



Federal Communications Commission
Washington, D.C. 20554

April 30, 2007

DA 07-1951

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In Reply Refer to:

1800B3-TSN

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

Fatima Response, Inc.
P.O. Box 611
Keno, OR 97627-0611

Renaissance Community Improvement Association, Inc.
7544 Second Street
Downey, CA 97241

Renaissance Community Improvement Association, Inc.
P.O. Box 111
Klamath Falls, OR 97601

RE: **Fatima Response, Inc.**
d/b/a St. Michael's Catholic Radio
New(FM), Keno, Oregon
Facility ID No. 15167
File No. BPED-19950206MH
Application for New Noncommercial
Educational FM Construction Permit

**Renaissance Community Improvement
Association, Inc.**
New(FM), Keno, Oregon
Facility ID No. 55702
File No. BPED-19950206MB
Application for New Noncommercial
Educational FM Construction Permit

Petitions for Reconsideration

Dear Applicants:

This refers to the above-referenced mutually exclusive applications for a new noncommercial educational ("NCE") FM radio station at Keno, Oregon. Because the staff did not receive timely responses from these applicants to its February 17, 2004, inquiry letter, it dismissed the two above-referenced applications on April 7, 2004. Based on evidence produced by Fatima Response, Inc. ("FRI") and Renaissance Community Improvement Association, Inc. ("RCIA") in their respective April 22, 2004,

Petitions for Reconsideration (respectively the “FRI Petition” and the “RCIA Petition”), we grant reconsideration to the extent necessary to take account of the parties’ arguments and evidence. However, based on the record in this proceeding, including the parties’ responses to the staff’s February 17, 2004, inquiry letter, documents produced by the parties with their Petitions for Reconsideration, and evidence of which the staff takes administrative notice, we conclude that FRI, as currently incorporated, is not the FRI that originally filed the above-referenced FRI Keno application, and that the original FRI has failed to prosecute its application in violation of Section 73.3568(a)(1) of our Rules.¹ We likewise find that RCIA, as incorporated, is not composed of the same parties the above-referenced original RCIA Keno application, and that those original parties have failed to prosecute their application. Moreover, because both FRI’s and RCIA’s membership has undergone major changes since their applications were filed, the applications must be dismissed under Section 73.3573(a)(1) of our Rules.² Accordingly, we re-affirm our dismissal of the above-referenced applications.

Background. *FRI.* On February 6, 1995, FRI, doing business as St. Michael’s Catholic Radio, filed its above-referenced application. According to the original application, FRI’s address was 2044 Beverly Plaza, Suite 281, Long Beach, California 90815. The principals of FRI listed in the application were Kimberly Thompson and Christine Matson, with Thompson listed as President and CEO and Matson listed as Secretary/Treasurer. 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. In those records, 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 Oregon Secretary of State, FRI was involuntarily dissolved on October 22, 1995, and was not reinstated.

On March 2, 1999, an amendment to the FRI application was filed. 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, with Kato’s address listed as 603 S. Rampart Blvd., # 63, Los Angeles, California 90057. Three days later, on March 5, 1999, Articles of Incorporation for FRI were again filed with the Oregon Secretary of State. This 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 noted in the amendment. The registered agent was Sandra Soho at 1604 Kimberly Drive, P.O. Box 111, Klamath Falls, Oregon 97601. 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 June 26, 2000, a second amendment to the FRI application was filed, changing the proposed location, channel, and class of the facilities, reverting to the Long Beach, California, address for FRI and listing Kimberly Thompson as President and CEO. On July 24, 2000, FRI filed a Petition to Exempt Application from Auction, signed by Kato. On the same date, July 24, 2000, a “Notice that Applicant Did Not File An Engineering Amendment” (“July Notice”) was filed. In the July Notice, which was signed by Kato, FRI disavowed the June 26, 2000, amendment, representing that the filing thereof “was a surprise to us as we did not file anything.”³

On September 28, 2000, a third amendment, specifying new facility coordinates and height, and reverting to the class and channel specified in the original application, was filed and signed by Kato, as

¹ 47 C.F.R. § 73.3568(a)(1).

² *Id.* § 73.3573(a)(1). In the documents discussed herein, individuals are varyingly described as “owners,” officers, or members of the entities described. In most instances the original terms are preserved, in others we use the generic “principals” to refer to the individuals.

³ July Notice at 1.

Director of FRI. A fourth amendment was filed on October 25, 2000, again changing channel, class, coordinates, and antenna height, and was also signed by Kato as Director of FRI, and certified by Kato as “applicant.” Finally, on November 14, 2000, a fifth “minor amendment” was filed, purporting to replace Franck Kato as the sole director and member of FRI with Leroy Demery. The amendment listed Demery’s address as 1009 Blue Heron Avenue NE, Bainbridge Island, Washington 98110. This amendment stated that it was filed because Kato allegedly had contracted “a fatal illness with resulting psychiatric and physical deterioration,” and was “forced to retire as the director of FRI.”⁴ It further reported that “the membership of Fatima Response, Inc.” 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, with no other members listed. Demery signed a May 14, 2003, Motion to Remove Application from Auction, giving an address of P.O. Box 611, Keno, Oregon. He signed subsequent pleadings on behalf of FRI filed March 29, 2004, as well as the FRI Petition.

RCIA. On February 6, 1995, RCIA filed its above-referenced application. The original application gave RCIA’s address as 7544 Second Street, Downey, California 90241. In the application, RCIA described itself as a “non-profit corporation in formation,”⁵ although a search of the Secretary of State databases for both California and Oregon did not indicate any corporation by that name being formed before or within four years after the date the RCIA Application was filed. The “officers” of RCIA listed in the application were Ralph D. Saul, President; Sandy Summerfelt, Vice President/Treasurer; and Shannon Saul, Secretary. The application was signed by Ralph D. Saul as President, and certified by Warren J. McCluer, Technical Consultant.

On March 2, 1999, an amendment to the RCIA application was filed. The amendment changed RCIA’s mailing address to P.O. Box 111, Klamath Falls, Oregon 97601. It listed Rev. Sandra Soho as President, Director, and only member of RCIA, giving an address for Soho of 1604 Kimberley Drive, Klamath Falls, Oregon 97603. Three days later, on March 5, 1999, Articles of Incorporation for RCIA were filed with the Oregon Secretary of State. This filing was assigned the registry number 678628-89, and the corporation type was “Religious with Members.” Sandra Soho was listed as the President, Secretary, and Registered Agent for the corporation, at the P.O. Box 111 address in Klamath Falls, but the address for Soho as Registered Agent was given as 1604 Kimberly Drive, Klamath Falls, Oregon 97601. According to the Oregon Secretary of State, this corporation was involuntarily dissolved on April 27, 2000, reinstated on March 12, 2004, and administratively dissolved on May 6, 2005.

On June 4, 1999, a “Notice That William Zawila Does Not Have Any Relationship With RCIA, Inc.” was filed, signed by Soho. On June 26, 2000, a second amendment to the RCIA application was filed, changing the proposed coordinates, channel, and class of the facilities, and again giving RCIA’s address as 7544 Second Street in Downey, California. Shannon Saul signed this amendment as Secretary/Treasurer of RCIA. Attached to the amendment was a Declaration of Ralph D. Saul, dated October 15, 1999, disavowing any connection between the original RCIA applicants and Sandra Soho or the Oregon RCIA corporation formed in March 1999. According to Mr. Saul, as of the date of his Declaration, he had “only now learned that Sandra Soho claims to be part of our pending application, file number BPED-950206MB. This is FALSE. Sandra Soho has no connection what so ever [sic] with our corporation.”⁶ Mr. Saul goes on to state that Soho formed RCIA in Oregon on March 5, 1999, three days after filing an amendment to the application, and requests that we “dismiss all amendments to our application that were filed by Sandra Soho.”⁷ On August 15, 2000, a “Notice that Applicant Did Not File

⁴ November 14, 2000, amendment, Exhibit “A.”

⁵ See Exhibit B to application.

⁶ Declaration of Ralph D. Saul, fourth unnumbered paragraph.

⁷ *Id.*, fourth-fifth unnumbered paragraphs.

an Engineering Amendment” was filed (the “August Notice”), stating that the June 26, 2000, amendment was “not filed by the applicant for the construction permit.” This document was signed by Sandra Soho.

On August 16, 2000, Wynne Broadcasting Company, Inc. (“WBC”), licensee of stations KKR(B)(FM) and KFLS(AM), Klamath Falls, Oregon, and KFLS-FM, Tulelake, California, filed a Petition to Deny Application for Construction Permit against the RCIA application (“WBC Petition”). This was apparently filed in response to the June 26, 2000, amendment. WBC’s principal, Robert Wynne, stated that the wooden pole on which RCIA proposed to mount its antenna was being used by WBC’s station KKR(B)(FM), Klamath Falls, Oregon; that there was no space available on the utility pole nor inside the existing transmitter building at the site; and that neither Mr. Wynne nor WBC had been contacted by RCIA for permission to use either the pole or the transmitter building, and that even if such permission had been sought it could not have been granted. WBC also noted that there “appear[ed] to be two individuals that claim they are ‘owners’ of this application,” and thus that both were served.⁸

A third amendment to the RCIA application was filed September 28, 2000, changing the proposed antenna location and reverting to the same channel and class as specified in the original application, signed and certified by Soho. On October 23, 2000, a brief opposition to the WBC Petition was filed by RCIA, again signed by Soho, stating that RCIA had filed an engineering amendment “that clearly indicates that the proposed transmitter site is not the existing transmitter site of KKR(B).” Most recently, on May 14, 2003, a Motion to Remove Application From Auction was filed by RCIA, signed by Soho.

Commission Inquiry. In light of the filings described above, on February 17, 2004, the staff sent the Keno applicants, FRI and RCIA, 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 with the notation “addressee unknown.” Likewise, the copy of the letter sent to RCIA’s Downey, California, address was returned with “addressee unknown.” Because the staff had not received timely responses to the February 17, 2004, inquiry letter, the staff dismissed the FRI and RCIA Keno applications on April 7, 2004.⁹

Discussion. *Petitions for Reconsideration.* Filers claiming to be FRI and RCIA each state that they did, in fact, respond to the February 17, 2004, inquiry letter before the April 7, 2004, dismissal of their applications. Both parties provide Express Mail receipts with tracking numbers, which they claim show that the documents were mailed to the Commission. Although the staff did not receive copies of the responses, the Commission’s mail logs indicate that packages with the tracking numbers provided were received at FCC Headquarters on March 31, 2004. Accordingly, we grant FRI’s and RCIA’s Petitions for Reconsideration, and proceed to consider the applications on their merits.

In its response to the Commission’s February 17, 2004, inquiry letter (dated March 16, 2004, and styled “Additional Opposition to Petition to Deny”), FRI attaches an updated Section II to its Application, along with copies of documents from the Oregon Secretary of State, all of which indicate that Leroy Demery is the sole “owner” of the corporation. RCIA’s response, likewise entitled “Additional Opposition to Petition to Deny” and dated March 16, 2004, also attaches an updated Section II to its

⁸ WBC Petition, paragraphs 1-7.

⁹ *Letter to Fatima Response, Inc. and Renaissance Community Improvement Association, Inc.*, Ref. No. 1800B3-TSN (MB Apr. 7, 2004).

Application and copies of documents from the Oregon Secretary of State, submitted to establish that Sandra Soho is the sole “owner” of the corporation.

FRI. Based upon the evidence produced by FRI and that of which we take administrative notice, including our previous findings with regard to FRI,¹⁰ we conclude that FRI, as currently constituted, is not the entity that originally filed the subject FRI application for a new NCE FM broadcast station at Keno, Oregon. The record establishes that the only FRI that had ever existed in the State of Oregon before the application was filed was that assigned registry number 353377-81 (“FRI 1”). Moreover, that corporation was dissolved seven months after the application was filed, and has not been revived. The evidence before us indicates that another group of individuals, other 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 contradicted by the fact that new Articles were filed and a new registry number assigned.¹¹ 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 Keno 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 Keno NCE permit is not FRI 2, but rather the now-defunct FRI 1. We further find that FRI 1, the original applicant, has failed to prosecute its Keno application, by failing to respond to the Commission’s February 17, 2004, inquiry letter. The only response to the inquiry letter appears to have come from a principal of FRI 2. Accordingly, we will dismiss the FRI application for failure to respond to official correspondence.¹²

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 Keno application was filed in 1995. 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 as the members of FRI, 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, also as sole member. 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,¹³ 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.¹⁴ These major “amendments,” then, would be fatal to the application, since the applicants could only file major change amendments during the application filing window.

¹⁰ See *Letter to Fatima Response, Inc. and Cove Road Publishing, LLC*, 21 FCC Rcd 11711 (MB 2006).

¹¹ 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.

¹² 47 C.F.R. § 73.3568(a)(1).

¹³ *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 have failed to respond to Commission correspondence, the application must be dismissed.

¹⁴ *Id.* § 73.3573(b) (1995).

Accordingly, the FRI application is subject to dismissal on this basis as well.¹⁵

RCIA. The RCIA application presents slightly different facts. The original RCIA application listed Ralph D. Saul, Sandy Summerfelt, and Shannon Saul as “officers” and the only principals of RCIA (“RCIA 1”). Although it described RCIA as a “non-profit corporation in formation,” there is no evidence that these individuals ever formed RCIA as a corporation, at least not in California (their state of residence) or Oregon (the state for which they applied for a new radio station). Additionally, while two of the three original principals of RCIA (Ralph and Shannon Saul) filed a June 2000 amendment, including a Declaration of Ralph D. Saul, they did not at that time describe any efforts to incorporate RCIA in any jurisdiction, nor did they provide any documentation to indicate that the “corporation in formation” had ever been formed by them. The initial incorporation of RCIA occurred just over four years after RCIA’s Keno application was filed (“RCIA 2”), but none of the original principals listed in the application appears in the corporate filing. The only principal appearing in these corporate filings, as submitted by RCIA in its response to the Commission inquiry letter, is Sandra Soho.

Based on our review of the documents submitted, the applications and other documents filed with the Commission, and the public record, it is readily apparent that the original RCIA 1 principals have abandoned their application, and that Soho exploited their lack of diligence in forming their corporation when she formed RCIA 2 four years after the RCIA application was filed. First, the “ownership” of RCIA, in whatever form it originally existed, changed 100 percent between 1995 and 1999, from Ralph Saul, Shannon Saul, and Sandy Summerfelt as the only listed principals, to Sandra Soho as sole “owner.” For the reasons set forth above with regard to FRI this, in itself, constitutes a major change in ownership, and is reason enough to dismiss the RCIA application. Second, the separate June 26, 2000, and September 28, 2000, amendments plainly show the conflict between the two sets of RCIA applicants. Ralph Saul, in his Declaration, disavows any knowledge of or connection with Soho, while Soho states in the August Notice that the June 26, 2000, amendment “was a surprise to us as we did not file any

¹⁵ 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.

amendment.”¹⁶ Clearly, the RCIA 1 and RCIA 2 applicants were acting independently, without any cooperation or knowledge of each others’ actions.

The record in this case indicates that either RCIA 1 is the original applicant and that Sandra Soho formed an identically named corporation four years after the fact in order to assume the RCIA Keno application, or that the three original “owners” of RCIA were supplanted by Soho, who completed the corporate formation process that the Sauls and Summerfelt never accomplished. As discussed above, under either scenario, there has been a major change in ownership that necessitates dismissing the RCIA application. The original RCIA 1 principals, Ralph and Shannon Saul and Sandy Summerfelt, have not filed any documents in connection with the application in almost seven years, and have not kept their mailing information up to date, making it impossible for the Commission to communicate with them.¹⁷ We conclude that RCIA 1 has abandoned its Keno application, which a third party (Soho) has attempted to take over. Alternately, we conclude that there has been a 100 percent change in ownership of RCIA. Under either scenario, the application must be dismissed.¹⁸

Conclusion. The Petitions for Reconsideration filed by Fatima Response, Inc. and Renaissance Community Improvement Association, Inc. ARE GRANTED. Upon reconsideration, and pursuant to Sections 0.61 and 0.283 of the Commission’s Rules,¹⁹ the application of Fatima Response, Inc. for a new noncommercial educational FM broadcast station at Keno, Oregon,²⁰ IS DISMISSED. The application of Renaissance Community Improvement Association, Inc. for a new noncommercial educational FM broadcast station at Keno, Oregon,²¹ IS DISMISSED. The Wynne Broadcasting Company, Inc. Petition to Deny IS DISMISSED.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: Wynne Broadcasting Company, Inc.

¹⁶ August Notice at 1.

¹⁷ Section 1.5 of the Commission’s Rules specifies that the mailing address furnished in the most recent application will be used by the Commission for delivery of official correspondence unless the applicant notifies the agency to the contrary. 47 C.F.R. § 1.5(a).

¹⁸ See *supra* notes 13-15.

¹⁹ 47 C.F.R. §§ 0.61, 0.283.

²⁰ File No. BPED-19950206MH.

²¹ File No. BPED-19950206MB.