

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
8/31/11

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In the Matter of)	
)	
CASA DE ORACION GETSEMANI)	File No. BNPL-20000605AFI
)	File No. BLL-20090518AAH
Application for a Construction Permit for a New)	Facility ID No. 124214
LPFM Station at Providence, Rhode Island)	
)	
EPHESE FRENCH SDA CHURCH)	File No. BNPL-20000606AAV
)	Facility ID No. 124196
Application for a Construction Permit for a New)	
LPFM Station at Providence, Rhode Island)	
)	
ZION BIBLE INSTITUTE)	File No. BNPL-20000601ADH
)	Facility ID No. 123967
Application for a Construction Permit for a New)	
LPFM Station at Barrington, Rhode Island)	
)	
BROWN STUDENT RADIO)	File No. BNPL-20000605AGI
)	Facility ID No. 124263
Application for a Construction Permit for a New)	
LPFM Station at Providence, Rhode Island)	
)	
PROVIDENCE COMMUNITY RADIO)	File No. BNPL-20000605AJO
)	Facility ID No. 124478
Application for a Construction Permit for a New)	
LPFM Station at Providence, Rhode Island)	
)	
To: The Commission)	

FILED/ACCEPTED

JUN 27 2011

Federal Communications Commission
Office of the Secretary

APPLICATION FOR REVIEW

1. Brown Student Radio ("BSR") hereby petitions for review by the full Commission of the Memorandum Opinion and Order, DA 11-1113, released June 27, 2011, in the above-captioned matter, denying BSR's April 14, 2008, Petition for Reconsideration of an earlier Commission decision, 23 FCC Rcd 4118 (2008) ("2008 Order"). The 2008 Order rejected BSR's objection to a time-sharing agreement among Casa de Oracion Getsemani ("Casa"),

Ephese French SDA Church (“Ehpese”), and Zion Bible Institute (“Zion”) all three of which had applied for a construction permit for a new Low Power FM (“LPFM”) station in the Providence, Rhode Island, area, and dismissed the mutually exclusive applications of BSR and Providence Community Radio, Inc. (“PCR”). BSR also petitions for review of the aspect of DA 11-1113 that denied BSR’s Informal Objection against Casa’s captioned application for a license to cover construction permit.

2. Full Commission review is required here, because the Media Bureau (“Bureau”) did not have delegated authority to dispose of BSR’s Petition for Reconsideration under Section 1.106(p) of the Commission’s Rules,¹ the section on which the Bureau relied. The Bureau stated that it “may dismiss or deny a reconsideration petition on the basis that it ‘plainly does not warrant consideration by the full Commission.’”² However, BSR’s arguments on reconsideration do warrant consideration by the full Commission, because (a) the Bureau failed to take into account the current state of facts as shown from its own records, and (b) the Bureau’s ruling opens up a gaping loophole that will poison the LPFM application window that the Commission hopes to open in 2012³ and thus has policy ramifications far beyond the specific case at hand. Because of both ignoring the facts and creating the risk of poisoning future windows, this matter clearly does warrant full Commission review.

3. In addition, the grant of Casa’s covering license application has never been before the full Commission, so BSR’s Application for Review of that action is its first request for full Commission action, entitling BSR to a vote of the Commissioners pursuant to 48 CFR §1.115(a).

¹ 47 CFR §1.106(p).

² DA 11-1113 at ¶6.

³ *See Creation of a Low Power Radio Service*, FCC 11-105, released July 12, 2011, at ¶¶1 and 29.

4. The Bureau has essentially ignored the plain facts of this case, and by doing so has charted a roadmap for future LPFM applications to circumvent the intent of the “point” system in 47 CFR §73.872, which is used to comparatively evaluate mutually exclusive applicants. That rule section awards points for certain attributes, including local presence, proposed operating hours, and local program origination. BSR was awarded the maximum number of points (three points), as were each of Casa, Ephese, and Zion. Despite BSR’s challenges to maximum point awards to Ephese and Casa, those two applicants and Zion were permitted to enter into a time-sharing agreement and to aggregate their points pursuant to 47 CFR §73.782(c), thereby allowing the time-sharing group to prevail with a total of nine points, and resulting in a grant of three construction permits.

5. The Bureau’s action has had the *de facto* end result of awarding a station license to a single applicant, Casa, and dismissal of an equally qualified application by BSR, each with three points. Zion’s station was never built. Zion withdrew its application, by a pleading posted to CDBS on July 3, 2008;⁴ and the Bureau canceled Zion’s permit on that date. Moreover, Zion requested that its hours in the time-sharing agreement be awarded to Casa, thereby destroying the time-sharing agreement among three parties and leaving only two.

6. Meanwhile, Ephese, the other time-sharing participant, never constructed its station and did not request an extension of time to construct. Its permit expired September 4, 2009. That expiration has long been final.

7. In sum, the end result is that neither Zion or Ephese constructed their stations or ever did anything to participate in time-sharing or broadcasting of any kind. Casa became the sole licensee; yet it was not entitled to prevail over BSR, as each of them was awarded three points.

⁴ http://licensing.fcc.gov/cgi-bin/prod/cdbbs/forms/prod/getimportletter_exh.cgi?import_letter_id=9551

8. The Bureau has now signaled what should be done by applicants in future windows. Each serious applicant should find two other applicants who may not be serious and have all three apply. The three should then enter into a time-sharing agreement. Only the serious applicant need build. The other two can let their permits expire. Thus a three-point applicant can claim nine points and win on that basis. Any applicant who is not clever enough to engage in this kind of manipulation will have a maximum of only three points and will lose.⁵

9. The end result will be to as much as triple the number of applications the Commission will receive, thereby flooding its processing system, and penalizing community groups who in good faith pursue their applications on an individual basis.

10. The Commission has recently suffered one set-back in its efforts to promote minority ownership in *Prometheus Radio Project v. FCC*, Case No. 08-3078 (3 Cir. July 7, 2011), as a result of which “eligible entities” have lost an opportunity to enter the ranks of media ownership through acquisitions and extensions of construction permit deadlines.⁶ The decision in the instant case sets the stage for another potential upset of efforts to broaden media ownership by small entities through LPFM. The integrity of the process must be upheld if the process is to provide fairness and justice, let alone survive a judicial challenge, especially to unsophisticated

⁵ It is worth noting that both Casa and Ephese were represented by the same consultant in their applications, a consultant with extensive LPFM experience. Thus there was a sophisticated entity that should have understood the intent of both applicants and was in a position to seize the opportunity to eliminate competition through the share-time agreement that was never implemented. The settlement agreement itself shows that Ephese and Zion never intended to engage in serious broadcasting, as it provided for Casa to provide the transmission plant for all three stations and to pay all costs other than the unique costs of Zion and Ephese. Moreover, Casa took 148 hours of air a week for itself, leaving each of the others with only the minimum required 10 hours.

⁶ See *Media Bureau Provides Notice of Suspension of Eligible Entity Rule Changes and Guidance on the Assignment of Broadcast Station Construction Permits to Eligible Entities*, DA 11-1232, rel. July 25, 2011.

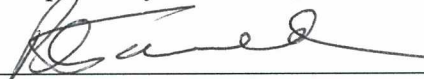
applicants who make up the bulk of LPFM applicants and are not likely to recognize the opportunity to trick the system.

11. There is no issue here of last-minute developments. Zion canceled its permit three years ago, and the Ephese construction permit expired almost two years ago. Both facts were in front of the Bureau in its own CDBS database and so need not be proved by external evidence.

12. The only fair result in this case is to re-open the record and to disqualify Casa by virtue of failure of its settlement. Even if Casa is not disqualified, it must be ruled equal to BSR on points, and those two parties must be left to share time on a 50-50 basis or otherwise come to a mutually acceptable arrangement.⁷

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Respectfully submitted,


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Counsel for Brown Student Radio

July 27, 2011

CERTIFICATE OF SERVICE

I, Evelyn M. Ojea, do hereby certify that I have, this 27th day of July, 2011, caused copies of the foregoing "Application for Review" to be sent by first class United States mail, postage prepaid, to the following:

Mr. John O. Broomall, Sr.
Christian Community FM
284 Louie Lane
Canton, GA 30115
Contact Representative for Casa de Oracion Getsemani


Evelyn M. Ojea

⁷ The fifth applicant, PCR, is not eligible to participate, because it did not prosecute its application after dismissal in the 2008 Order, which became final in April of 2008. Because PCR, Ephese, and Zion are no longer parties to this proceeding, they are not being served with this Application for Review.