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In Reply Refer to:

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Fatima Response, Inc.
2044 Beverly Plaza, Suite 281
Long Beach, California 90815

P.O. Box 611
Keno, Oregon 97627-0611

Cove Road Publishing, LLC
P.O. Box 218
Cheney, Washington 99004

RE: New(FM), Merrill, Oregon
Fatima Response, Inc.
d/b/a St. Michael's Catholic Radio
Application for Construction Permit
File No. BPED-19951108NE
Facility ID No. 78553

New(FM), Merrill, Oregon
Cove Road Publishing, LLC
Application for Construction Permit
File No. BPH-19951102MA
Facility ID No. 78319

**Applications for New FM Station
Construction Permits**

Dear Applicants:

This refers to the above-referenced mutually exclusive applications for a new FM radio station at Merrill, Oregon. Based on the record in this proceeding, including the parties' responses to the staff's March 18, 2004, inquiry letter, documents produced by the parties, and evidence of which the staff takes administrative notice, we conclude that Fatima Response, Inc. ("FRI"), as currently incorporated, is not the FRI that originally filed the above-referenced application, and that FRI has failed to prosecute its application in violation of Section 73.3568(a)(1) of our Rules.¹ Moreover, because FRI's membership has undergone two major changes since its application was filed, the application must be dismissed under Section 73.3573(a)(1) of our Rules.² Accordingly, we dismiss FRI's application.

¹ 47 C.F.R. § 73.3568(a)(1).

² *Id.* § 73.3573(a)(1).

Background. On November 8, 1995, FRI, doing business as St. Michael’s Catholic Radio, filed the above-referenced application. According to the original application, FRI’s address was 2044 Beverly Plaza, Suite 281, Long Beach, California 90815. The members of FRI listed in the application were Kimberly Thompson and Christine Matson, with Thompson listed as President. The Oregon Secretary of State’s records indicate that FRI was incorporated on July 7, 1993, with its principal place of business at 1415 Laverne, Klamath Falls, Oregon 97602. Kimberly Thompson was again listed as President, at the Long Beach, California address. Shannon Saul was listed as Secretary and William L. Zawila as registered agent. The corporation was assigned the registry number 353377-81. According to the Secretary of State, FRI was involuntarily dissolved on October 22, 1995, approximately two weeks before filing the application, and was not reinstated.

On March 2, 1999, an amendment to the FRI application was filed.³ The amendment changed FRI’s mailing address to P.O. Box 611, Keno, Oregon 97627. It also listed Franck Kato as the President and only member of FRI. Three days later, on March 5, 1999, Articles of Incorporation for FRI were again filed with the Oregon Secretary of State. This new filing was assigned the registry number 678625-82. Leroy Demery was listed as the President and Franck Kato as the Secretary, both at the Keno P.O. Box 611 address. The registered agent was Sandra Soho at 1604 Kimberly Drive, P.O. Box 111, Klamath Falls, Oregon 97601. Again, according to the Oregon Secretary of State, this corporation was involuntarily dissolved on May 5, 2000, reinstated on March 12, 2004, and administratively dissolved on May 6, 2005.

On October 18, 1999, a second amendment to the FRI application was filed, changing the proposed coordinates of the facilities. Finally, on November 14, 2000, a third “minor amendment” was filed, purporting to replace Franck Kato as the sole director and member of FRI with Leroy Demery, owing to the fact that Kato allegedly “obtained a fatal illness that has caused physical problems and psychosis making it impossible for him to function as director.”⁴ It was further noted that the membership of FRI had elected Mr. Demery as the new director. However, the amended application listed Demery as holding 100 percent voting control of and equity in FRI.

On March 18, 2004, the staff sent the Merrill applicants, FRI and Cove Road Publishing, LLC (“Cove Road”), an inquiry letter requesting that each amend its pending application and provide a copy of its current corporate charter, articles of limited liability company, and/or articles of incorporation, and the most recent annual report submitted to the State of Oregon, and also indicate the name(s) and address(es) of the current members / partners / shareholders of the applicant entity and/or its governing board. Although the inquiry letter was sent to FRI at both the Long Beach, California, and Keno, Oregon addresses, the letter sent to the former address was returned “addressee unknown.” Leroy Demery, on behalf of FRI, submitted an updated Section II of the application, again showing Demery as director of FRI and holder of 100 percent of its votes and equity. FRI also attached a copy of the March 5, 1999, Articles of Incorporation – Nonprofit; a Reinstatement Annual Report to the Oregon Secretary of State dated March 12, 2004; a “Reinstatement Amended,” also dated March 12, 2004; and an undated “Acknowledgment of Reinstatement Amended” from the Secretary of State.⁵ Despite the report in 2000

³ On June 2, 1999, an amendment was filed to correct the original application’s file number, which had been misstated in the March 2, 1999, amendment.

⁴ October 18, 1999, amendment, Attachment A.

⁵ In its response, FRI also alleged that Robert Wynne and William Ifft, principals of Cove Road and its predecessor, Klamath Basin Broadcasting, along with William Zawila, were conspiring to gain control of radio stations in

of Mr. Kato's physical and psychiatric deterioration, the Reinstatement Annual Report listed him as Secretary of FRI.

Discussion. Based upon the evidence produced by the parties and that of which we take administrative notice, we conclude that FRI, as currently constituted, is not the entity that originally filed an application for a noncommercial educational FM broadcast station at Merrill, Oregon. It is clear that the only FRI that had ever existed in the State of Oregon before the application was filed was the FRI assigned registry number 353377-81 ("FRI 1"). Moreover, that corporation was dissolved before the application was filed and has not been revived. The evidence before us indicates that another group of individuals, entirely different than those who comprised FRI 1, formed a new corporation on March 5, 1999, by filing new Articles of Incorporation and receiving a new registry number, 678625-82, from the Oregon Secretary of State ("FRI 2"). Any contention that FRI 2 was merely a revival and change in control of FRI 1 is gainsaid by the fact that new Articles were filed and a new registry number assigned.⁶ The clear indication is that the principals of FRI 2 merely formed a new corporation using the same name as a prior corporation that had been dissolved, and sought to replace the original Merrill applicant, FRI 1, with their newly formed but identically named corporation, allowing them to stand in the shoes of the pending FRI 1 applicant before the Commission. Thus, we conclude that the proper applicant for the Merrill NCE permit is not FRI 2, but rather the now-defunct FRI 1. We further find that FRI 1 has failed to prosecute its Merrill application, by failing to respond to the Commission's March 18, 2004, inquiry letter. Accordingly, we will dismiss the application for failure to respond to official correspondence.⁷

Alternately, assuming that FRI 2 is a legal successor to FRI 1, FRI can be said to have undergone at least two major changes in its membership since its Merrill application was filed in 1995. Even assuming *arguendo* that the March 5, 1999, incorporation of FRI 2 constituted a revival of FRI 1, 100 percent of the members changed, from Kimberly Thompson and Christine Matson to Franck Kato as sole member. Then, in November of 2000, 100 percent of the membership changed again, from Franck Kato as sole member to Leroy Demery. Either event could be viewed as an amendment to report a major change in the composition of FRI. Under the rules in effect when this application was filed,⁸ an application is assigned a new file number when it is amended in such a way that the original parties to the application do not retain more than 50 percent ownership interest in the application as originally filed.⁹ These major "amendments," then, would be fatal to the application, since the applicants could only file

northern California and southern Oregon, and that they had sent a derogatory fax to advertisers in the Klamath Falls area which included a racial epithet allegedly referring to Demery. Because these accusations are beyond the scope of the inquiry letter, we disregard these allegations as moot.

⁶ Likewise, the fact that FRI 2 was involuntarily dissolved in 2000 but was revived in 2004 under the same registry number supports our finding that FRI 2 was treated by its principals as a separate corporation from FRI 1.

⁷ 47 C.F.R. § 73.3568(a)(1).

⁸ *Id.* § 73.3573. Section 73.3573 of the Rules, "Processing FM broadcast station applications," was subsequently modified with the adoption of the 1998 First Report and Order establishing broadcast auctions. *See* 47 U.S.C. § 309(j)(2)(c); *Implementation of Section 309(j) of the Communications Act-Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses*, First Report and Order, 13 FCC Rcd 15920, 16039-40 (1998); *recon denied*, 14 FCC Rcd 8724 (1999); *modified*, 14 FCC Rcd 12541 (1999). However, even applying the post-auction version of Section 73.3573 would not change the result: the current Section 73.3573(b)(2) compels us not to accept an amendment that would effect a major change in ownership, such as the March 1999 and November 2000 "amendments" to the FRI application. As we cannot accept those amendments, we must look to the original 1995 applicants. Because, as noted above, those applicants cannot be contacted, the application must be dismissed.

⁹ *Id.* § 73.3573(b) (1995).

major change amendments during the application filing window. Accordingly, the application is subject to dismissal on this basis as well.¹⁰

Conclusion. For the foregoing reasons, pursuant to Sections 0.61 and 0.283 of the Commission's Rules,¹¹ the application of Fatima Response, Inc. for a new noncommercial educational FM broadcast station at Merrill, Oregon IS DISMISSED. Cove Road's application for a new commercial FM broadcast station at Merrill, Oregon shall be processed as a singleton. Accordingly, Cove Road is directed to submit, within 30 days of the date of this letter, an amendment to its application, to include, at a minimum, an exhibit demonstrating that grant of its application comports with the broadcast ownership rules, Section 73.3555(a) of the Commission's Rules.¹²

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: J. Dominic Monahan, Esq.

¹⁰ See *Ocean Pines LPB Broadcast Corp.*, Decision, 4 FCC Rcd 7767, 7770-71 (ALJ 1989), *aff'd* 5 FCC Rcd 5821 (Rev. Bd. 1990) (petition for leave to amend application to reflect new member-directors of nonprofit foundation denied, as 100 percent of the member-directors changed since application was filed, constituting a major change under Section 73.3573(b); motions to dismiss foundation's application granted due to change in control). While the Commission has on occasion waived rules prohibiting major changes in ownership, these waivers have been limited to situations in which the changes have occurred gradually over time during the course of legitimate business and not for the purpose of acquiring the pending application. See, e.g., *Constellation Communications*, Memorandum Opinion and Order, 11 FCC Rcd 18502, 18512 (1996). As noted above, the evidence before us demonstrates that the amendments to the FRI application were wholesale changes in ownership of the application by parties unrelated to the original applicants.

¹¹ 47 C.F.R. §§ 0.61, 0.283.

¹² *Id.* § 73.3555(a).