

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

In the Matter of)	
)	
SONIDO INTERNACIONAL CRISTIANO, INC.)	File No. BNPL-20010613AFF
)	Facility ID No. 132718
)	
Application for a Construction Permit for a New LPFM Station at Naples, Florida)	
)	
RADIO RESPLANDECE)	File No. BNPL-20010614AIZ
)	Facility ID No. 134402
)	
Application for a Construction Permit for a New LPFM Station at Lehigh Acres, Florida)	
)	
IGLESIA DE CRISTO ELIM DE NAPLES)	File No. BNPL-20010611ACV
)	Facility ID No. 134009
)	
Application for a Construction Permit for a New LPFM Station at Naples, Florida)	
)	
NAPLES TALK HOPE RADIO, INC.)	File No. BNPL-20010615AUI
)	Facility ID No. 135536
)	
Application for a Construction Permit for a New LPFM Station at Naples, Florida)	

MEMORANDUM OPINION AND ORDER

Adopted: February 6, 2008

Released: February 8, 2008

By the Commission:

I. INTRODUCTION

1. The Commission has before it the captioned, mutually exclusive applications of Sonido International Cristiano, Inc. (“Sonido”); Radio Resplandece (“Radio”); Iglesia de Cristo Elim de Naples (“Iglesia”); and Naples Talk Hope Radio, Inc. (“NTHR”), each seeking a construction permit for a new station in the Low Power FM (“LPFM”) Broadcast Service in the Naples, Florida, area.¹ In accordance

¹ The application for the subject authorization of New Missionary Baptist Church (File No. BNPL-20010614AGO) was dismissed by Bureau staff on April 29, 2005. The applications of the State of Florida (File No. BNPL-20010614AGL) and Florida Gulf Coast University Board of Trustees (File No. BNPL-20010614AEO) for that authorization were also dismissed by Bureau staff on May 31 and June 23, 2005, respectively.

with our procedures,² the staff tallied the comparative point totals claimed by each applicant and listed those point totals in a Public Notice accepting the applications for filing, establishing a petition to deny period, and specifying the applicants' tentative selectee status.³ Therein, Sonido, Radio, Iglesia, and NTHR were designated as tentative selectees for the subject authorization. NTHR filed a Petition to Deny Sonido's application on April 12, 2004 (the "Petition"). Because Sonido did not file an opposition to NTHR's Petition, on November 29, 2004, the Bureau requested that Sonido respond to NTHR's allegations.⁴ Sonido and various community supporters timely filed letters with the Commission in response.⁵ WTL Communications, Inc. ("WTL")⁶ filed an Informal Objection to NTHR's application on May 7, 2004 (the "Objection"), which NTHR opposed on June 13, 2005. No party filed a petition to deny or informal objection to the Radio or Iglesia captioned applications. For the following reasons, we grant the NTHR Petition to the extent indicated; we dismiss the WTL Objection⁷ as moot; and we grant the Radio and Iglesia applications and dismiss those of Sonido and NTHR.

II. DISCUSSION

2. *NTHR Petition to Deny.* In its Petition, NTHR alleges that the captioned Sonido application is unsigned, and thus, pursuant to Section 73.3513 of the Commission's Rules (the "Rules"),⁸ invalid. NTHR also argues that Sonido "is not entitled to a point for established community presence because it has not submitted clear and concise documentation required to support its claim for the point."⁹ According to General Instruction J of the FCC Form 318, the LPFM application form, "if the application is filed electronically, the signature will consist of the electronic equivalent of the typed name of the individual."¹⁰ Our review of the CDBS Public Access database indicates that the captioned application,

² See *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205 (2000) ("*LPFM Report and Order*"); *recon. generally denied*, Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 19208 (2000); *regulation modification granted by Second Report and Order*, 16 FCC Rcd 8026 (2001); Third Report and Order and Second Further Notice of Proposed Rulemaking, FCC 07-204 (rel. Dec. 11, 2007) ("*Third Report and Order*").

³ See *Closed Groups of Pending Low Power FM Mutually Exclusive Applications Accepted for Filing*, Public Notice, 19 FCC Rcd 4624 (2004).

⁴ See *Letter to Sonido Internacional Cristiano, Inc.*, Ref. 1800B3 (MB Nov. 29, 2004).

⁵ See *Letters to the Commission from Sonido Internacional Cristiano, Inc.*, filed Dec. 15, 2004; *Robert J. Sneddon*, filed Dec. 15, 2004; *Board of Collier County Commissioners*, filed Dec. 15, 2004; *Golden Gate Fire Control & Rescue District*, submitted Dec. 9, 2004; *Lt. Tim Guerrette, Golden Gate Road Patrol* submitted Dec. 9, 2004; *Golden Gate Area Civic Association* submitted Dec. 8, 2004; and *Cheryle L. Newman*, submitted Dec. 7, 2004.

⁶ WTL an applicant for a new LPFM facility in Grants Pass, Oregon (File No. BNPL-20010615BDF), claims to have discovered flaws in a number of pending LPFM applications to which it has filed objections, including that of NTHR here.

⁷ Because the NTHR application will be dismissed herein as inadvertently accepted for filing, we will dismiss the WTL objection against this application as moot.

⁸ 47 C.F.R. § 73.3513.

⁹ See Petition to Deny filed by NTHR on Apr. 12, 2004, at 5.

¹⁰ The language in the Instruction is taken directly from the Commission's non-technical *Streamlining Order* which, among other things, adopted an electronic filing mandate for broadcast forms. See *1998 Biennial Regulatory Review* (continued . . .)

as originally filed, contains the typed name of Herminio Pagán, Jr., Sonido's President, in the signature block under Section IV, the Certification section of the application. Accordingly, we find NTHR's claim that Sonido's application is defective because it lacked a signature to be without merit.

3. NTHR also asserts that Sonido is not entitled to a comparative point for established community presence because it did not submit documentation sufficient to support its claim for the point. In its Response, Sonido states that it "has been very visible and active in the Collier County/Naples area for many years,"¹¹ and it submits a number of letters attesting to the involvement in the community of its principals, Mr. and Mrs. Pagán.

4. Section 73.872 of the Rules, entitled "Selection Procedure for Mutually Exclusive LPFM Applications," provides, in pertinent part, that:

[e]ach mutually exclusive application will be awarded one point for each of the following criteria, based on application certification that the qualifying conditions are met: (1) *Established community presence.* An applicant must, for a period of at least two years prior to application, have been physically headquartered, have had a campus, or have had seventy-five percent of its board members residing within 10 miles of the coordinates of the proposed transmitting antenna. . . .¹²

5. The language of the Rule requires that a LPFM applicant must be in existence for at least two years prior to filing the application in order to earn a comparative point for community presence. Further, in the proceeding establishing the LPFM service,¹³ the Commission discussed the underpinning for its requirement that an applicant must make a threshold showing that it existed two years prior to filing its application. Therein, the Commission contemplated that the organization filing the application would have been in existence and based in the community for at least two years at the time of filing. For example, 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. 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.¹⁴ Thus, the Commission indicated that it would prefer "organizations that have been in existence and physically present in the community for two years."¹⁵ Further, the Commission stated that "preferring organizations that have been in existence and physically present in the community for two years" would "help prevent maneuvering of

(...continued from previous page)

– *Streamlining of Mass Media Applications, Rules and Procedures*, Report and Order, 13 FCC Rcd 23056, 23064 (1998).

¹¹ *December 15, 2004, Letter from Robert J. Sneddon* at 1.

¹² 47 C.F.R. § 73.872(b)(1).

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

¹⁴ *Id.*

¹⁵ *Id.* at 2260 ¶ 140.

the point system by those who might otherwise establish multiple organizations to file the LPFM applications.”¹⁶

6. Further, the Instructions to FCC Form 318, regarding claiming the point for established community presence, expressly provide that:

To qualify for a point under this criterion, the applicant must have an established community presence of at least two years duration in the community it proposes to serve. Educational institution and organization applicants must be able to certify that, during the two years prior to application, (a) it has been in existence as a nonprofit educational institution or organization, **and** (b) has been physically headquartered, has had a campus, or has had seventy-five percent of its governing board members residing within 10 miles of the coordinates of the proposed transmitting antenna.¹⁷

7. The Rule language, the Commission’s Order adopting the Rule, and the instructions to the application for an LPFM construction permit all provide that, if an applicant desires to claim the point for establishment of a community presence, it must meet the threshold requirement of existing as an entity for at least two years prior to filing its application. Sonido’s incorporation on February 29, 2000,¹⁸ slightly more than one year before it filed its application, does not demonstrate the “longstanding organizational ties” to Naples envisioned by the Rule.¹⁹ Although the information Sonido submitted is sufficient to demonstrate that Sonido is “community-based”²⁰ for purposes of fulfilling the basic eligibility requirement under Section 73.853(b), it fails to demonstrate the “established community presence” under Section 73.872(b)(1) of the Rules necessary to entitle it to claim the comparative point for the criterion set forth in Section 73.872(b)(1). Accordingly, we find that Sonido is not entitled to the point for “established community presence.”

8. *WTL Informal Objection.* In its Objection, WTL asserts that NTHR improperly claimed a comparative point for “established community presence” because it did not exist for at least two years prior to filing the application. WTL also argues that: (1) NTHR failed to prove that it is a nonprofit legal entity because the application did not provide “a document showing its articles of incorporation or the status of its incorporation as of the filing date, and does not give an exact date of its incorporation;”²¹ and

¹⁶ *Id.*

¹⁷ Page 8, A. Question 1: Established Community Presence (emphasis added).

¹⁸ See Florida Department of State website, <http://www.sunbiz.org/scripts/cornamelis.exe>, visited April 14, 2005.

¹⁹ See *LPFM Report and Order, supra*, 15 FCC Rcd at 2260 ¶ 140. We do not question whether Sonido’s listed principals have lived in Naples for more than two years. However, the Commission does not license LPFM stations to individuals, and the Sonido principals’ individual ties to the community since 1993 do not provide the “organizational ties” valued by the Commission for LPFM applicants.

²⁰ *Id.* at ¶ 33. See also 47 C.F.R. § 73.853.

²¹ WTL is correct in this assertion; NTHR’s original application does not indicate the date on which NTHR was incorporated.

(2) NTHR “appears” to be controlled by a central organization and “will not” serve Naples, based on the similarity of the language and generic references found in NTHR’s and other applications.²²

9. In its Opposition, NTHR states that it described itself in its initially-filed application as a “non-stock, not-for-profit corporation organized under the laws of the state of Florida in 2001,”²³ and the application form requires nothing further concerning the identification of corporate existence. NTHR also argues that WTL’s real party in interest allegation is unsupported by any extrinsic evidence and flows entirely from WTL’s unfounded speculation. NTHR indicates that it was formed by and operates entirely under the initiative and control of the individuals in Naples, Florida, area who undertook to establish an LPFM station there. NTHR states that, in preparing its exhibit outlining its educational objectives, it reviewed a model provided by counsel and determined that it was appropriate to include that model as part of NTHR’s application; it had no knowledge about whether its counsel provided a similar draft to his other LPFM clients.²⁴

10. Pursuant to the applicable Rules and procedures, an applicant for an LPFM station must certify its eligibility to own and operate such station at the time it files its application.²⁵ Section 73.853 of the Rules states that an LPFM station may be licensed to a noncommercial educational (“NCE”) organization for the advancement of an educational program. The *LPFM Report and Order* states that the establishment of LPFM as a noncommercial service requires that licensees comply with the eligibility requirements of Section 397(6) of the Communications Act of 1934, as amended (the “Act”).²⁶ As relevant to this discussion, Section 397(6) of the Act defines a “noncommercial educational broadcast station” as a station which “(A) . . . is owned and operated by a public agency or nonprofit private foundation, corporation, or association. . . .”²⁷ Because individuals are not eligible to own and operate LPFM stations,²⁸ the certification requires that the applicant be a noncommercial educational institution,

²² WTL states that, while doing research against an application mutually exclusive with its LPFM application for Grants Pass, Oregon, it discovered that the applicant there used “almost the identical text to state their educational purpose” and used the same rationale and text to claim a comparative point for Established Local Presence. WTL observes that there is nothing in the statement to demonstrate any connection to Naples, only to “the proposed service area.” WTL charges that it cannot be a coincidence that the same text and “flawed reasoning” could be used in multiple applications unless it was directed by a “central organization.” WTL does not identify that “central organization.”

²³ See captioned NTHR application, Exhibit 2. The Opposition, however, contains a copy of a page from the Florida Secretary of State’s website indicating that NTHR incorporated on July 7, 2004, and remains in good standing. NTHR Opposition to WTL Informal Objection, Attachment 1.

²⁴ In fact, NTHR observes that each of the more than 30 LPFM applications against which WTL levied its “controlled by a central organization” claim were represented by NTHR’s counsel. This common representation, NTHR argues, does not give the applicants any relation to each other, nor “does it consign them all to becoming part of some grand conspiracy.” Opposition at 10-11.

²⁵ See Instructions for FCC Form 318, Section II, Question 2. See also FCC Form 318, Section II, Question 2.

²⁶ *LPFM Report and Order*, 15 FCC Rcd at 2215.

²⁷ 47 U.S.C. § 397(6).

²⁸ *LPFM Report and Order*, 15 FCC Rcd 2205 at paragraph 20, footnote 40. See also Instructions for FCC Form 318, Section II, Question 2(b).

corporation, or entity that is recognized under state law.²⁹ Thus, an LPFM applicant must be incorporated, registered, or otherwise organized as a nonprofit entity under state law.³⁰

11. The record establishes that NTHR was not incorporated as of June 15, 2001, the date on which it filed the captioned application. NTHR's Opposition demonstrates that NTHR did not validly incorporate in Florida until July 7, 2004.³¹ We note that incorporation is not always necessary.³² However, in this case, NTHR made no showing that it is an unincorporated entity. Rather, NTHR appears to rely solely on its alleged incorporation to demonstrate compliance with Section 73.853, but it was not incorporated when it filed its application, as required by the Rule. Accordingly, pursuant to Section 73.853 of the Rules, as well as Section 397(6) of the Act, and the explanation provided in the *LPFM Report and Order*, NTHR did not meet the basic qualifications for a new LPFM station authorization at the time of filing. Thus, we find that the NTHR application must be dismissed as inadvertently accepted for filing.³³

12. *LPFM Selection Process.* Before applying the LPFM 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.³⁴ 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.³⁵ Based on the record before us, we conclude that Sonido, Radio, and Iglesia are each qualified to hold an LPFM authorization.

13. Mutually exclusive LPFM applications filed by qualified applicants are subject to the comparative selection procedures set forth in Section 73.872 of the Rules.³⁶ This procedure awards a maximum of three points based on three criteria deemed to be most relevant to predicting the applicant

²⁹ *Id.* at ¶¶ 18 and 19. See also 47 U.S.C. § 397(6)(A).

³⁰ The Commission restricted the initial LPFM filing windows to "local" applicants. 47 C.F.R. 73.853(b). See also, *LPFM Report and Order*, 15 FCC Rcd at 2215.

³¹ NTHR's Opposition contains a copy of a page from the Florida Secretary of State's website indicating that NTHR incorporated on July 7, 2004, and remains in good standing. NTHR Opposition to WTL Informal Objection, Attachment 1. See also <http://www.sunbiz.org/corpweb/inquiry/corinam.html>.

³² As stated *supra* at para. 10, an LPFM applicant may be registered or otherwise recognized as a nonprofit educational entity under state law.

³³ In light of our dismissal of the NTHR application, we also dismiss the WTL Objection to that application as moot.

³⁴ See 47 C.F.R. § 73.860.

³⁵ See 47 C.F.R. § 73.853(b). The *Third Report and Order* amends this rule section. Pursuant to the amended 47 C.F.R. § 73.853(b), "[o]nly local applicants will be permitted to submit applications." The amended rule takes effect on March 17, 2008.

³⁶ 47 C.F.R. § 73.872.

best qualified to provide the service for which LPFM spectrum has been allocated, with the applicant with the highest points awarded named the tentative selectee.³⁷

- 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.
- An applicant that has *pledged to operate at least 12 hours per day* is awarded one point.
- 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.³⁸

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

- *Established Community Presence.* Radio and Iglesia are each entitled to a point because they have each certified that, for a period of at least two years prior to the filing date of its application, they existed as an educational institution or organization and were physically headquartered, had a campus, or had 75 percent of their board members residing within 10 miles of the coordinates of their proposed transmitting antenna.³⁹ Sonido is not entitled to a point because, even though it certified as having an “established community presence,” it did not exist for a period of at least two years prior to filing its application.⁴⁰
- *Proposed Operating Hours.* Radio, Iglesia, and Sonido are each entitled to a point because they have each pledged to operate at least 12 hours per day.⁴¹
- *Local Program Origination.* Radio, Iglesia, and Sonido are each entitled to a point because they have each pledged to originate at least eight hours of local programming per day.⁴²

Total Points. Accordingly, Radio and Iglesia are entitled to three points, and Sonido is entitled to two points. Although Sonido and Radio filed a voluntary time-share agreement between them, because Sonido now has only two points and is no longer a tentative selectee and because only the top tied applicants may participate in such agreements,⁴³ the agreement must also be dismissed, as must the

³⁷ *Id.*

³⁸ *See id.*

³⁹ *See* captioned Radio Application at Section III, Question 1(a); *see also* Exhibit 7; *see also* captioned Iglesia Application at Section III, Question 1(a).

⁴⁰ *See* captioned Sonido Application at Section III, Question 1(a); *see also* Exhibit 7; *see also* ¶ 5, *supra*.

⁴¹ *See* captioned Radio, Iglesia, and Sonido Applications at Section III, Question 2.

⁴² *See* Radio, Iglesia, and Sonido Applications at Section III, Question 3.

⁴³ *See* 47 C.F.R. § 73.872. Section 73.872(c) states in part:

(continued . . .)

Sonido application. Thus, Radio and Iglesia are the prevailing tentative selectees in LPFM Mutually Exclusive Group No. 29. Because they did not file a voluntary time-share agreement, the applicants are eligible for equal, successive license terms of four years each.⁴⁴ The terms of the grant will also be made part of the authorization issued to each of these applicants. We conclude that grant of Radio's and Iglesia's applications would serve the public interest, convenience and necessity.

III. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that the April 12, 2004, Petition to Deny filed by Naples Talk Hope Radio, Inc., against the application of Sonido International Cristiano, Inc. (File No. BNPL-20010613AFF) IS HEREBY GRANTED to the extent indicated and is otherwise DENIED.

16. IT IS FURTHER ORDERED, that the application of Sonido International Cristiano, Inc. IS DISMISSED.

17. IT IS FURTHER ORDERED that the voluntary time-share agreement filed April 23, 2004, by Sonido International Cristiano, Inc. and Radio Resplandece IS DISMISSED.

18. IT IS FURTHER ORDERED that the application of Naples Talk Hope Radio, Inc. (File No. BNPL-20010615AUI) IS DISMISSED AS INADVERTENTLY ACCEPTED FOR FILING.

19. IT IS FURTHER ORDERED that the May 7, 2004, Informal Objection filed by WTL Communications, Inc., to the application of Naples Talk Hope Radio, Inc. and all related pleadings ARE HEREBY DISMISSED as moot.

20. IT IS FURTHER ORDERED, that the applications of Radio Resplandece (File No. BNPL-20010614AIZ) and Iglesia de Cristo Elim de Naples (File No. BNPL-20010611ACV) ARE GRANTED.

21. IT IS FURTHER ORDERED that copies of this *Memorandum Opinion and Order* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Sonido International Cristiano, Inc., 5355 25th Ave., S.W., Naples, Florida 34116, Radio Resplandece, 1808 Acacia Avenue, Lehigh Acres, Florida 33936, Iglesia de Cristo Elim de Naples, 701 103rd Ave., North Naples, Florida 34018, and Naples Talk Hope Radio, Inc., 3187 Calusa Ave., Naples, Florida 34112, and to its counsel Donald E. Martin, Esquire, P.O. Box 8433, Falls Church, Virginia 22041, and WTL Communications, Inc., P.O. Box 1199,

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Voluntary time-sharing. If mutually exclusive applications have the same point total, any two or more of the tied applicants may propose to share use of the frequency by submitting, within 30 days of the release of a public notice announcing the tie, a time-share proposal. Such proposals shall be treated as amendments to the time-share proponents' applications, and shall become part of the terms of the station license. Where such proposals include all of the tied applications, all of the tied applications will be treated as tentative selectees; otherwise, time-share proponents' points will be aggregated to determine the tentative selectees. . . .

⁴⁴ See 47 C.F.R. § 73.872(d); see also 47 C.F.R. § 73.873.

Merlin, Oregon 97532, and to its counsel Dan J. Alpert, Esquire, 2120 N. 21st Rd., Arlington, Virginia 22201.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary