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In Reply Refer To:

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Ms. Jennifer Cox-Hensley
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In Re: **WSRC(FM), Waynetown, Indiana**
Facility ID Number: 92984
File Number: BLED-20100903AAE

Petition for Reconsideration

Dear Ms. Cox-Hensley and Counsel:

This letter is in regard to the Petition for Reconsideration (“Petition”) filed by Jennifer Cox-Hensley (“Petitioner”) on September 21, 2010.¹ The Petition seeks reconsideration of our September 15, 2010, grant of a license application (“License Application”) to Calvary Chapel of Crawfordsville (“Calvary”) for noncommercial educational FM radio station WSRC(FM), Waynetown, Indiana (the “Station”).² Calvary filed an “Opposition to Informal Objection” (“Opposition”) on September 28, 2010. For the reasons discussed below, we grant, in part, the Petition, rescind the grant of the License Application, and direct Calvary to comply with its obligation to divest its interest in the LPFM station within 30 days. If Calvary is unable to divest the LPFM station within 30 days, we will dismiss the License Application as patently defective.

Background. Horizon Christian Fellowship assigned the Station’s construction permit (“CP”) to Calvary on March 6, 2009. The Media Bureau (“Bureau”) extended the expiration date of the CP 18

¹ Although the Petition is dated September 15, 2010, the Commission received it on September 21, 2010.

² Petitioner filed a Petition to Deny Calvary’s License Application. However, Section 309(c)(2)(C) of the Communications Act of 1934, as amended, excludes this type of application from the requirements of a 30-day public notice and petition to deny process. *See* 47 U.S.C. § 309(c)(2)(C). We would treat the Petition to Deny as an informal objection if it had been filed before the grant of the License Application. Because the Petition to Deny was received after the grant of the License Application, we are treating the pleading as a Petition for Reconsideration rather than a Petition to Deny.

months from consummation to September 6, 2010.³ The CP included a condition requiring Calvary to divest its interest in its low power station WVRG-LP because Commission rules (the “Rules”) prohibit cross-ownership of an LPFM station and a full service broadcast station.⁴ However, in the assignment application, Calvary stated it would convert WVRG-LP into a student run station.⁵ The Bureau granted that application without a divestiture condition in the assignment authorization. Nonetheless, the CP still required Calvary to comply with the divestiture condition.⁶

Calvary filed the License Application on September 3, 2010. On September 15, 2010, Calvary notified the Bureau that it had converted WVRG-LP into a student run station. The Bureau granted the License Application on September 15, 2010.

The Petition essentially argues the Commission erred in granting Calvary the License Application. Petitioner first alleges the Station’s antenna is mounted eight meters above its authorized height, causing the station’s service contour to overlap with WJCF-FM, Morristown, Indiana.⁷ Petitioner states in an affidavit that these allegations are based on her personal observations. The affidavit does not allege to have taken any actual measurements of the antenna height. Petitioner further alleges the Station was not fully constructed as of the CP’s expiration date. Finally, Petitioner argues Calvary has not divested WVRG-LP as required by the CP.

³ See FCC File Nos. BAPED-20080813ABA, BMPED-20090612AJO, and BMPED-20091228ABO. The extension was based on Calvary’s “eligible entity” showing in the assignment application, which was granted before the suspension of the “eligible entity” rule provision took effect. See 47 C.F.R. §73.3598(a); see also *Media Bureau Provides Notice of Suspension of Eligible Entity Rule Changes*, Public Notice, 26 FCC Rcd 10370 (MB 2011).

⁴ See 47 C.F.R. §73.860. (Effective February 8, 2013, the Commission revised Section 73.860 to allow for cross-ownership of translators and LPFM stations in certain situations. See *Creation of A Low Power Radio Service, Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, 27 FCC Rcd 15402 (2012). The change does not affect the rule at issue in this case).

⁵ Section 73.860(d)(3) of the Rules allows an accredited college or university to have an ownership interest in a full service radio station that is not student run and a student run LPFM station.

⁶ Special operating condition 5 of the CP states: “Prior to commencing operations, the permittee must divest itself of its interest in, and sever any connection with, station WVRG-LP, Crawfordsville, Indiana (FIN: 124827). See 47 C.F.R. § 73.860; see also *Creation of a Low Power Radio Service, Second Order on Reconsideration and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 6563 (2005). Program test authority for this facility will not be granted in the absence of a demonstration of compliance with this condition.” FCC File No. BMPED-20091228ABO.

⁷ Calvary notes Petitioner is a principal of WJCF-FM, though Petitioner did not identify herself as such. However, Petitioner does state in her affidavit that she has standing based on “future interference to WJCF-FM.” Our records indicate Petitioner is President of Indiana Community Radio Corporation, licensee of WJCF-FM, which gives Petitioner standing. Section 309(d)(1) of the Act provides that only a “party in interest” may file a petition to deny. 47 U.S.C. § 309(d)(1). The Commission accords party in interest status to a petitioner if grant of the application would result in, or be reasonably likely to result in, some injury of a direct, tangible or substantial nature. See, e.g., *Pinelands, Inc.*, 7 FCC Rcd 6058, 6063 (1992). The Commission has long recognized that a competing broadcaster qualifies as a party in interest. See *Anabelle Savage*, 25 FCC Rcd 3665, 3667 (2010). Thus, here, as a competing broadcaster, Petitioner did have standing to file her Petition to Deny, which we are now considering as a Petition for Reconsideration.

In its Opposition, Calvary provides a detailed affidavit from Mr. Robert H. Branch, Jr., a broadcast technical consultant attesting the antenna was mounted at the correct height on the tower.⁸ Calvary also provides affidavits from Mr. Branch and Jeffrey M. Clark, Treasurer and Assistant Pastor of Calvary, attesting to the operational status and limited program tests on September 3, 2010, with full programming commencing on September 24, 2010. Finally, Calvary argues that instead of divesting WVRG-LP, it converted the LPFM station into a student-run station, as pledged in the License Application and pursuant to Section 73.860(d) of the Rules.⁹

Discussion. The Commission will consider a Petition for Reconsideration only when the petitioner shows either a material error in the Commission's original order or raises changed circumstances or unknown additional facts not known or existing at the time of petitioner's last opportunity to present such matters.¹⁰

Petitioner has not demonstrated error with respect to the antenna installation or the Station's operational status. The affidavits provided by Calvary demonstrate the antenna was properly mounted and the Station was operational as of the filing of the license application, with full-time programming beginning on September 24, 2010.

Petitioner, however, is correct that Calvary was required to divest WVRG-LP. Calvary's CP specifically required the divestiture of that station prior to commencement of operations.¹¹ Moreover, Calvary's attempt to employ Section §73.860(d) of the Rules¹² does not save it from the requirement to divest WVRG-LP prior to commencement of operations. The Rules allow only a college or university to have an ownership interest in a full service station and LPFM station if it "can certify that the existing [full power] broadcast radio station is not student run. This exception applies only to parties that...[a]re accredited educational institutions, and ...[a]pply for an authorization for an LPFM station that will be managed and operated on a day-to-day basis by students..."¹³ Calvary has not demonstrated it is an accredited college or university. Consequently, Calvary cannot have ownership interests in both the Station and WVRG-LP.

Accordingly, we will rescind the grant of the License Application for the Station.¹⁴ Calvary must discontinue program test operations on the Station because it has not complied with the terms and conditions of the CP.¹⁵

⁸ The affidavit further provides a photo and diagram of the tower to demonstrate the antenna was mounted at the authorized height. The affidavit also suggests Petitioner could have made a mistake by using ASR height data that was overstated to accommodate future antennas.

⁹ 47 C.F.R. §73.860(d).

¹⁰ See 47 C.F.R. §1.106, *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966), and *National Association of Broadcasters*, 18 FCC Rcd 24414, 24415 (2003). It is also appropriate to consider new facts not previously presented when such consideration is required in the public interest. See 47 C.F.R. §1.106(c)(2).

¹¹ See FCC File No. BMPED-20090612AJO.

¹² 47 C.F.R. §73.860(d).

¹³ *Id.*

¹⁴ See 47 U.S.C. § 312(a)(2) (The Commission can rescind a station license "because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application").

Because the Bureau granted the License Application in error, we find that it is appropriate to give Calvary 30 days to request cancellation of the WVRG-LP authorization and to amend the License Application to note that Calvary has complied with the divestiture condition. Absent such action, we will dismiss the License Application as patently defective pursuant to Section 73.3566(a) of the Rules¹⁶ and the CP will be automatically forfeited pursuant to Section 73.3598(e) of the Rules.¹⁷ At that time, we will update our public and internal databases to note the expiration of the CP.

Conclusions/Actions. Accordingly, IT IS ORDERED that the September 21, 2010 Petition for Reconsideration filed by Jennifer Cox-Hensley IS GRANTED in part and DENIED in all other respects. IT IS FURTHER ORDERED that the grant of License Application (File No. BLED-20100903AAE) IS RESCINDED and the License Application WILL BE DISMISSED AS OF February 6, 2014, unless Calvary Chapel of Crawfordsville has divested WVRG-LP, Crawfordsville, IN (Fac. ID No. 124827) and amended the License Application accordingly. All authority to operate WSRC(FM), Waynetown, Indiana (Fac. ID No. 92984) IS TERMINATED and any operation of the facility must cease immediately. Upon dismissal of the License Application, the Commission's public and internal databases will be modified to reflect the expiration of the construction permit (*see* FCC File Nos. BPED-19990311MF as last modified by BMPED-20091228ABO).

Finally, it is imperative to the safety of air navigation that any prescribed painting and illumination of the WSRC(FM) tower be maintained while the station is silent. Accordingly, the owner of the tower where the WSRC(FM) transmitting antenna is located is required to maintain, pursuant to Section 303(q) of the Communications Act of 1934, as amended, the tower in the manner prescribed by our Rules.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁵ See 47 C.F.R. § 73.1620(a) and FCC File No. BMPED-20091228ABO.

¹⁶ See 47 C.F.R. § 73.3566(a).

¹⁷ 47 C.F.R. § 73.3598(e).