

# FEDERAL COMMUNICATIONS COMMISSION

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July 15, 2008

Sancta Familia Academy, Inc.  
1204 No. Harbor City Blvd.  
Melbourne, FL 32935

Central Florida Educational Foundation, Inc.  
1065 Ranier Drive  
Altamonta Springs, FL 32714

In re: WPOZ (FM), Union Park, FL  
Central Florida Educational Foundation, Inc.  
Facility ID No. 9876  
Petition for reconsideration of grant of  
construction permit BMPED-20070828ACD

Dear applicants:

This letter refers to construction permit BMPED-20070828ACD, which was granted on September 7, 2007 to Central Florida Educational Foundation, Inc. ("CFEF") for its noncommercial station WPOZ (FM), Union Park, FL. On October 9, 2007, Sancta Familia Academy, Inc. ("Academy") filed a petition for reconsideration against this granted construction permit.<sup>1</sup> However, for the reasons set forth below, we deny the petition for reconsideration and affirm grant of the application. Because matters raised in these pleadings tend to fall into distinct groups, we will address them in that manner.

**Expedited grant of CFEF's minor change application.** Academy complains that it had insufficient time to file a petition to deny against CFEF's minor change construction permit application, because the staff acted on it on only five business days after it was filed. Academy avers it certainly would have timely filed pleadings against this application, had it had sufficient time to do so, because the WPOZ proposal adversely affects its interests. Academy believes that it could have filed a petition to deny which (it believes) would have prevailed, allowing its later-filed noncommercial educational (NCE) application for a new NCE station to be granted.

It is true that the staff expedited the processing of the WPOZ construction permit application, as it did (to the extent possible) for all minor change applications filed up to and including September 7, 2007, the last date on which minor change applications could be filed prior to the opening of the NCE new and major change application filing window on October 12. This was done so that applicants filing during the NCE filing period (such as Academy) could have a better sense of which minor change applications they would have to protect. It is also true that the expedited processing curtailed the time in which Academy could have filed objections against the CFEF proposal. However, it appears that Academy has raised all the points in its petition for reconsideration that it would have made in an informal objection. To insure a complete record in this matter, we will address those issues below.

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<sup>1</sup> CFEF filed an "Opposition to Petition for Reconsideration" on October 24, 2007, and Academy subsequently filed a "Reply" on November 9, 2007 and a "Supplement and Erratum to Reply" on November 9, 2007.

Moreover, Academy has chosen the wrong forum in which to object to the staff's processing of CFEF's application before its own. By public notice dated August 9, 2007, the Commission announced the procedures that would be used in the filing of NCE window applications.<sup>2</sup> That public notice clearly stated that minor change applications could be filed up through September 7, 2007, and that subsequent NCE window applicants could be precluded by prior filed minor change applications.<sup>3</sup> Academy was thereby on notice of the exact situation about which it now bitterly complains, that its NCE application for a new station is precluded by an earlier, acceptable minor change filing. Yet there is no evidence that Academy filed any appeal against the August 9, 2007 public notice: indeed, it did not file any complaint on that issue until its October 9, 2007 petition for reconsideration against the WPOZ construction permit. Consequently, Academy's complaints regarding the timing of CFEF's application and its own merit no further consideration.

**“Warehousing” of Spectrum.** Academy alleges that CFEF does not plan to construct the facility approved in the construction permit, and that the sole purpose of CFEF's filing was to preclude other competing applicants from obtaining construction permits for new NCE stations in the area. Academy points out that CFEF already operates two “mere translator” (actually satellite) stations in the area, WHYZ (FM), Palm Bay FL and WEAZ, Holly Hill, FL, suggesting that CFEF would have no real incentive to replace these existing facilities with increased facilities for WPOZ. Academy suggests that the WHYZ and WEAZ facilities could be upgraded to provide much the same coverage. Academy further contends that the Commission should have required an actual commitment from CFEF to build the upgraded WPOZ facility. In response, CFEF contends that Academy's assertions are speculative only and are actually false. CFEF avers that it does intend to construct the facility granted in the construction permit.

We agree with CFEF on this point. Academy provides no evidence to support its assertion that CFEF does not intend to build the facility as proposed and authorized. We conclude that CFEF has no intention of warehousing spectrum.

**Merits of Academy's proposed new NCE service.** Academy's goal is to obtain a construction permit for a new NCE station that would “provide[ ] greater local programming and ownership diversity in local markets ... consistent with the policy preferences of the FCC.” According to Academy, failure to grant its petition for reconsideration and dismiss CFEF's construction permit application would render impossible its dream of initiating a new local NCE service at Melbourne, in competition with CFEF. In its reply, Academy includes form letters of support from members of the local community.

We well recognize the value that new radio services can have on localism and diversity of programming. However, such considerations have no bearing on the matter at hand. The primary matter to be addressed here is the application of the first come / first served process used for NCE minor change applications, which is purely a mechanistic process based on filing date without consideration of other factors. In this instance, we conclude in this letter that CFEF's application was timely filed first, that the application was properly accepted for filing and was granted, and that Academy's application was second in time (“in queue”). Having established that sequence, Academy's queue application is subject to dismissal.

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<sup>2</sup> *Media Bureau Announces NCE FM New Station and Major Change Filing Procedures for October 12-October 19, 2007 Window; Limited Application Filing Freeze to Commence September 8, 2007*, Public Notice, DA 07-3521, 22 FCC Rcd 15050, released August 9, 2007.

<sup>3</sup> Specifically, the August 9, 2007 *Public Notice* clearly states that the filing freeze commencing September 8, 2007 was “designed to provide sufficient time for applicants and consulting engineers to verify the availability of spectrum and perfect applications, while minimizing expenditures on facility proposals that otherwise could be blocked by minor change filings immediately prior to opening of the window.”

**Alleged prohibited contour overlap, in violation of Section 73.509.** Academy alleges that the staff erred in granting the application because it creates prohibited contour overlap with third-adjacent channel station WKTO, Edgewater, FL. Specifically, Academy alleges that the 100 dBu interfering contour of WPOZ's construction permit overlaps the authorized 60 dBu contour of WKTO's construction permit BMPED-20061102ACB by 0.02 km, and provides exhibits to show the alleged prohibited contour overlap. CFEF responded with its own showing that no prohibited contour overlap exists with WKTO. In an exhibit attached to its reply, Academy also alleges that the WPOZ construction permit's 60 dBu service contour creates prohibited contour overlap with the 54 dBu interfering contour of first adjacent channel station WMNF, Tampa, FL by approximately 0.1 km.

CFEF's results mirror our own analysis, which show that the alleged prohibited contour overlaps do not exist. Academy's results were obtained using a commercial software product, using a different, higher resolution (and thus allegedly better) terrain database model.

When the Commission permitted the use of terrain databases in 1984, it did not adopt the use of a standard digitized terrain format. Any terrain database of 30 second accuracy or better could be employed. However, the Commission stated that a digitized data file would not take precedence over topographical maps (the manual method). In cases of dispute, topographic maps remain the standard in cases of questioned accuracy.<sup>4</sup> Here, as the party disputing the accuracy of the terrain data used to find no prohibited contour overlap, Academy is expected to supply topographic maps showing the data points, elevations, and antenna heights above the average elevation of the radials in the pertinent directions. It has not done so. Consequently, we find that Academy has not provided relevant information that would allow us to conclude that CFEF's and the Commission's results were in error.

**Conclusion.** We find that Academy's petition for reconsideration is unpersuasive on all counts. Accordingly, the petition for reconsideration filed by Sancta Familia Academy, Inc. IS DENIED, and the grant of application BMPED-20070828ACD IS AFFIRMED.

Sincerely,



Dale E. Bickel  
Senior Engineer  
Audio Division  
Media Bureau

cc Wood, Maines and Nolan, Chartered  
Fletcher, Heald and Hildreth

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<sup>4</sup> *Standardize the Use of Computer-Generated Terrain Data for Determining Antenna Height Above Average Terrain*, Gen. Docket 84-705, FCC 84-594, 57 RR 2d 415, 49 FR 48935 (1984); see also *Use of Computer-Generated Terrain Data for Determining Antenna Height Above Average Terrain*, Public Notice, FCC 84-341, released July 13, 1984. A copy of this public notice is posted at [http://www.fcc.gov/ftp/Bureaus/Mass\\_Media/Databases/documents\\_collection/84-341.pdf](http://www.fcc.gov/ftp/Bureaus/Mass_Media/Databases/documents_collection/84-341.pdf).