



**Federal Communications Commission
Washington, D.C. 20554**

March 25, 2015

In Reply Refer To:
1800B3-ATS

Mr. Patrick L. Singh
Gospel Light Prayer Church Inc.
873 Sanford Ave.
Irvington, NJ 07111

Mr. Anselm LeBourne
Caribbean Sports International, Inc.
36 Newark Way
Maplewood, NJ 07040

Mr. Theodore Fayette
Optimum Voice, A NJ Nonprofit Corp.
68 South Harrison St.
East Orange, NJ 07018

Mr. Brendon Devlin
SIRadio, Inc.
85 West Northfield Road
Livingston, NJ 07039

Mr. Jorge Valdez
First Spanish Free Methodist Church of Passaic
575 Main Avenue
Passaic, NJ 07055

Mr. David Klompier
Preakness Valley United Reformed Church
480 Valley Road
Wayne, NJ 07470

In re: LPFM MX Group 244

Gospel Light Prayer Church Inc.
New LPFM, Kearney, New Jersey
Facility ID Number: 197066
File Number: BNPL-20131114BFK

Caribbean Sports International, Inc.
New LPFM, Maplewood, New Jersey
Facility ID Number: 195682
File Number: BNPL-20131112BWI

Optimum Voice, A NJ Nonprofit Corp.
New LPFM, Orange, New Jersey
Facility ID Number: 194097
File Number: BNPL-20131025AGU

SIRadio, Inc.
New LPFM, Orange, New Jersey
Facility ID Number: 196122
File Number: BNPL-20131114BGJ

First Spanish Free Methodist Church of
Passaic
New LPFM, Passaic, New Jersey
Facility ID Number: 197655
File Number: BNPL-20131115ART

Preakness Valley United Reformed
Church
New LPFM, Wayne, New Jersey
Facility ID Number: 194694
File Number: BNPL-20131112CAH

Petitions to Deny

Dear Messrs. Singh, LeBourne, Fayette, Devlin, Valdez and Klompfen:

We have before us: 1) the application of Gospel Light Prayer Church, Inc. ("GLPC"), Caribbean Sports International, Inc. ("CSI"), Optimum Voice, a NJ Nonprofit Corp. ("OV"), SIRadio, Inc. ("SIRadio"), First Spanish Free Methodist Church of Passaic ("First Spanish"), and Preakness Valley United Reformed Church ("Preakness") for new LPFM stations proposing to serve various communities in New Jersey ("GLPC Application," "CSI Application," "OV Application," "SIRadio Application," "First Spanish Application," and "Preakness Application," respectively); 2) the Petition to Deny the GLPC Application filed by CSI ("GLPC Petition");¹ 3) the Petition to Deny the CSI Application filed by GLPC ("CSI Petition");² 4) the Petitions to Deny the OV Application filed by First Spanish and GLPC ("OV-First Spanish Petition" and "OV-GLPC Petition," respectively);³ 5) the Petition to Deny the First Spanish Application filed by CSI ("First Spanish Petition");⁴ and 6) the time-share agreement jointly filed by GLPC and First Spanish ("Agreement").

For the reasons set forth below, we deny the GLPC Petition, deny the CSI Petition, grant the First Spanish Petition, dismiss the OV-First Spanish Petition and OV-GLPC Petition as moot, dismiss the First Spanish Application, dismiss the OV Application, dismiss the SIRadio Application, reject the Agreement, and begin a 30-day period in which GLPC, CSI, and Preakness may identify their preferred time slots pursuant to involuntary time-share procedures.

¹ The GLPC Petition was filed on October 6, 2014. GLPC filed an opposition on October 20, 2014 ("GLPC Opposition"). CSI filed a reply on October 27, 2014 ("CSI Reply").

² The CSI Petition was filed on October 7, 2014. CSI filed an opposition on October 17, 2014 ("CSI Opposition"). First Spanish filed a reply on October 20, 2014 ("First Spanish Reply"). CSI filed a supplement on October 27, 2014 ("CSI Supplement").

³ The OV-First Spanish Petition was filed on September 8, 2014. The OV-GLPC Petition was filed on October 3, 2014. GLPC filed a supplement on November 18, 2014. OV did not file an opposition.

⁴ The First Spanish Petition was filed on October 6, 2014. First Spanish filed an opposition on October 20, 2014 ("First Spanish Opposition"). CSI filed a reply on October 27, 2014 ("CSI Reply").

Background. GLPC, CSI, OV, Siradio, First Spanish, and Preakness filed their respective applications during the October 2013 LPFM filing window. The Media Bureau (“Bureau”) determined that all six applications were mutually exclusive and identified them as LPFM MX Group 244.⁵ On September 5, 2014, the Commission identified the applications of GLPC, CSI, OV, First Spanish, and Preakness as the tentative selectees of LPFM MX Group 244 on a time-share basis, began a 30-day period for filing petitions to deny against the applications, and began a 90-day period in which the tentative selectees could file time-share agreements.⁶ On November 5, 2014, GLPC and First Spanish filed a time-share agreement, aggregating their points for a total of 10 points.⁷

Discussion. Pursuant to Section 309(d) of the Communications Act of 1934, as amended, petitions to deny must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.⁸

GLPC Application. CSI states that “[i]t is common knowledge that less than 75% of the Board of [GLPC] are citizens of the United States America. Therefore, [GLPC] has failed to meet the minimum requirements for an applicant for an [LPFM] radio station and must be dismissed.”⁹ In the GLPC Opposition, GLPC states that it accurately listed that all of its board members are United States citizens.¹⁰ In the Reply, CSI requests that the Commission require GLPC to provide proof of its board member’s citizenship.¹¹ We reject CSI’s argument. As the petitioner, the burden is on CSI to substantiate its argument.¹² CSI provides no evidence for its allegation and we will therefore deny the GLPC Petition.

CSI Application. First Spanish argues that CSI is not eligible to hold an LPFM license because its principal, Anselm LeBourne, engaged in the unlicensed operation of a radio station.¹³ In support of this allegation, CSI provides a printout of an article found on the website for The Village Green, a local newspaper, in which LeBourne is quoted as saying “I worked at a radio station in New Jersey, an underground station. I did a lot of my own stuff. Then I decided I wanted my own station.”¹⁴ CSI responds that the newspaper article was a “misquote by the report which was subsequently corrected.”¹⁵

⁵ *Media Bureau Identifies Mutually Exclusive Applications Filed in the LPFM Window and Announces 60-Day Settlement Period; CDBS Is Now Accepting Form 318 Amendments*, Public Notice, 28 FCC Rcd 16713 (MB 2013).

⁶ *Commission Identifies Tentative Selectees in 111 Groups of Mutually Exclusive Applications Filed in the LPFM Window; Announces a 30-Day Petition to Deny Period and a 90-Day Period to File Voluntary Time-Share Proposals and Major Change Amendments*, Public Notice, 29 FCC Rcd 10847 (2014) (“September Public Notice”).

⁷ The *September Public Notice* explained that tentative selectees may file time-share agreements to aggregate their points and break ties. *See id.* at 10850. *See also* 47 C.F.R. § 73.872(c).

⁸ 47 U.S.C. § 309(d).

⁹ GLPC Petition at 1.

¹⁰ GLPC Opposition at 1. *See also* GLPC Application at Section II, Question 3.a.

¹¹ GLPC Reply at 1.

¹² *See* 47 U.S.C. § 309(d).

¹³ CSI Petition at 1.

¹⁴ *Id.*

¹⁵ CSI Opposition at 1. CSI provides a corrected copy of the article, which quotes LeBourne as saying “An underground station in New Jersey approached me to work for them. I did a lot of my own stuff. I declined and decided I wanted to form my own Internet radio station.” The CSI Supplement includes an affidavit from LeBourne

(continued)

First Spanish alleges that “LeBourne requested [The Village Green reporter] to administered the changes, so his organization can be in good standing in the eyes of the FCC. This is clear attempt to undermine the intelligence of the FCC.”¹⁶ We find that the newspaper article provided by First Spanish is not sufficient to demonstrate that LeBourne engaged in unlicensed radio operation.¹⁷ Accordingly, we will deny the CSI Petition.

First Spanish Application. CSI argues that First Spanish is not eligible to hold an LPFM license because it is not recognized by the State of New Jersey as a nonprofit entity. CSI notes the First Spanish Application did not provide any documentation showing First Spanish’s legal status and that there is no record for First Spanish in the State of New Jersey Division of Revenue and Enterprise Services database.¹⁸ First Spanish states that it mistakenly failed to provide a copy of its Articles of Incorporation and submits a copy of a filing made with the County Clerk of the County of Passaic showing that First Spanish had incorporated as a religious organization in 1989.¹⁹ In the First Spanish Reply, CSI argues that the First Spanish Opposition does not show that First Spanish is recognized by New Jersey, and that the documentation First Spanish provided should be disregarded because it was not included with the First Spanish Application.²⁰

The Rules provide that an LPFM station may be licensed to a nonprofit educational organization for the advancement of an educational program.²¹ An applicant “must submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation. Applicants that fail to provide these materials are subject to dismissal.”²² The Commission has stated that LPFM applicants must show that they were recognized under state law *at the time of filing*.²³ First Spanish has not demonstrated that is recognized by the State of New Jersey as a nonprofit entity. Although First Spanish has shown that is registered with the County of Passaic, it has not demonstrated that it has obtained recognition from the State of New Jersey.²⁴ We thus find First Spanish ineligible to

in which he states that he has never been associated with an underground or unlicensed on-air radio station. See CSI Supplement at Affidavit of Anselm LeBourne.

¹⁶ CSI Reply at 1.

¹⁷ See *Pikes Peak Broadcasting Co.*, Memorandum Opinion and Order and Notice of Apparent Liability, 12 FCC Rcd 4626, 4630 (1997) (a newspaper article is not an acceptable substitute for the requirement of Section 309(d) of the Communications Act that allegations in a petition to deny be supported by the affidavit of a person with personal knowledge of the facts alleged).

¹⁸ First Spanish Petition at 1-2. See also <https://www.njportal.com/dor/businessrecords/>.

¹⁹ First Spanish Opposition at 1.

²⁰ First Spanish Reply at 1-2.

²¹ 47 C.F.R. § 73.853(a). See also *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2213 (2000) (“having decided to establish LPFM as a noncommercial service, we will require that LPFM licensees comply with the eligibility requirements of [47 U.S.C. § 397(6)(A)].”).

²² Instructions to FCC Form 318, Section II, Question 2, Subsection 2(a).

²³ See *Application for Review of Decisions Regarding Six Applications for New Low Power FM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13393-96 (2013) (affirming dismissal of LPFM applications where applicants did not incorporate until after filing their respective applications and did not demonstrate that they were recognized nonprofit entities under state law at the time of filing).

²⁴ First Spanish filed its incorporation documents with Passaic pursuant to Title 16 of New Jersey Revised Statutes, which permits religious societies or congregations to incorporate with the county clerk. See N.J. Rev. Stat. § 16:1-2. However, the State of New Jersey Department of the Treasury website states that such applicants must also register with the State. See *Starting a Nonprofit Organization In New Jersey*,

(continued)

hold an LPFM license and will grant the First Spanish Petition, dismiss the First Spanish Application, and reject the Agreement. We will also dismiss the SIRadio Application as a non-tentative selectee.²⁵

Involuntary Time-sharing. The dismissal of the First Spanish Agreement and rejection of the Agreement results in a four-way tie between GLPC, CSI, OV, and Preakness. The *September Public Notice* provided 90 days for the tentative selectees in LPFM MX Group 244 to reach a voluntary time-sharing agreement.²⁶ Because they have not filed an acceptable agreement, we will grant the applications pursuant to the involuntary time-sharing procedures set forth in Section 73.872(d).²⁷

We first identify the three of the four remaining tied applicants that have been local²⁸ for the longest uninterrupted periods of time.²⁹ Preakness has been established since 1950, GLPC since 1996, CSI since 1997, and OV since 2011.³⁰ We will thus accept preferred time slots from Preakness, GLPC and CSI, and dismiss the OV Application.³¹ The Commission will then, subject to a complete regulatory review, simultaneously grant the applications, assigning an equal number of hours per week to operate the proposed station to the three remaining applicants in LPFM MX Group 244 by first assigning hours to Preakness, then to GLPC, and then to CSI.

To clarify, we are providing the applicants thirty (30) days to simultaneously and confidentially submit their preferred time slots. Each applicant must certify that it did not collude with any other applicant in submitting its preference. We will use the information provided by the applicants to assign time slots, per the Rules.³² During this 30 day period, we will continue to entertain voluntary time-sharing arrangements. Applicants that are unable or unwilling to submit voluntary time-sharing arrangements and that instead choose to CONFIDENTIALLY submit their preferred time slots MUST select one of the time slots described in note 32, below. Any confidential requests for preferred time slots must be emailed to: gary.loehrs@fcc.gov

<http://www.state.nj.us/treasury/taxation/rsb100.shtml> (“Q. How does my nonprofit organization become incorporated? A. . . . Religious organizations may want to contact the Corporate Filing Unit for information on Title 16 incorporation (certificate filed with the county *and then with the State*), which involves only a \$5 State filing fee and no annual filing requirements.) (emphasis added). First Spanish has not shown that it filed its certificate with the State of New Jersey.

²⁵ See *September Public Notice*, 29 FCC Rcd at 10852 (“We direct the staff, once the petition to deny period has run, to conduct a final study of each tentatively selected application in accordance with the Bureau’s routine processing procedures. . . . we direct the staff to grant the application(s) on the basis of the point system determinations and dismiss all competing applications.”).

²⁶ *September Public Notice*, 29 FCC Rcd at 8668. See also 47 C.F.R. § 73.872(c).

²⁷ 47 C.F.R. § 73.872(d); see also Instructions to FCC Form 318, Section IV at 9; *Creation of a Low Power Radio Service, Fifth Order on Reconsideration and Sixth Report and Order*, 27 FCC Rcd 15402, 15475 (2012).

²⁸ See 47 C.F.R. § 73.853(b).

²⁹ 47 C.F.R. § 73.853(b), FCC Form 318, Section IV, Question 1 (requiring applicants to provide the date on which the applicant qualified as local).

³⁰ See Preakness Application at Attachment 10, CLPC Application at Attachment 10, CSI Application at Attachment 10, and OV Application at Attachment 10.

³¹ Because we are dismissing the OV Application, we need not consider the arguments in the OV-First Spanish Petition or the OV-GLPC Petition and will dismiss those petitions as moot.

³² 47 C.F.R. § 73.872(d)(2). Here, where there are three tied, grantable applications, the applicants must state a preference for one of the following time slots: 2 a.m. – 9:59 a.m., 10 a.m. – 5:59 p.m., and 6 p.m. – 1:59 a.m. If there are conflicting preferences, the Bureau will apply the provisions of 47 C.F.R. § 872(d)(2).

and james.bradshaw@fcc.gov.³³ Failure to designate a preferred time slot, failure to designate a time slot provided by the Rules, or failure to certify under penalty of perjury that the applicant did not collude with another other applicant in submitting its preference, will result in the Bureau selecting a time slot for the applicant.

Action on the applications will be deferred for thirty days from the date of this letter to permit the applicants to respond. Any time-share agreements must be submitted in writing, as an amendment to one or more of the applications (with a copy to the email addresses listed below), signed by each applicant, and satisfy the following requirements: (1) the agreement must include all applicants captioned on this letter; (2) the proposal must specify the proposed hours of operation of each time-share proponent; (3) the proposal must not include simultaneous operation of the time-share proponents; and (4) each time-share proponent must propose to operate for at least 10 hours per week.³⁴

Interlocutory Appeals. Finally, we remind the applicants that a petition for reconsideration of this letter as it pertains to the GLPC Application, the CSI Application, or the Preakness Application would be procedurally improper. Section 1.106(a)(1) of the Rules specifically prohibits petitions for reconsideration of interlocutory actions.³⁵ This letter takes no action on the GLPC Application, the CSI Application, or the Preakness Application, and is therefore an interlocutory action with regard to those applications.³⁶ Accordingly, while those applications remain pending, we will dismiss any petition for reconsideration filed with respect to this letter.³⁷

Conclusion. Accordingly, for the reasons set forth above, IT IS ORDERED that the Petition to the Deny the application of Gospel Light Prayer Church, Inc., filed on October 6, 2014, by Caribbean Sports International IS DENIED.

IT IS FURTHER ORDERED that the Petition to the Deny the application of Caribbean Sports International filed on October 7, 2014, by Gospel Light Prayer Church, Inc., IS DENIED.

IT IS FURTHER ORDERED that the Petition to the Deny the application of First Spanish Free Methodist Church filed on October 6, 2014, by Caribbean Sports International IS GRANTED.

IT IS FURTHER ORDERED that the Petition to the Deny the application of Optimum Voice, A NJ Nonprofit Corp. filed on September 8, 2014, by First Spanish Methodist Church, and the Petition to Deny the application of Optimum Voice, A NJ Nonprofit Corp. filed on September 8, 2014, by Gospel Light Prayer Church Inc. ARE DISMISSED AS MOOT.

³³ Any such email may not contain additional information that would violate the Commission's *ex parte* rules, §§ 1.1200 *et seq.*

³⁴ 47 C.F.R. § 73.872(c)(1)(i) – (iii). The agreement can only be modified if all of the parties submit a written agreement, signed by each party, to the Commission, Attention: Audio Division, prior to the change.

³⁵ 47 C.F.R. § 1.106(a)(1) (prohibiting petitions for reconsideration of interlocutory actions).

³⁶ See *Bennett v. Spear*, 520 US 154, 178 (1977) (holding an agency's action is final and reviewable only if, *inter alia*, it “mark[s] the ‘consummation’ of the agency's decision making process - it must not be of a merely tentative or interlocutory nature.”) (internal quotes and cites omitted).

³⁷ See *Patrick J. Vaughn, Esq.*, Letter, 22 FCC Rcd 11165 (MB 2007) (dismissing petition for reconsideration filed against interlocutory order).

IT IS FURTHER ORDERED that the application of First Spanish Methodist Church (BNPL-20131115ART) for a new LPFM station at Passaic, New Jersey, IS DISMISSED.

IT IS FURTHER ORDERED that the application of Optimum Voice, A NJ Nonprofit Corp. (BNPL-20131025AGU) for a new LPFM station at Orange, New Jersey, IS DISMISSED.

IT IS FURTHER ORDERED that the application of SIRadio, Inc., (BNPL-20131114BGJ) for a new LPFM station at Orange, New Jersey, IS DISMISSED.

IT IS FURTHER ORDERED that the time-share agreement filed on November 5, 2014, by Gospel Light Prayer Church, Inc., and First Spanish Methodist Church IS REJECTED.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" followed by a stylized monogram "PH".

Peter H. Doyle
Chief, Audio Division
Media Bureau