



Federal Communications Commission  
Washington, D.C. 20554

August 4, 2005

DA 05-2243  
***In Reply Refer to:***  
1800B3-DT

David A. O'Connor, Esq.  
Holland & Knight LLP  
2099 Pennsylvania Ave., N.W., Suite 100  
Washington, D.C. 20006

In Re: Application for New LPFM Station,  
Manitowac, WI  
Calvary Chapel of Manitowac, Inc.  
File No. BNPL-20010122ABQ  
Facility ID No. 132217

Petition for Reconsideration

Dear Mr. O'Connor:

This letter refers to the captioned application of Calvary Chapel of Manitowac, Inc., ("CCMI") for a new Low Power FM ("LPFM") station in Manitowac, Wisconsin. CCMI filed its application on January 22, 2001. National Lawyers Guild Center on Democratic Communications, Microradio Implementation Project, and Prometheus Radio Project ("Lawyers Guild") filed an Informal Objection against CCMI's application on September 27, 2001.<sup>1</sup> On March 16, 2004, the Bureau dismissed CCMI's application as inadvertently accepted for filing, and dismissed the Lawyers Guild objection as moot.<sup>2</sup> On April 13, 2004, CCMI filed a Petition for Reconsideration. For the reasons set forth below, we reinstate CCMI's application, reinstate and deny the Lawyers Guild objection, and grant CCMI's application.

### Background

CCMI 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 and limited each non-governmental applicant to a single application filing.<sup>3</sup> 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 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

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<sup>1</sup> On October 25, 2001, CCMI filed a Motion to Dismiss the Lawyers Guild Informal Objection. On November 2, 2001, the Lawyers Guild filed an Opposition to CCMI's Motion to Dismiss. On November 15, 2001, CCMI filed a Reply to Opposition to Motion to Dismiss.

<sup>2</sup> *Letter to Listed Applicants*, Reference 1800B3-GDG/SW (MB Mar. 16, 2004) ("*Letter Decision*"). By the same letter a number of other applications, all filed by other Calvary Chapel applicants, were also dismissed.

<sup>3</sup> 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.

jurisdiction within the service area of the proposed LPFM station. Item 5(a) requires an applicant to certify that “No party to this application has an attributable interest in any non-LPFM 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 ownership restrictions.” There are exceptions to this ownership restriction for “local chapters” of a national or other large organization set forth in the attribution provisions of Section 73.858 of the Commission’s rules.<sup>4</sup> The Instructions for FCC Form 318 summarize 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.<sup>5</sup>

Each of the Calvary Chapel-named applicants, including CCMI, submitted information to establish that it qualified for the “local chapter” exemption, certifying its local presence and submitting an exhibit to demonstrate a distinct local purpose. In dismissing the applications, the staff stated that it is undisputed that each applicant is separately incorporated and that it has a headquarters within the proposed broadcast community. However, the staff found that the submitted statements of educational purpose failed to distinguish the applicant from the other Calvary Chapel applicants which 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.<sup>6</sup> Nothing in the educational purpose of the applications referenced the respective communities of license in any way or demonstrated “a local purpose that can be distinguished from the purpose of the national organization with which it is affiliated.” Without this evidence, the staff could not find that the purported “local chapter” had a distinct local presence and mission. Accordingly, the staff determined, pursuant to Section 73.853(b) and 73.858 of the Commission’s rules, that the applications were patently defective and the applications, including that of CCMI, were dismissed as inadvertently accepted for filing. The informal objections that were filed against these applications were dismissed as moot.<sup>7</sup> On April 13, 2004, CCMI filed its Petition for Reconsideration.

## Discussion

*Petition for Reconsideration.* In its Petition for Reconsideration, CCMI argues that the Letter Decision incorrectly assumes that CCMI “is part of a national organization, in which all affiliates or local chapters share the name ‘Calvary Chapel.’”<sup>8</sup> CCMI claims that it is not affiliated with any other Calvary

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

<sup>5</sup> Instructions for FCC Form 318, pp. 5-6.

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

<sup>7</sup> Informal objections against several of these applications filed by Lawyers Guild alleged that they did not demonstrate a “distinct local presence and mission,” and therefore, they do not fall under the exceptions to the ownership restrictions pursuant to Section 73.858 of the Commission’s rules. These objections were dismissed as moot in the letters dismissing the applications.

<sup>8</sup> *CCMI Petition for Reconsideration* (“*CCMI Petition*”) at 1.

Chapel organization.<sup>9</sup> Because it is not affiliated with Calvary Chapel, CCMI argues, its application should be analyzed “under the criteria set forth in Section 73.853 of the rules, under which CCMI qualifies as an LPFM applicant.”<sup>10</sup> Nevertheless, CCMI contends, if it is considered an affiliate 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 contention, CCMI provided a Revised Statement of Educational Purpose that details its relationship with Manitowac, Wisconsin, and outlines the proposed educational purpose of its LPFM station.<sup>11</sup> For all these reasons, CCMI argues, the Commission should reinstate its application.<sup>12</sup>

CCMI formally and voluntarily identifies itself with the Calvary Chapel organization and has submitted an application substantially identical to those of other Calvary Chapel applicants. While these facts are highly probative on the issue of whether CCMI should be treated as a “local chapter” of Calvary Chapel, we need not resolve that matter here. We agree with CCMI that even if it is considered a local chapter of a “national” Calvary Chapel organization, it qualifies for the attribution exemption of Section 73.858(b) in that the Revised Statement demonstrates that CCMI has a distinct local presence and mission in Manitowac. According to this Revised Statement, CCMI provides Manitowac with a variety of programs and activities including bible studies, abstinence counseling, employment counseling, free concerts, and a prison ministry. Thus, we find that CCMI has demonstrated a “distinct local presence and mission” within Manitowac and is therefore eligible to become an LPFM station licensee.<sup>13</sup>

*Lawyers Guild Informal Objection.* Reinstatement of CCMI’s application requires us to consider the Lawyers Guild’s September 27, 2001, Informal Objection and all related pleadings. We reinstate the Lawyers Guild’s pleadings for this purpose. We first consider CCMI’s Motion to Dismiss the Lawyers Guild’s Informal Objection. In its Motion to Dismiss and Reply to Opposition to Motion to Dismiss, CCMI argues that the Lawyers Guild’s objection should not have been submitted until CCMI had been named a tentative selectee, citing paragraph 132 of the Commission’s first LPFM *Report and Order*.<sup>14</sup> For this reason, CCMI argues, the objection should be dismissed. In its Opposition to CCMI’s motion, the Lawyers Guild notes that the cited language discusses only when particular filings will be considered, not when they may or must be submitted to the Commission. On this procedural point, the Lawyers

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<sup>9</sup> *Id.* at 1-2. In support of this assertion, CCMI attaches to its Petition three letters. The first letter, from Pastor Joe Guglielmo, President of CCMI, declares that CCMI has “no financial or ownership ties to any other organization” and that “there is no controlling entity that has legal or financial authority over CCM[I].” *CCMI Petition*, Exhibit 1. The second letter, from Pastor Michael Kestler, President of Calvary Chapel Twin Falls (“CCTF”) and Vice President of CSN International, declares that “neither CCTF nor CSN has any legal partnership or control over any of the applicants cited in the letter.” *CCMI 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....” *CCMI Petition*, Exhibit 3 at 1, 2.

<sup>10</sup> *Id.* at 2. See notes 3 and 4, *supra*, and accompanying text.

<sup>11</sup> *Educational Purpose: Use of Station, Calvary Chapel of Manitowac* (filed April 15, 2004) (“*Revised Statement*”).

<sup>12</sup> *CCMI Petition* at 7-8.

<sup>13</sup> As stated above, it is undisputed that CCMI was separately incorporated within Manitowac.

<sup>14</sup> *In the Matter of Creation of Low Power Radio Service* (MM Docket No. 99-25), 15 FCC Rcd 2205 (2000). Paragraph 132 states in relevant part: “Petitions and informal objections will not be considered unless and until the application has been tentatively selected for processing and found acceptable for filing.”

Guild is correct. Informal Objections, in particular, may be filed at any time before FCC action on license applications.<sup>15</sup> For this reason, we deny CCMI's motion to dismiss the Lawyers Guild objection.

The objection itself deals primarily with the identical issue for which the CCMI application was dismissed, namely the attribution to CCMI of other Calvary Chapel radio stations.<sup>16</sup> Because this issue has been adequately addressed on reconsideration, it requires no further discussion here. Additionally, the Lawyers Guild notes in its objection that "the board of this applicant is composed of three persons, with the pastor holding 100% of the 'entity's' votes."<sup>17</sup> The Lawyers Guild states that "the ability of one person to control this entity raises significant questions concerning whether this applicant meets the FCC's eligibility criterion" for LPFM licensees.<sup>18</sup> There is no provision in our rules that prohibits one person from controlling 100% of the votes of the board of an LPFM licensee, and the Lawyers Guild cites no other authority for why this arrangement should affect an LPFM applicant's basic qualifications. For these reasons, we deny the Lawyers Guild's Informal Objection.

### **Conclusion/Actions**

Accordingly, Calvary Chapel of Manitowac, Inc.'s Petition for Reconsideration IS GRANTED and its application for a new LPFM station IS REINSTATED. Furthermore, the September 27, 2001, Informal Objection of the Lawyers Guild IS REINSTATED. Calvary Chapel of Manitowac, Inc.'s October 25, 2001, Motion to Dismiss and the Lawyers Guild Informal Objection ARE DENIED, and Calvary Chapel of Manitowac's application (File No. BNPL-20010614AIW) for a new LPFM station IS GRANTED. The authorization will follow under separate cover.

Sincerely,

Peter H. Doyle, Chief  
Audio Division  
Media Bureau

cc: Calvary Chapel of Manitowac, Inc.  
National Lawyers Guild Center on Democratic Communications

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<sup>15</sup> See 47 C.F.R. § 73.3587.

<sup>16</sup> In its informal objection, the Lawyers Guild argues that CCMI "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 CCMI'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, CCMI should not be granted a license for a new LPFM station because, unless CCMI establishes its distinct local purpose, "it must be considered an affiliate of the National Calvary Chapel under the Commission's attribution rules." *Id.* at 5-6. If considered an affiliate, the Lawyers Guild argues, CCMI 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.*

<sup>17</sup> *Id.* at 6.

<sup>18</sup> *Id.* at 6-7.