that the informal objector has failed to raise a substantial and material question that granting this application would be contrary to the public interest. Furthermore, we have examined the subject proposal and find that it complies with all applicable statutory and regulatory provisions.

4. *FMEMA Informal Objections.* In its objections, FMEMA argues that the CCG, Faith Presbyterian, and Civic Media applications should be denied, pursuant to Section 73.807, for failing to meet separation requirements for all new LPFM applications.¹³ Each of these applicants specifies the same transmitter site. FMEMA argues that because only one LPFM proposal can be authorized at those coordinates, only applicants applying for the same channel with *differing* transmitting site locations, “within the same 5.6 contour area,” are to be considered “mutually exclusive.” FMEMA argues that, because each LPFM applicant has a duty to ensure that its transmitting antenna site location does not conflict with any other LPFM applicant’s site location, LPFM applicants specifying the same transmitter site cannot be considered mutually exclusive and must be dismissed under Section 73.807 for failing to protect one another.

5. FMEMA provides no support for its novel conception, and we are aware of none. In fact, there is no provision, in Section 73.807 or anywhere else in the Commission’s rules, requiring that timely applicants for a specified frequency protect any other timely applicant for that frequency. Rather, conflicting proposals are simply treated as mutually exclusive applications and dealt with according to the appropriate regulatory process. Furthermore, we disagree with FMEMA’s attempt to draw a distinction between same site and different site applicants for the same LPFM channel. A claim by one applicant that its proposal conflicts (or, conversely, does not conflict) with another’s does not, *ipso facto*, determine mutual exclusivity.¹⁴ That determination “must be made by the Commission on an informed basis after

⁹ Instructions for FCC Form 318, pp. 5-6.

¹⁰ See CCG Response at Exhibit 3; see also <http://www.csnradio.com>. For example, Calvary Chapel of Twin Falls operates FM translator station K202DS in Port Angeles, Washington, and CSN International owns a full-service station KBLD(FM), Kennewick, Washington. See http://www.csnradio.com/stations_WA.htm.

¹¹ Instructions for FCC Form 318, pp. 5-6.

¹² The Bureau has confirmed from the website of the Office of the Florida Secretary of State that Calvary Chapel of Gainesville, Inc. was incorporated in Florida on August 21, 1995. See www.sunbiz.org/scripts/cornamelis.exe.

¹³ 47 C.F.R. § 73.807.

¹⁴ See *KLUC Broadcasting Co.*, 41 R.R.2d 863, 864 (1977), *app. for review denied*, 42 R.R.2d 178 (1978).

careful review of all available data.”¹⁵ The Bureau defines closed groups of mutually exclusive applications as groups comprised of proposals that conflict with each other such that they cannot all be granted consistent with the Commission’s technical rules but are no longer subject to new competing applications.¹⁶ Such a conflict occurs when one LPFM application does not meet the spacing requirements to another LPFM application.¹⁷ Mutually exclusive applications can occur with all the applications clustered together, or can take the form of a “daisy chain” in which the end applications are linked through intermediate proposals.¹⁸ We find that the Bureau correctly identified the captioned LPFM applications as being “mutually exclusive.”¹⁹ Because the CCG, Faith Presbyterian, and Civic Media applications are properly considered to be mutually exclusive proposals, they cannot be dismissed for violation of Section 73.807 with respect to each other. Accordingly, we find FMEMA’s informal objection to be without merit.

6. *LPFM Selection Process.* Before applying the mutually exclusive selection procedure preference to determine the number of merit points to be awarded to each applicant, we first ascertain the basic eligibility of the applicants. In order to further our diversity goals and foster local, community-based service, we do not allow any broadcaster or other media entity subject to our ownership rules to control or to hold an attributable ownership interest in an LPFM station or enter broadcast-related operating agreements with an LPFM licensee. Additionally, to foster the local nature of LPFM service, we have limited eligibility to local entities during the first two years that LPFM licenses are available. Based on the complete application record, we conclude that CCG, Faith Presbyterian, Civic Media, and UFSG are qualified to hold an LPFM station license.

7. Mutually exclusive LPFM applications are subject to the comparative selection procedures set forth in Section 73.872 of the Commission’s rules.²⁰ This procedure awards a maximum of three points based on three criteria deemed to be most relevant to predicting the applicant best qualified to provide the service for which LPFM spectrum has been allocated.²¹ Each applicant that certified that it has had an *established community presence of at least two years’ duration* is awarded one point. An applicant is deemed to have an established community presence if, for a period of at least two years prior to application, the *applicant* has been physically headquartered, has had a campus, or has had 75 percent of its board members residing within 10 miles of the reference coordinates of the proposed transmitting antenna. Second, an applicant that has *pledged to operate at least 12 hours per day* is awarded one point. Third, an applicant that has *pledged to originate locally at least eight hours of programming per day* is awarded one point. For purposes of this criterion, local origination is defined as the production of programming within 10 miles of the reference coordinates of the proposed transmitting antenna.²² The tentative selectee is the applicant with the highest score.

¹⁵ See *Mansfield Broadcasting Company*, 8 R.R.2d 155, 158 (1966), *recon. denied*, 4 F.C.C.2d 154 (1966).

¹⁶ See, e.g., *Public Notice, Section 1.65 Amendment Deadline Established for Noncommercial Educational FM and FM Translator Applicants*, DA 04-4009, (rel. Dec. 22, 2004) at note 1.

¹⁷ See 47 C.F.R. § 73.807.

¹⁸ See www.fcc.gov/mb/audio/lowpwr.html.

¹⁹ See n.2, *supra*.

²⁰ 47 C.F.R. § 73.872.

²¹ *Id.*

²² See *id.*

8. Under this comparative selection process, the applicants are awarded the following points:

Established Community Presence. CCG, Faith Presbyterian, Civic Media, and UFSG are each entitled to one point because they certify that for a period of at least two years prior to the filing date of its application, they have existed as an educational institution or organization and have been physically headquartered, have had a campus, or have had 75 percent of their board members residing within 10 miles of the coordinates of the proposed transmitting antenna.²³

Proposed Operating Hours. Each applicant is entitled to one point because it pledges to operate at least 12 hours per day.²⁴

Local Program Origination. Each applicant is entitled to one point because it pledges to originate at least eight hours of local programming per day.²⁵

Total. Accordingly, CCG, Faith Presbyterian, Civic Media, and UFSG are entitled to three points. A time-share agreement has been submitted by CCG, Faith Presbyterian, and Civic Media.²⁶ Under the terms of the agreement, CCG proposes to operate its station from 5:00 am to 11:00 am Monday through Saturday; 4:00 pm to 5:30 pm Monday through Friday; 5:00 am to 11:00 am and 4:00 pm to 10:00 pm on Sunday. Faith Presbyterian proposes to operate its station from midnight to 5:00 am Monday through Saturday; 11:00 am to 1:00 pm Monday through Saturday; 5:30 pm to 8:00 pm Monday through Friday; 9:00 pm to midnight, Tuesday, Thursday, and Saturday; and on Sunday midnight to 5:00 am, 11:00 am to 1:00 pm, and 10:00 pm to 12:00 am. Finally, Civic Media proposes to operate its station from 1:00 pm to 4:00 pm Monday through Friday; 8:00 pm to midnight Monday, Wednesday, and Friday; midnight to 5:00 am Tuesday, Thursday, and Saturday; 1:00 pm to 9:00 pm on Saturday; and 1:00 pm to 4:00 pm on Sunday. We conclude that the acceptance of CCG's, Faith Presbyterian's and Civic Media's voluntary time-share agreement, which also aggregates their points and fully complies with the requirements of Section 73.872,²⁷ would serve the public interest, convenience and necessity. Thus, CCG, Faith Presbyterian, and Civic Media are the prevailing tentative selectees in LPFM Mutually Exclusive Group No. 26. The terms of the time-share agreement will be made part of the authorization issued to each of these applicants.

III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, that the application of the University of Florida Student Government (File No. BNPL-20010615AGA) IS DISMISSED.

10. IT IS FURTHER ORDERED, that the applications of Calvary Chapel of Gainesville, Inc. (File No. BNPL-20010615AAU), Faith Presbyterian Church of Gainesville, Inc. (File No. BNPL-20010615AAG), and Civic Media Center and Library, Inc. (File No. BNPL-20010613AGD) ARE

²³ See File No. BNPL-20010615AAU ("CCG Application") at Section III, Question 1(a); see also Exhibit 7; File No. BNPL-20010615AAG ("Faith Presbyterian Application") at Section III, Question 1(a); see also Exhibit 7; File No. BNPL-20010613AGD ("Civic Media Application") at Section III, Question 1(a); see also Exhibit 7; and File No. 20010615AGA ("UFSG Application") at Section III, Question 1(a); see also Exhibit 7.

²⁴ See CCG; Faith Presbyterian; Civic Media; and UFSG Applications at Question 2.

²⁵ See CCG; Faith Presbyterian; Civic Media; and UFSG Applications at Question 3.

²⁶ See Joint Request for Approval of Settlement Agreement filed April 9, 2004, by CCG, Civic Media, and Faith Presbyterian.

²⁷ See 47 C.F.R. § 73.872(c).

GRANTED. IT IS FURTHER ORDERED that the September 27, 2001, informal objection filed by National Lawyers Guild Center on Democratic Communications, Microradio Implementation Project, and Prometheus Radio Project Radio, against CCG, and the May 13, 2004, informal objections filed by Florida Minority Educational Media Association against CCG, Faith Presbyterian, and Civic Media ARE HEREBY DENIED, and all related pleadings ARE DISMISSED. IT IS FURTHER ORDERED that the informal objection filed by Florida Minority Educational Media Association against University of Florida Student Government (File No. BNPL-20010615AGA) IS HEREBY DISMISSED as moot.²⁸

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁸ Because the Commission is dismissing the University of Florida Student Government application (File No. BNPL-20010615AGA) in this action, the informal objection filed by FMEMA against this application is also dismissed as moot.

**JOINT STATEMENT OF
COMMISSIONERS MICHAEL J. COPPS AND JONATHAN S. ADELSTEIN**

Re: Applications for Construction Permits for New LPFM Stations

We are pleased that the Commission is moving ahead to license additional low power FM radio stations. These community-based stations are licensed to churches, schools and other local organizations and can help in significant ways to meet the needs of under-represented communities. Low power benefits recording artists by providing more outlets for airplay, especially on a local or regional level. It provides community coverage in often strikingly-successful ways. To promote these local stations, we hope the Commission would also move forward on its recent proceeding on low power FM radio and consider opening a new filing window for the many noncommercial entities that want to offer new low power FM radio services wherever possible.