



Federal Communications Commission
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DA 07-3541

In Reply Refer to:

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Shenandoah County (VA) Public Schools
411 Boyd Street
Woodstock, VA 22664

Ms. Anne Thomas Paxson
Borsari & Paxson
4000 Albemarle Street, NW
Suite 100
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In Re: Shenandoah County (VA) Public Schools
WSCE-LP, Woodstock, VA
Facility ID No. 126828
File No. BAPL-20061024AFK

Application for Assignment of Permit

Dear Applicants:

We have before us the above-referenced application (“Application”) of Shenandoah County Public Schools (“SCPS”), permittee of low-power FM (“LPFM”) station WSCE-LP, Woodstock, Virginia (the “Station”), to assign the permit of that facility to Portering the Glory International, Inc. d/b/a Christian Leadership Ministries (“CLM”). For the reasons set forth below, we grant the Application.

Background. SCPS submitted an application seeking consent to assign the permit of the Station to CLM on October 24, 2006. In the Application, SCPS explained that the Shenandoah County School Board decided that it would be “unfair to fund a facility for only one of the schools under its purview”¹, which led SCPS to seek out another local nonprofit entity to whom to assign the permit.² A letter from the Division Superintendent of SCPS to

¹ See Application at Exhibit 4.

² As of the date of filing, SCPS held no other FCC broadcast authorizations.

the Senior Pastor of CLM, memorializing the agreement between the parties, specified that CLM would pay \$1000 to SCPS as compensation for assignment of the permit.³

In a March 7, 2007 amendment to the Application, SCPS provided documentation to support a request for a waiver of Section 73.865 of Commission's rules, which prohibits most assignments and transfers of LPFM authorizations. The parties to the application certified that SCPS would not profit from the assignment. In support of this certification, they included a statement from the consultant that originally prepared the Station's permit application for SCPS, clarifying that that his charges had exceeded the \$1000 consideration SCPS was to receive under the agreement with CLM.⁴ The parties also certified that CLM held no other broadcast interests, submitted material describing the educational nature of CLM's mission and proposed program schedule for the Station, and clarified that CLM was a nonprofit organization whose principals all resided in or near the Station's community of license.⁵

On December 7, 2006, the Shenandoah County School Board Chairman, on behalf of the Shenandoah County School Board (the "Board"), filed an informal objection to the Application (the "Objection"), alleging that the Board "had not and did not vote, as a body, at any time, to dispose of or transfer the [Station] permit." It further claimed that the acting superintendent had proceeded "without the knowledge of or direction by" the Board, in violation of state law.⁶ Subsequently, in a letter dated June 21, 2007, the Board voluntarily withdrew its objection, stating that the assignment had been officially approved by a Board vote.

Discussion. Section 73.865 of the Commission's rules prohibits transfers and assignments of LPFM stations, except for those that are either involuntary or that involve less than a substantial change in ownership or control (*pro forma*).⁷ In establishing the LPFM service, the Commission initially created a blanket prohibition on assignments and transfers of LPFM stations.⁸ On reconsideration, it adjusted this policy by delegating authority to the Media Bureau to waive Section 73.865 on a case-by-case basis on the determination that "such waiver will maximize spectrum use for low-power operations."⁹ The Commission offered a nonexclusive list of potential circumstances warranting a waiver, but noted that, until it further considered the issue, a "for-profit sale of an LPFM station to any entity or, the transfer of an LPFM station to a non-local entity or entity that owns another LPFM station" would not be appropriate.¹⁰

⁴ See Application at Exhibit 1, Attachment A.

⁵ *Id.* at Exhibit 1, Attachment B & C.

⁶ Objection at ¶2.

⁷ See 47 CFR §73.865.

⁸ See *Creation of a Low-Power Service*, Report and Order, 15 FCC Rcd 2205, 2269 (2000).

⁹ *Creation of a Low Power Service*, Second Order on Reconsideration and Further Notice of Proposed Rule Making, 20 FCC Rcd 6563, 6571 ¶ 20 (2005) ("*Second Order and Further Notice*").

¹⁰ *Id.*

An examination of an application for assignment or transfer of control of an LPFM station should therefore incorporate consideration of the guidelines set forth in the *Second Order and Further Notice* in addition to a review under the general licensing requirements for LPFM applicants. Here, because SCPS holds only one LPFM permit, not all of the schools within the county would have their own facility. SCPS wishes to assign the Station's authorization in order to avoid an inequitable situation.¹¹ While not a ground specifically enumerated in the *Second Order and Further Notice*, we find that the assignment itself would advance the goal of maximizing spectrum use for the LPFM service. CLM has designed a programming plan and appears prepared to assume the responsibilities of completing construction and commencing on-air operations. Moreover, the terms of the assignment fall within the Commission's limits for a waiver of Section 73.865. SCPS will not profit from the transaction, CLM does not hold any other broadcast interests and CLM qualifies as a local entity under the licensing requirements for LPFM applicants as stated in Section 73.853 of the Commission's rules.¹²

Additionally, we have before us the informal objection filed and withdrawn by the Board. Even where a petition to deny or an objection is dismissed at the request of the filing party, the Commission considers the merits of that submission.¹³ In this case, the Board objected to the assignment because it had not authorized the transaction carried out by the superintendent, an official subject to the oversight of the Board. While the Board's subsequent vote to approve the assignment most likely ratified the superintendent's prior actions, we note that the Objection raises only the issue of the superintendent's authority to assign the construction permit, which is not an issue we are empowered to address under our statutory mandate, the Communications Act of 1934, as amended.¹⁴ This case is analogous to those in which the Commission has held that it is not the proper forum for the resolution of private contractual disputes and that redress should be sought in a local court of competent jurisdiction.¹⁵ The Objection thus presents no substantial and material question of fact that grant of the Application would be *prima facie* inconsistent with the public interest.

¹¹ No LPFM filing window is currently scheduled to take place. Even assuming SCPS had the financial means to acquire and operate more stations, given the existing restraints on the assignment of LPFM permits and licenses, SCPS likely would face difficulty obtaining additional permits at this time.

¹² See 47 U.S.C. §73.853. The parties indicate in the Application that CLM intends to file a modification of permit application to change the transmitter site for the Station. Section 73.853 defines "local," for the purposes of LPFM licensing, in terms of distance from the facility's transmitting antenna. We caution the parties that, any proposal to change sites will require a *de novo* showing of compliance with this section of the Commission's rules.

¹³ *Detroit Public Schools*, Memorandum Order and Opinion, 21 FCC Rcd 13688, 13689 (2006) (citing *Stockholders of CBS, Inc.*, Memorandum Order and Opinion, 11 FCC Rcd 3733, 3739 (1995)).

¹⁴ 47 U.S.C. §151 *et. seq.*

¹⁵ See, e.g., *Cumulus Licensing LLC and Star Broadcasting, Inc.*, 21 FCC Rcd 2998, 3006 (2006); *Application of Margaret Jackson (Transferor)*, Memorandum Order and Opinion, 18 FCC Rcd 26403, 26404 (2003).

Accordingly, as CLM otherwise qualifies as an LPFM license and the Application complies with all other statutory requirements, Section 73.865 of the Commission's rules IS WAIVED, and the Application to assign the construction permit of WSCE-LP IS GRANTED. The authorization is enclosed.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau