



Federal Communications Commission
Washington, D.C. 20554

March 12, 2007

DA 07-1268

In Reply Refer to:

1800B3-BSH

Released: March 13, 2007

Jeff Kingery, President
Calvary Chapel of Joplin
4706 Gateway Drive
Joplin, Missouri 64804

In Re: Calvary Chapel of Joplin
Joplin, Missouri
Facility ID No. 132124
File No. BNPL-20010122AAN

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

Dear Mr. Kingery:

This letter refers to the captioned application (the "Application") of Calvary Chapel of Joplin ("CCJ") for a new Low Power FM ("LPFM") station in Joplin, Missouri. National Lawyers Guild Center on Democratic Communications, Microradio Implementation Project, and Prometheus Radio Project (collectively, "Lawyers Guild") jointly filed an Informal Objection to CCJ's Application on October 5, 2001. By letter dated February 7, 2005, the Bureau granted the Lawyers Guild Objection, to the extent indicated, and dismissed CCJ's Application as inadvertently accepted for filing.¹ On March 4, 2005, CCJ filed a Petition for Reconsideration. For the reasons set forth below, we grant reconsideration, reinstate and grant the CCJ Application, and reinstate and deny the Lawyers Guild Objection.

Background. CCJ and other Calvary Chapel applicants located around the country 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.² 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 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.³ To demonstrate its

¹ *Letter to Eric S. Kravetz, Esq. and Alan Korn, Esq.*, Reference 1800B3 (MB Feb. 7, 2005) ("Letter Decision"). By separate letter, a number of other applications, all filed by other Calvary Chapel entities, were also dismissed. *See Letter to Listed Applicants*, Reference 1800B3-GDG/SW (MB Mar. 16, 2004).

² *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.

³ 47 C.F.R. § 73.860(a).

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 broadcast 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.⁴ 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.⁵

In its Application, CCJ 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 was undisputed that CCJ was separately incorporated from any other Calvary Chapel organization and that it has a headquarters within the proposed broadcast community. However, the staff found that the submitted statement of educational purpose failed to distinguish the applicant from other Calvary Chapel 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.⁶ The staff noted that nothing in the statement referenced Joplin, Missouri, the proposed community of license, or demonstrated “a local purpose that can be distinguished from the purpose of the national organization with which [CCJ] 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,⁷ the staff determined, pursuant to Sections 73.853(b) and 73.858 of the Rules,⁸ that the Application was patently defective and dismissed it as inadvertently accepted for filing. On March 4, 2005, CCJ filed its Petition for Reconsideration.

Discussion. *Petition for Reconsideration.* In its Petition for Reconsideration, CCJ argues that the Letter Decision incorrectly assumes that CCJ “is part of a national organization, of which all affiliates or local chapters share the name ‘Calvary Chapel.’”⁹ CCJ claims that it is not affiliated with any other such

⁴ 47 C.F.R. § 73.858, “Attribution of LPFM Station Interests.”

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

⁶ See, e.g., <http://www.csnradio.com>.

⁷ 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.

⁸ 47 C.F.R. §§ 73.853(b) and 73.858.

⁹ CCJ Petition for Reconsideration (“*CCJ Petition*”) at 1.

Calvary Chapel organization.¹⁰ Because of this, CCJ argues, its Application should be analyzed “under the criteria set forth in Section 73.853 of the Rules, under which CCJ qualifies as an LPFM applicant.”¹¹

We agree that CCJ 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 however, 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 CCJ was an affiliate of the national Calvary Chapel radio company, which owns numerous full-service and FM translator radio stations throughout the country. The *CCJ Petition* represents that this is not the case. Therefore, CCJ contends, the other media interests of the national Calvary Chapel organization should not be attributed to it.

In the alternative, CCJ contends that, even if it is considered an affiliate of Calvary Chapel, it qualifies for the attribution exemption under Section 73.858(b) because it was separately incorporated and has a distinct local presence and mission in its proposed community of license. In support of this position, CCJ provides a Revised Educational Purpose Statement that details its distinct local presence and mission in Joplin, Missouri, and outlines the proposed educational purpose of its LPFM station there.¹⁴ We agree. According to the Revised Statement, CCJ “has been an active part of the local community of Joplin Missouri for the past 16 years and will continue to invest [in the] community both by means of information/education as well as practical outreach.”¹⁵ By way of example, CCJ indicates that it provides Joplin with a variety of programs and activities, including support of multiple local homeless shelters, a crisis pregnancy center, career and college counseling, free food distribution, as well as free concerts. In addition, as stated above, it is undisputed that CCJ is separately incorporated within Joplin and maintains its headquarters within the proposed broadcast community. Thus, with the submission of the Revised Statement, we find that CCJ has successfully established a distinct local presence and mission within Joplin and, therefore, is eligible to hold an LPFM station license. For this reason, we grant the *CCJ Petition* and reinstate the Application.

¹⁰ *Id.* at 1-2. In support of this assertion, CCJ attaches three letters. The first letter, from Pastor Jeff Kingery, President of CCJ, declares that CCJ has “no financial or ownership ties to any other organization” and that “there is no controlling entity that has legal or financial authority over CCJ.” *CCJ Petition*, Exhibit 1. The second letter, from Pastor Michael Kestler, President of Calvary Chapel of Twin Falls (“CCTF”) and Vice President of CSN International (“CSN”), declares that “neither CCTF nor CSN has any legal partnership or control over any of the applicants cited in [the] letter.” *CCJ Petition*, Exhibit 2 at 1. The third letter, from Pastor Chuck Smith, Senior Pastor at Calvary Chapel Costa Mesa, Inc., who started the first “Calvary Chapel” thirty years ago, declares that other Calvary Chapel churches “operate totally and separate [sic] from any relationship to us, as they minister to their local community” and explains that “the name ‘Calvary Chapel’ would merely be used to refer to a style of ministry and teaching alone, for the sake of clarity....” *CCJ Petition*, Exhibit 3 at 1, 2.

¹¹ *Id.* at 2. See notes 3 and 4, *supra*, and accompanying text.

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

¹³ See, e.g., 47 C.F.R. § 73.860.

¹⁴ Revised Educational Purpose Statement - Calvary Chapel of Joplin (filed March 7, 2005) (“Revised Statement”).

¹⁵ Revised Statement at 1.

Lawyers Guild Informal Objection. Reinstatement of CCJ's Application requires us to consider the Lawyers Guild's October 5, 2001, Informal Objection, which we reinstate for this purpose.¹⁶ The Informal Objection, however, argues that CCJ 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 CCJ has demonstrated its qualifications to be the licensee of its proposed LPFM station. Accordingly, we will deny the Informal Objection. 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 Chapel of Joplin's Petition for Reconsideration IS GRANTED, and its application for a new LPFM station in Joplin, Missouri (File No. BNPL-20010122AAN), 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 application of Calvary Chapel of Joplin for a construction permit for a new LPFM station in Joplin, Missouri, IS GRANTED.

Sincerely

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: David A. O'Connor, Esq.
National Lawyers' Guild Center on Democratic Communications

¹⁶ In its Informal Objection, the Lawyers Guild argues that CCJ "fails to satisfactorily establish that it has a distinct local mission that can be distinguished from the purpose of the national Calvary Chapel." Lawyers Guild Informal Objection at 4. To support this allegation, the Lawyers Guild references portions of CCJ'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.* Therefore, the Lawyers Guild argues, CCJ should not be granted a license for a new LPFM station because, unless CCJ 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, CCJ 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 Commission's rules. *Id.* at 5-6.