



Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer to:

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Calvary Chapel of Brandon, Inc.
1331 Kings Way Road
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Iglesia Cristiana La Nueva Jerusalem, Inc.
2103 Lumsden Road
Valrico, FL 33594

Projet La Metropole/The Metropole Project
P.O. Box 76832
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In re: WQRD-LP, Gibsonton, FL
Calvary Chapel of Brandon, Inc.
Facility ID No. 134707
File No. BNPL-20010613AGK

WVVD-LP, East Tampa, FL
Iglesia Cristiana La Nueva Jerusalem, Inc.
Facility ID No. 135008
File No. BNPL-20010615AAV

Petition for Reconsideration

Dear Petitioner/Permittees:

We have before us: (1) Projet La Metropole/The Metropole Project's ("Metropole") June 27, 2005, petition for reconsideration ("Petition") of the Commission's grant of the captioned applications seeking construction permits in the Low Power FM ("LPMF") Broadcast Service in the Tampa, Florida, area;¹ and (2) Calvary Chapel of Brandon, Inc.'s ("CCB") and Iglesia Cristiana La Nueva Jerusalem, Inc.'s ("Iglesia") July 11, 2005, joint opposition to the Petition. For the reasons set forth herein, we deny the Metropole Petition.

Background. The captioned, mutually exclusive applications of CCB, Iglesia, as well as Metropole, and Florida Force, Inc.² sought LPMF construction permits in the Tampa area. In accordance

¹ These applications were granted by the Commission on May 27, 2005.

² File Nos. BNPL-20010615ASL and BNPL-20010615AKC, respectively.

with our procedures,³ the Commission published notice of the applications' tentative selectee status.⁴ Metropole was a tentative selectee along with CCB and Iglesia in this LPFM mutually exclusive application group until CCB and Iglesia submitted a voluntary time-share agreement aggregating their points.⁵ Thus, CCB and Iglesia became the prevailing tentative selectees. By *Memorandum Opinion & Order*, the Commission granted the CCB and Iglesia applications on May 27, 2005.⁶

Discussion. Under Section 1.106 of the Commission's Rules (the "Rules"),⁷ the Commission will consider a petition for reconsideration when a petitioner shows either a material error in the Commission's original order, or raises additional facts, not known or existing at the time of the petitioner's last opportunity to present such matters.⁸ Section 1.106(b)(1) of the Rules specifically provides that an entity that is not a party to a proceeding may nevertheless file a petition for

³ See *Creation of a Low Power Radio Service*, Report & Order, 15 FCC Rcd 2205 (2000) ("*Report & Order*"); *Creation of a Low Power Radio Service*, Memorandum Opinion & Order on Reconsideration, 15 FCC Rcd 19208 (2000); and *Creation of Low Power Radio Service*, Second Report & Order, 16 FCC Rcd 8026 (2001).

⁴ See Public Notice, Closed Groups of Pending Low Power FM Mutually Exclusive Applications Accepted for Filing, DA 04-679, (rel. Mar. 12, 2004).

⁵ See 47 C.F.R. § 73.872, which provides in pertinent part that:

(a) Following the close of each window for new LPFM stations . . . the Commission will issue a public notice identifying all groups of mutually exclusive applications. Such applications will be awarded points to determine the tentative selectee. . . . [T]he tentative selectee will be the applicant within each group with the highest point total under the procedure set forth in this section. . . .

(b) Each 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. . . .

(2) *Proposed operating hours.* The applicant must pledge to operate at least 12 hours per day.

(3) *Local program origination.* The applicant must pledge to originate locally at least eight hours of programming per day. For purposes of this criterion, local origination is the production of programming, by the licensee, within ten miles of the coordinates of the proposed transmitting antenna.

⁶ See *In Re Applications of: Calvary Chapel of Brandon, Inc., Iglesia Cristiana La Nueva Jerusalem, Inc., Proje La Metropole/The Metropole Project, and Florida Force, Inc.*, Memorandum Opinion & Order, 20 FCC Rcd 10208 (2005).

⁷ 47 C.F.R. § 1.106.

⁸ 47 C.F.R. § 1.106, and *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sum nom.*, *Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

reconsideration of a Commission action if it states with particularity the manner in which its interests are adversely affected by the action taken and shows good reason why it was not possible to participate earlier in the proceeding. Metropole contends in its Petition that it is raising “new facts” and that Section 1.106(c)(2) of the Rules⁹ requires consideration of these facts to be in the public interest. Metropole argues that the grants of CCB’s and Iglesia’s applications should be rescinded and that their applications be dismissed because neither permittee is physically headquartered or has a campus within 10 miles of the proposed site for the transmitting antenna nor are 75 per cent of the permittees’ board members residing within 10 miles of the proposed site for the transmitting antenna, pursuant to Section 73.853(b)(1)(2) of the Rules.¹⁰ Metropole also alleges that the permittees were aware of this when they filed their applications, thus raising misrepresentation issues.¹¹

In joint opposition, CCB and Iglesia state that Metropole’s Petition should be dismissed because (1) the petition is procedurally defective as it has failed to demonstrate why Metropole could not have brought its allegations to the attention of the Commission prior to the grant of the applications; (2) the petition presents no new information to contradict the findings in the May 27, 2005, Commission decision; and (3) the information that petitioner does present is incorrect.¹²

Metropole maintains that it did not participate earlier in the proceeding because certain new facts only recently came to its attention.¹³ In opposition, both CCB and Iglesia argue that Metropole failed to demonstrate “good reason” for not participating earlier. They also note that Metropole had constructive notice of the addresses of the permittees’ headquarters and of each of the board members since 2001, as neither application had been amended since the original filing. CCB and Iglesia add that “[c]ertainly after [Metropole] became aware of its mutual exclusivity with other applicants, it could have taken steps to consider the basic qualifications of the other applicants in its pool, and filed a petition to deny within the 30-day period provided . . . or an informal objection anytime before the applications were granted in May 2005.”¹⁴

If a petition relies on new facts, Section 1.106(c) of the Rules requires the petitioner either to show how the facts changed since the last opportunity to present the matters or to demonstrate that the facts could not have been ascertained, through the exercise of ordinary diligence, prior to that time. CCB and Iglesia maintain -- and we agree -- that Metropole has failed to meet either of these requirements. Although Metropole argues that CCB’s and Iglesia’s applications should not have been granted, it does not allege any facts which it could not have ascertained prior to the grant, nor has it demonstrated changed circumstances. Moreover, it raises no public interest reasons which would warrant reversal of our previous actions. The D.C. Circuit Court of Appeals has observed that an appellant cannot “sit back and hope that a decision will be in its favor and then, when it isn’t, to parry with an offer of more

⁹ 47 C.F.R. § 1.106(c)(2).

¹⁰ See Petition at 2; see also 47 C.F.R. § 73.853(b)(1)(2).

¹¹ *Id.* at 3.

¹² See Joint Opposition at 2.

¹³ See Petition at 1.

¹⁴ See Joint Opposition at 3.

evidence. No judging process in any branch of government could operate efficiently or accurately if such procedure were allowed."¹⁵

Moreover, even if we disregard the Petition's fatal procedural deficiency, we agree with CCB and Iglesia that the Petition fails because Metropole has used incorrect measuring instruments to support its arguments. Pursuant to Section 73.853(b) of the Rules, only local applicants were permitted to submit applications in the first LPFM filing windows.¹⁶ These provisions are manifested by Section II, Items 4 and 5 of FCC Form 318. For example, Item 4 requires an applicant to 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, 75 percent of whose board members reside 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. Furthermore, the *Report & Order* states that the Commission instituted this rule because it found that "the disadvantages of imposing a requirement that applicants be community-based are outweighed by the benefits to be gained by maximizing the likelihood that LPFM stations are operated by entities grounded in the communities they serve."¹⁷

In support of its allegation, Metropole submits the affidavit of Metropole principal Bernard Bros. His statement, made under penalty of perjury, asserts that he "used MapQuest to determine the distances between each director's residence and the proposed transmitter for each applicant."¹⁸ CCB and Iglesia note, however, that MapQuest provides driving distances but not line-of-sight distances as the Rules require.¹⁹ CCB and Iglesia state that they properly converted each board member's address to coordinates, and then the distance between the transmitter site and particular coordinates were measured in accordance with Section 73.208(c) of the Rules,²⁰ with algorithms found on the Commission's website.²¹ Whereas Metropole's measurement study finds all of the applicants' board members living beyond the 10-mile requirement, CCB's and Iglesia's study finds all but one board member's residence within the 10-mile range.

Section 73.853(b) and the *Report & Order* are silent as to how the 10-mile distance requirement is to be calculated. However, we find that application of the methodology specified in Section 73.208 of the Rules to calculate distance is appropriate, and we will not revisit the grants based on distances obtained from MapQuest. We find, therefore, that the measurement tests conducted by both CCB and Iglesia were done properly. Accordingly, we will deny Metropole's Petition.

¹⁵ See *Colorado Radio Corporation v. F.C.C.*, 118 F.2d 24, 26 (D.C. Cir. 1941).

¹⁶ See 47 C.F.R. §§ 73.853(b), 73.858.

¹⁷ See *Report & Order* at 2219.

¹⁸ See Petition at Affidavit.

¹⁹ See Joint Opposition at Exhibit A, p.5.

²⁰ 47 C.F.R. § 73.208(c).

²¹ See Joint Opposition at 5; see also <http://www.fcc.gov/mb/audio/bickel/distance.html> (visited Aug. 16, 2006).

Conclusion/Actions. For the reasons discussed above, Metropole's Petition for Reconsideration IS DENIED and the grants to Calvary Chapel of Brandon, Inc. (File No. BNPL-20010613AGK) and Iglesia Cristiana La Nueva Jerusalem, Inc. (File No. BNPL-20010615AAV) for construction permits in the LPFM Broadcast Service in the Tampa, Florida, area, ARE UPHELD.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Lee G. Petro, Esq.
Michael Couzens, Esq.