

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 88-585

In re Applications of

VOICE OF CALVARY            File No. BPED-830419AH  
EDUCATIONAL  
MINISTRIES,  
INC.  
(hereafter Voice)  
Roanoke, Virginia

UNITY OF                      File No. BPED-830830AE  
ROANOKE VALLEY  
(hereafter Unity)  
Salem, Virginia

For a Construction Permit for a New  
Noncommercial Educational FM Station on  
Channel 217C (91.3 MHz)

#### HEARING DESIGNATION ORDER

Adopted: December 13, 1988; Released: January 31, 1989

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Unity*. *Unity* proposes to construct a tower near other broadcast facilities. Our study indicates that the concurrent operation of the new proposal and the existing facilities may significantly exceed the radio frequency radiation guidelines under 47 C.F.R. § 1.1307(b). Accordingly, the applicant is required to amend its application, within 30 days of the date of this Order, to demonstrate compliance with the RF radiation guidelines. *Unity* must submit a detailed study based upon OST Bulletin No. 65, October 1985 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Radiation." This study must include the cumulative effect of the proposed operation and any co-located or nearby RF sources. If a fence is to be built, the applicant must give the distance from the base of the tower to the fence. Since *Unity's* proposal may have a significant environmental impact as defined by 47 C.F.R. § 1.1307, it is required to submit the environmental impact information described in 47 C.F.R. § 1.1311. Accordingly, *Unity* will be required to file, within 30 days of the release of this Order, an environmental assessment with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmen-

tal phase is completed. See *Golden State Broadcasting*, 71 FCC 2d 229 (1979), recon. denied sub nom. *Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

3. Applicants for new broadcast stations are required by 47 C.F.R. § 73.3580 to give local notice of the filing of their applications. We have no indication that *Voice* has published the required notice. To remedy this deficiency, *Voice* must publish local notice of the application, if it has not already done so, and so inform the presiding Administrative Law Judge within 30 days of the release of this Order, or an appropriate issue will be specified by the Judge. Further, we note that *Unity* has published the required notice, but the notice is deficient because *Unity* failed to give the location of its proposed main studio site. To remedy this deficiency, *Unity* must republish an amended local notice of the application, if it has not already done so, and so inform the presiding Administrative Law Judge within 30 days of the release of this Order, or an appropriate issue will be specified by the Judge.

4. Neither applicant has indicated whether an attempt has been made to negotiate a share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency and thus better serve the public interest. *Granfalloon Denver Educational Broadcasting, Inc.*, 43 Fed. Reg. 49560 (Oct. 24, 1978). It should be noted that our action specifying a share-time issue is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time agreement between themselves.

5. The respective proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining pursuant to 47 U.S.C. § 307(b) which of the proposals would better provide a fair, efficient, and equitable distribution of radio service, a contingent comparative issue will also be specified.

6. Inasmuch as it also appears that there would be a significant difference in the size of the areas and populations which would receive service from the proposals and this proceeding involves competing applications for noncommercial educational facilities, the standard areas and populations issue will be modified in accordance with the Commission's prior action in *New York University*, FCC 67-673, released June 8, 1967, 10 RR 2d 215 (1967). Thus, the evidence adduced under this issue will be limited to available noncommercial educational FM signals within the respective service areas.

7. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the "B" cut-off date, the last day for filing minor amendments as of right. Under 47 C.F.R. § 1.65, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	DATE AMENDMENTS FILED
Voice	December 6, 1985 (Engineering)
Unity	December 31, 1985 (Engineering)
	January 8, 1986; March 11, 1986
	October 9, 1986 (Engineering)

8. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, IT IS ORDERED, That, pursuant to 47 U.S.C. § 309(e), the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Unity, in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by Sections 1.1301-1319 of the Commission's Rules.

2. To determine: (a) the number of other reserved channel noncommercial educational FM services available in the proposed service area of each applicant, and the area and population served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; and (c) in light of 47 U.S.C. § 307(b) which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

3. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to § 307(b), the extent to which each of the proposed operations will be integrated into the overall educational operation and objectives of the respective applicants; and whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications, if either, should be granted.

10. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Unity shall submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division.

11. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Voice shall inform the presiding Administrative Law Judge as to whether local notice of filing of the application has been published.

12. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Unity shall inform the presiding Administrative Law Judge as to whether a corrected local notice of the filing of its application has been republished pursuant to 47 C.F.R. § 73.3580.

13. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by the following applicants ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein: Voice, Unity.

14. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to

the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

15. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 C.F.R. § 1.221(c), in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

16. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to 47 U.S.C. § 311(a)(2) and 47 C.F.R. § 73.3594, give notice of the hearing within the time and in the manner therein prescribed, and shall advise the Commission of the publication of such notice as required by 47 C.F.R. § 73.3594(g).

#### FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief  
Audio Services Division  
Mass Media Bureau