

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

|                                                 |   |                           |
|-------------------------------------------------|---|---------------------------|
| In re Matter of                                 | ) |                           |
|                                                 | ) |                           |
| <b>PUBLIC RADIO OF CAMP DENNISON</b>            | ) | File No. BNPL-20010116ABC |
|                                                 | ) | Facility ID No. 131453    |
| Application for a Construction Permit for a New | ) |                           |
| LPFM Station at Indian Hill, Ohio               | ) |                           |
|                                                 | ) |                           |
| <b>OUR LADY OF THE HOLY SPIRIT</b>              | ) | File No. BNPL-20010116ABP |
| <b>CENTER</b>                                   | ) | Facility ID No. 131426    |
|                                                 | ) |                           |
| Application for a Construction Permit for a New | ) |                           |
| LPFM Station at Norwood, Ohio                   | ) |                           |
|                                                 | ) |                           |
| <b>UNITED UNIVERSAL FELLOWSHIP</b>              | ) | File No. BNPL-20010116ABS |
|                                                 | ) | Facility ID No. 131351    |
| Application for a Construction Permit for a New | ) |                           |
| LPFM Station at Cincinnati, Ohio                | ) |                           |
|                                                 | ) |                           |
| <b>MKWS, INC.</b>                               | ) | File No. BNPL-20010119ABK |
|                                                 | ) | Facility ID No. 131802    |
| Application for a Construction Permit for a New | ) |                           |
| LPFM Station at Cincinnati, Ohio                | ) |                           |
|                                                 | ) |                           |
| <b>FOREST HILLS SCHOOL DISTRICT</b>             | ) | File No. BNPL-20010119ADR |
|                                                 | ) | Facility ID No. 131392    |
| Application for a Construction Permit for a New | ) |                           |
| LPFM Station at Cincinnati, Ohio                | ) |                           |
|                                                 | ) |                           |
| <b>CALVARY CHAPEL OF THE TRI-STATE</b>          | ) | File No. BNPL-20010122ABR |
|                                                 | ) | Facility ID No. 132219    |
| Application for a Construction Permit for a New | ) |                           |
| LPFM Station at Cincinnati, Ohio                | ) |                           |
|                                                 | ) |                           |
| <b>CHRISTIAN HITS, INC.</b>                     | ) | File No. BNPL-20010122ABW |
|                                                 | ) | Facility ID No. 132218    |
| Application for a Construction Permit for a New | ) |                           |
| LPFM Station at Groesbeck, Ohio                 | ) |                           |
|                                                 | ) |                           |
| <b>VICTORY CHURCH</b>                           | ) | File No. BNPL-20010122AHT |
|                                                 | ) | Facility ID No. 132321    |
| Application for a Construction Permit for a New | ) |                           |
| LPFM Station at Cincinnati, Ohio                | ) |                           |
|                                                 | ) |                           |
| <b>MEDIA BRIDGES CINCINNATI, INC.</b>           | ) | File No. BNPL-20010122ALM |
|                                                 | ) | Facility ID No. 132345    |
| Application for a Construction Permit for a New | ) |                           |
| LPFM Station at Cincinnati, Ohio                | ) |                           |

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|-------------------------------------------------|---|---------------------------|
| <b>O'CONNOR COMMUNICATIONS, INC.</b>            | ) | File No. BNPL-20010117AAC |
|                                                 | ) | Facility ID No. 131737    |
| Application for a Construction Permit for a New | ) |                           |
| LPFM Station at Cincinnati, Ohio                | ) |                           |
|                                                 | ) |                           |
| <b>CINCINNATI COMMUNITY RADIO, INC.</b>         | ) | File No. BNPL-20010122AFO |
|                                                 | ) | Facility ID No. 132334    |
| Application for a Construction Permit for a New | ) |                           |
| LPFM Station at Cincinnati, Ohio                | ) |                           |
|                                                 | ) |                           |
| <b>THE NATHAN B. STUBBLEFIELD</b>               | ) | File No. BNPL-20010122ALQ |
| <b>WIRELESS GROUP</b>                           | ) | Facility ID No. 132056    |
|                                                 | ) |                           |
| Application for a Construction Permit for a New | ) |                           |
| LPFM Station at Cincinnati, Ohio                | ) |                           |
|                                                 | ) |                           |
| <b>THE NORTHSIDE COMMUNITY COUNCIL</b>          | ) | File No. BNPL-20010119AEB |
|                                                 | ) | Facility ID No. 131812    |
| Application for a Construction Permit for a New | ) |                           |
| LPFM Station at Cincinnati, Ohio                | ) |                           |
|                                                 | ) |                           |

## MEMORANDUM OPINION AND ORDER

**Adopted: February 6, 2008**

**Released: February 8, 2008**

By the Commission:

### I. INTRODUCTION

1. The Commission has before it the captioned, mutually exclusive applications of Public Radio of Camp Dennison ("Dennison"); Our Lady of the Holy Spirit Center ("Holy Spirit"); United Universal Fellowship ("UUF"); MKWS, Inc. ("MKWS"); Forest Hills School District ("Forest Hills"); Calvary Chapel of the Tri-State ("Calvary Chapel"); Christian Hits, Inc. ("Christian Hits"); Victory Church ("Victory"); Media Bridges Cincinnati, Inc. ("Media Bridges"); O'Connor Communications, Inc. ("O'Connor"); Cincinnati Community Radio, Inc. ("CCR"); The Nathan B. Stubblefield Wireless Group ("Stubblefield"); and The Northside Community Council ("NCC"), each seeking a construction permit for a new station in the Low Power FM ("LPFM") Broadcast Service in the Cincinnati, Ohio, area.<sup>1</sup> In

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<sup>1</sup> The application of M&M Community Development, Inc. ("M&M") (File No. BNPL-20010122AGJ) was dismissed by the Bureau, per the applicant's request, on June 6, 2005. The application of Vineyard Community Church (File No. BNPL-20010122ACA) was dismissed by the Bureau, per the applicant's request, on August 22, 2006. Christian Community FM ("CCFM") filed an Informal Objection to the M&M application on September 24, 2001; M&M filed an Opposition on December 31, 2001, to which CCFM replied on March 14, 2002. CCFM's Objection and all related pleadings will be dismissed as moot. Edward P. Cunningham ("EPC") filed a Petition to Deny M&M's application on March 1, 2004, which we also dismiss as moot.

accordance with our procedures,<sup>2</sup> the staff tallied the comparative point totals claimed by each applicant and listed those point totals in a Public Notice accepting the applications for filing, establishing a petition to deny period, and specifying the applications' tentative selectee status.<sup>3</sup> Therein, Dennison, Holy Spirit, UUF, MKWS, Forest Hills, Calvary Chapel, Christian Hits, Victory, and Media Bridges were designated as tentative selectees for the subject authorization.

2. National Lawyers Guild Center on Democratic Communications, Microradio Implementation Project and Prometheus Radio Project (collectively, "Lawyers Guild"), three organizations whose stated purpose is to assist churches and communities in the build-out of LPFM, filed an Informal Objection to the Calvary Chapel application on September 27, 2001.<sup>4</sup> On February 27 and June 1, 2004, NCC filed petitions for reconsideration of the comparative point total awarded its application in the LPFM Notice of Acceptance Public Notice.<sup>5</sup> During the first week of March 2004, NCC's principal, EPC, filed informal objections to the following applications: Dennison; Christian Hits; Calvary Chapel; UUF; and MKWS.<sup>6</sup> Southwestern Ohio Public Radio, Inc. ("SOPR") filed an Informal Objection to the Christian Hits application on January 27, 2005, which Christian Hits opposed on March 2, 2005.<sup>7</sup> No parties filed a petition to deny or informal objection to any of the other captioned applications. For the following

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<sup>2</sup> See *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205 (2000) ("*LPFM Report and Order*"); *recon. generally denied*, Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 19208 (2000); *regulation modification granted by* Second Report and Order, 16 FCC Rcd 8026 (2001); Third Report and Order and Second Further Notice of Proposed Rulemaking, FCC 07-204 (rel. Dec. 11, 2007) ("*Third Report and Order*").

<sup>3</sup> See *Closed Groups of Pending Low Power FM Mutually Exclusive Applications Accepted for Filing*, Public Notice, 19 FCC Rcd 1034 (MB Jan. 28, 2004).

<sup>4</sup> On October 30, 2001, Calvary Chapel filed a Motion to Dismiss the Lawyers Guild Objection; on November 6, 2001, Lawyers Guild submitted an Opposition to the Motion, to which Calvary Chapel replied on November 15, 2001.

<sup>5</sup> NCC filed a Petition for Reconsideration of the January 28, 2004, LPFM Notice of Acceptance Public Notice on February 27, 2004, and it filed a Petition for Reconsideration of the May 3, 2004, Bureau denial of its voluntary time-share agreement with Media Bridges. The Bureau denied these petitions on October 14, 2004, and July 7, 2005, respectively. See *Letter to Edward P. Cunningham*, Ref. 1800B3-SS (MB Oct. 14, 2004); and *Letter to Edward P. Cunningham*, Ref. 1800B3-SS (MB Jul. 7, 2005). In disallowing the Petition regarding the Public Notice, the Bureau found that two of NCC's claimed comparative points were based upon an amendment that it had filed improving its comparative position, in violation of 47 C.F.R. § 73.871(b). The Bureau denied the voluntary time-share agreement because it was not an agreement among those tied for the highest point total in the group; thus, it was impermissible under 47 C.F.R. § 73.872(c).

<sup>6</sup> EPC filed an informal objection on March 3, 2004, to Dennison's application, which Dennison opposed on April 5, 2004; EPC filed a Petition to Deny Christian Hits' application on March 1, 2004, which Christian Hits opposed on April 20, 2004; EPC filed an informal objection on March 4, 2004, to Calvary Chapel's application, which Calvary Chapel opposed on June 2, 2004; EPC filed Petitions to Deny UUF's, and MKWS's applications on March 1, 2004; EPC filed an informal objection on March 3, 2004, to the now-dismissed Vineyard application, which we dismiss, as moot. Because the deadline for petitions to deny was February 27, 2004, we will treat EPC's remaining petitions to deny as informal objections pursuant to 47 C.F.R. § 73.3587. Because EPC's objections did not indicate service upon the applicants, on May 18, 2005, the Bureau provided each applicant with a copy of each respective objection and gave it 20 days in which to respond. MKWS, the only applicant to respond, submitted an e-mail response on May 21, 2005, inquiring about unrelated transferability matters. On June 6, 2005, EPC filed a consolidated reply to the oppositions of Dennison, Calvary Chapel, and Christian Hits.

<sup>7</sup> On February 21, 2006, SOPR withdrew its Informal Objection to the Christian Hits application.

reasons, we grant four EPC objections<sup>8</sup> to the extent indicated; dismiss, as moot, two EPC objections,<sup>9</sup> the Lawyers Guild Objection, and the SOPR Objection. We also grant the Media Bridges, Victory, Holy Spirit, and Forest Hills applications and dismiss those of MKWS, NCC, Stubblefield, CCR, O'Connor, Dennison, Calvary Chapel, Christian Hits, and UUF.

## II. DISCUSSION

3. *EPC Informal Objections.* In his informal objections, EPC alleges that the captioned Dennison, Calvary Chapel, Christian Hits, UUF, and MKWS applications are not entitled to a point for “established community presence” because: (1) Dennison’s nonprofit status is not on record with the Ohio Secretary of State’s Office; (2) Calvary Chapel’s nonprofit status was cancelled in 1999 for failure to file a statement of continued existence, and Calvary Chapel was not reinstated until January 2000, one year before it filed its captioned application; (3) Christian Hits was incorporated on September 7, 2000, less than one year before it filed its captioned application; (4) UUF was incorporated on February 23, 2000, less than one year before it filed its captioned application; and (5) MKWS was not incorporated in the State of Ohio. Thus, EPC asserts that, because Dennison, Calvary Chapel, Christian Hits UUF, and MKWS did not legally exist for two years prior to filing their respective applications, the award to each applicant of one comparative point for established community presence must be rescinded.

4. In their respective oppositions, Dennison, Calvary Chapel, and Christian Hits each state that they are entitled to such a point because their board members reside within 10 miles of their proposed transmitting antenna site and had done so for a period of two years or more prior to the filing of their original applications.<sup>10</sup> Calvary Chapel also responds that it has been incorporated in the State of Ohio since July 27, 1991.<sup>11</sup> Concerning UUF, its founder Jerome J. Manigan acknowledges in an Affidavit that UUF was not formally incorporated as an Ohio non-profit corporation until February 23, 2000.<sup>12</sup> MKWS states that it “was incorporated in Cincinnati, Ohio, on March 18, 1996, and has been an active part of the community since that time.”<sup>13</sup>

5. Pursuant to the applicable Rules and procedures, an applicant for an LPFM station must certify its eligibility to own and operate such station at the time it files its application.<sup>14</sup> Section 73.853 of the Rules states that an LPFM station may be licensed to a noncommercial educational (“NCE”) organization for the advancement of an educational program. The *LPFM Report and Order* states that the establishment of LPFM as a noncommercial service requires that licensees comply with the eligibility

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<sup>8</sup> See EPC informal objections filed to the captioned applications of Calvary Chapel, Dennison, Christian Hits, and UUF.

<sup>9</sup> Because the MKWS and Vineyard applications were inadvertently accepted for filing, we will dismiss the EPC objections to these applications as moot.

<sup>10</sup> See Dennison Opposition at 2; *see also* Calvary Chapel Opposition at 2; Christian Hits Opposition at 2.

<sup>11</sup> See Calvary Chapel Opposition at 1.

<sup>12</sup> See captioned UUF Application at Attachment 2, Exhibit 7.

<sup>13</sup> See captioned MKWS Application Attachment 2, Exhibit 7.

<sup>14</sup> See Instructions for FCC Form 318, Section II, Question 2. *See also* FCC Form 318, Section II, Question 2.

requirements of Section 397(6) of the Communications Act of 1934, as amended (the “Act”).<sup>15</sup> As relevant to this discussion, Section 397(6) of the Act defines a “noncommercial educational broadcast station” as a station which “(A) . . . is owned and operated by a public agency or nonprofit private foundation, corporation, or association. . . .”<sup>16</sup> Because individuals are not eligible to own and operate LPFM stations,<sup>17</sup> the certification requires that the applicant be a noncommercial educational institution, corporation, or entity that is recognized under state law.<sup>18</sup> Thus, an LPFM applicant must be incorporated, registered, or otherwise organized as a nonprofit entity under state law.<sup>19</sup>

6. With regard to MKWS, the record establishes that MKWS was not incorporated as of January 19, 2001, the date on which it filed its captioned application. Specifically, although MKWS certified in its application that it is incorporated, evidence submitted by EPC shows that MKWS was not, and continues not to be, incorporated in the State of Ohio.<sup>20</sup> We note that incorporation is not always necessary.<sup>21</sup> However, in this case MKWS made no showing that it was an unincorporated entity. Notably, when the staff requested a response from MKWS to EPC’s allegation that MKWS was ineligible to be an LPFM licensee, MKWS, in its response,<sup>22</sup> did not even address the issue. Thus, we find that MKWS does not meet the basic eligibility requirement that it be a nonprofit educational organization pursuant to Section 73.852(a). Accordingly, its application must be dismissed as having been inadvertently accepted for filing.<sup>23</sup>

7. With regard to Dennison, Calvary Chapel, Christian Hits, and UUF, Section 73.872 of the Commission’s Rules (the “Rules”), entitled “Selection Procedure for Mutually Exclusive LPFM Applications,” provides, in pertinent part, that:

[e]ach mutually exclusive application will be awarded one point for each of the following criteria, based on application certification that the qualifying conditions are met: (1) *Established community presence.* An applicant must, for a period of at least two years prior to application, have been physically headquartered, have had a campus, or have had

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<sup>15</sup> *LPFM Report and Order*, 15 FCC Rcd at 2215.

<sup>16</sup> 47 U.S.C. § 397(6).

<sup>17</sup> *LPFM Report and Order*, 15 FCC Rcd 2205 at ¶ 20, n. 40. *See also* Instructions to FCC Form 318, Section II, Question 2(b).

<sup>18</sup> *Id.* at ¶¶ 18, 19. *See also* 47 U.S.C. § 397(6)(A).

<sup>19</sup> The Commission restricted the initial LPFM filing windows to “local” applicants. 47 C.F.R. § 73.853(b). *See also*, *LPFM Report and Order*, 15 FCC Rcd at 2215.

<sup>20</sup> *See* EPC Objection at 1. *See also* Secretary of State of Ohio website, <http://www.sos.state.oh.us/>, visited June 7, 2005.

<sup>21</sup> As stated *supra* at para. 5, an LPFM applicant may be registered or otherwise recognized as a nonprofit educational entity under state law.

<sup>22</sup> *See* E-mail from Wilhelmina C. Hurd, President and CEO, MKWS, Inc., to Peter H. Doyle, Chief, Audio Division, Media Bureau (May 21, 2005).

<sup>23</sup> *See* 47 C.F.R. § 73.853(a).

seventy-five percent of its board members residing within 10 miles of the coordinates of the proposed transmitting antenna. . . .<sup>24</sup>

8. The language of the Rule requires that, to qualify for a point for established local presence, a LPFM applicant must be in existence for at least two years prior to filing its application. Further, in the proceeding establishing the low power FM service,<sup>25</sup> the Commission discussed the underpinning for this requirement that applicants must make a threshold showing that they existed two years prior to filing its application. Therein, the Commission contemplated that the organization filing the application would have been in existence and based in the community for at least two years at the time of filing. For example, the Commission stated that the criterion for demonstrating established community presence favors *organizations* that have been operating in the communities where they propose to construct an LPFM station and thus have "track records" of community service and established constituencies within their communities. The Commission expressed its belief that such applicants, because of their "longstanding organizational ties" to their communities, are likely to be more attuned to, and have "organizational experience" addressing the needs and interests of their communities.<sup>26</sup> Further, the Commission stated that "preferring organizations that have been in existence and physically present in the community for two years" would "help prevent maneuvering of the point system by those who might otherwise establish multiple organizations to file the LPFM applications."<sup>27</sup>

9. Further, the Instructions to FCC Form 318 regarding claiming the point for established community presence expressly provide that:

To qualify for a point under this criterion, the applicant must have an established community presence of at least two years duration in the community it proposes to serve. Educational institution and organization applicants must be able to certify that, during the two years prior to application, (a) it has been in existence as a nonprofit educational institution or organization, **and** (b) it has been physically headquartered, has had a campus, or has had seventy-five percent of its governing board members residing within 10 miles of the coordinates of the proposed transmitting antenna.<sup>28</sup>

10. The Rule language, the Commission's Order adopting the Rule, and the instructions to the application for an LPFM construction permit all make clear that, if an applicant desires to claim the point for established community presence, it must meet the threshold requirement of existing as an entity for at least two years prior to filing its application. Although it appears that Dennison was formed as an unincorporated, private, non-profit association, this did not occur until January 10, 2001, only six days before it filed its application.<sup>29</sup> In addition, the record reveals that EPC is, in fact, correct in his assertion

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<sup>24</sup> 47 C.F.R. § 73.872(b)(1).

<sup>25</sup> *LPFM Report and Order*, *supra*, 15 FCC Rcd 2205.

<sup>26</sup> *Id.* (emphasis added).

<sup>27</sup> *Id.* at 2260 ¶ 140.

<sup>28</sup> Page 8, A. Question 1: Established Community Presence (emphasis added).

<sup>29</sup> See Secretary of State of Ohio website, <http://www.sos.state.oh.us/>, visited June 7, 2005; see also captioned Dennison Application at Attachment 2, Exhibit 2 supplemental.

that Calvary Chapel's incorporation was canceled and not renewed until January 3, 2000.<sup>30</sup> The record also indicates that Christian Hits and UUF were incorporated on September 7, and February 23, 2000, respectively, less than two years before their application filing dates.

11. The fact that Dennison's, Calvary Chapel's, Christian Hits' and UUF's board members had lived within 10 miles of the proposed transmitter site for more than two years prior to the filing of their respective applications does not demonstrate the "longstanding organizational ties" to Cincinnati envisioned by the Rule.<sup>31</sup> Although the information Dennison, Calvary Chapel, Christian Hits, and UUF have submitted regarding the local residence of individual members of their respective governing boards is sufficient to demonstrate that each applicant is "community-based" for purposes of fulfilling the basic eligibility requirement under Section 73.852(b),<sup>32</sup> it is not sufficient to demonstrate that they had an "established community presence" for two years prior to the filing of the application entitling them to claim the comparative point for the criterion set forth in Section 73.872(b)(1). Accordingly, we will grant EPC's informal objections on this issue only to the extent that we find that Dennison, Calvary Chapel, Christian Hits, and UUF are each not entitled to a comparative point for established community presence.

12. *LPFM Selection Process.* Before applying the LPFM mutually exclusive selection procedure preferences to determine the number of merit points to be awarded to each applicant, we first ascertain the basic eligibility of the applicants. In order to further our diversity goals and foster local, community-based service, we do not allow any broadcaster or other media entity subject to our ownership rules to control or to hold an attributable ownership interest in an LPFM station or enter broadcast-related operating agreements with an LPFM licensee.<sup>33</sup> Additionally, to foster the local nature of LPFM service, we have limited eligibility to local entities during the first two years that LPFM licenses are available.<sup>34</sup> Based on the record before us, we conclude that Dennison, Holy Spirit, UUF, Forest Hills, Calvary Chapel, Christian Hits, Victory, Media Bridges, O'Connor, CCR, Stubblefield, and NCC are each qualified to hold an LPFM authorization.

13. Mutually exclusive LPFM applications filed by qualified applicants are subject to the comparative selection procedures set forth in Section 73.872 of the Rules.<sup>35</sup> This procedure awards a maximum of three points, based on three criteria deemed to be most relevant to predicting the applicant best qualified to provide the service for which LPFM spectrum has been allocated, with the applicant with the highest points awarded named the tentative selectee:<sup>36</sup>

<sup>30</sup> See Secretary of State of Ohio website, <http://www.sos.state.oh.us/>, visited June 7, 2005.

<sup>31</sup> See *LPFM Report & Order, supra*, 15 FCC Rcd at 2260 ¶ 140. We do not question whether Dennison's, Calvary Chapel's, Christian Hits', and UUF's listed principals have lived in the Cincinnati area within 10 miles of each applicant's proposed transmitter site for more than two years. However, because the Commission does not license LPFM stations to individuals, the Dennison, Calvary Chapel, Christian Hits, UUF, and MKWS principals' individual ties to the community do not provide the "organizational ties" valued by the Commission for LPFM applicants.

<sup>32</sup> *Id.* at ¶ 33. See also 47 C.F.R. § 73.853.

<sup>33</sup> See 47 C.F.R. § 73.860.

<sup>34</sup> See 47 C.F.R. § 73.853(b). The *Third Report and Order* amends this rule section. Pursuant to the amended 47 C.F.R. § 73.853(b), "[o]nly local applicants will be permitted to submit applications." The amended rule takes effect on March 17, 2008.

<sup>35</sup> 47 C.F.R. § 73.872.

<sup>36</sup> *Id.*

- Each applicant that certified that it has had an *established community presence of at least two years' duration* is awarded one point. An applicant is deemed to have an established community presence if, for a period of at least two years prior to application, the *applicant* has been physically headquartered, has had a campus, or has had 75 percent of its board members residing within 10 miles of the reference coordinates of the proposed transmitting antenna.
- An applicant that has *pledged to operate at least 12 hours per day* is awarded one point.
- An applicant that has *pledged to originate locally at least eight hours of programming per day* is awarded one point. For purposes of this criterion, local origination is defined as the production of programming within 10 miles of the reference coordinates of the proposed transmitting antenna.<sup>37</sup>

14. Under this comparative selection process, the applicants here are awarded the following points:

- *Established Community Presence.* Holy Spirit, Forest Hills, Victory, Media Bridges, O'Connor, and NCC are each entitled to a point because they have each certified that, for a period of at least two years prior to the filing date of its application, they existed as an educational institution or organization and had been physically headquartered, had a campus, or had 75 percent of their board members residing within 10 miles of the coordinates of the proposed transmitting antenna.<sup>38</sup> CCR and Stubblefield<sup>39</sup> are not entitled to a point because neither has so certified.<sup>40</sup> Dennison, Calvary Chapel, Christian Hits, and UUF are also not entitled to a point because, although they each certified as having an “established community presence,” they do not meet the requirements of existing as an educational institution or organization for a period of at least two years prior to their application filing date and being physically headquartered, having a campus, or having 75 percent of its board members residing within 10 miles of the reference coordinates of the proposed transmitting antenna for a period of at least two years prior to that date.<sup>41</sup>
- *Proposed Operating Hours.* Holy Spirit, Forest Hills, Victory, Media Bridges, Dennison, Calvary, Christian Hits, CCR, Stubblefield and UUF are each entitled to a point because they have each

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<sup>37</sup> See *id.*

<sup>38</sup> See captioned Holy Spirit Application at Section III, Question 1(a); see also Exhibit 7; captioned Forest Hills Application at Section III, Question 1(a); see also Exhibit 7; captioned Victory Application at Section III, Question 1(a); see also Exhibit 7; captioned Media Bridges Application at Section III, Question 1(a); see also Exhibit 7; captioned O'Connor Application at Section III, Question 1(a); see also Exhibit 7; captioned NCC Application at Section III, Question 1(a); see also Exhibit 7.

<sup>39</sup> Although Stubblefield certified to having an “established community presence,” an amendment to its application acknowledges its incorporation date as February 12, 2001, less than one month before it filed its application. Accordingly, Stubblefield does not meet the requirements to claim this point pursuant to 47 C.F.R. § 73.972(b)(1). See captioned Stubblefield Application at Attachment 1.

<sup>40</sup> See captioned CCR Application at Section III, Question 1(a); see also Exhibit 7; see also captioned Stubblefield Application at Section III, Question 1(a); see also Exhibit 7.

<sup>41</sup> See captioned Dennison Application at Section III, Question 1(a); see also Exhibit 7; captioned Calvary Chapel Application at Section III, Question 1(a); see also Exhibit 7; captioned Christian Hits Application at Section III, Question 1(a); see also Exhibit 7; and captioned UUF Application at Section III, Question 1(a); see also Exhibit 7.

pledged to operate at least 12 hours per day.<sup>42</sup> O'Connor<sup>43</sup> and NCC<sup>44</sup> are not entitled to a point because they have not so pledged.

- *Local Program Origination.* Holy Spirit, Forest Hills, Victory, Media Bridges, Dennison, Calvary Chapel, Christian Hits, UUF, O'Connor, CCR, and Stubblefield are each entitled to a point because they have each pledged to originate at least eight hours of local programming per day.<sup>45</sup> NCC<sup>46</sup> is not entitled to a point because it has not so pledged.

*Total Points.* Accordingly, Holy Spirit, Forest Hills, Victory, and Media Bridges are each entitled to three points. Dennison, Calvary Chapel, Christian Hits, UUF, O'Connor, CCR, and Stubblefield are each entitled to two points,<sup>47</sup> and NCC is entitled to one point. Because we are dismissing Calvary Chapel's and Christian Hits' applications on comparative grounds, we need not address the objections to their applications filed by Lawyers Guild<sup>48</sup> and SOPR.<sup>49</sup> A time-share agreement has been submitted by Christian Hits, Calvary Chapel, Forest Hills, and Dennison. However, with the dismissal of Dennison's, Calvary Chapel's, and Christian Hits' applications, the agreement includes applicants other than the four remaining, eligible applicants; therefore the agreement is invalid and must be dismissed.<sup>50</sup> Thus, Holy

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<sup>42</sup> See captioned Dennison, Holy Spirit, UUF, Forest Hills, Calvary Chapel, Christian Hits, Victory, Media Bridges, CCR, and Stubblefield Applications at Question 2.

<sup>43</sup> The captioned O'Connor Application lacked a mark in either the "yes" or "no" boxes of Section III, Question 2.

<sup>44</sup> See n.5, *supra*.

<sup>45</sup> See captioned Dennison, Holy Spirit, UUF, Forest Hills, Calvary Chapel, Christian Hits, Victory, Media Bridges, O'Connor, CCR, and Stubblefield Applications at Question 3.

<sup>46</sup> See n.5, *supra*.

<sup>47</sup> Because the MKWS application is dismissed as inadvertently accepted for filing, MKWS' comparative point totals are moot and not reflected in the above tabulations.

<sup>48</sup> In its Informal Objection to Calvary Chapel's application, Lawyers Guild alleges that Calvary Chapel does not demonstrate a "distinct local presence and mission," and therefore violates 47 C.F.R. § 73.853(b). Lawyers Guild also argues that Calvary Chapel is in violation of 47 C.F.R. § 73.855 because one entity cannot own more than one LPFM station during its first two years of service. In opposition, Calvary Chapel argues that the Lawyers Guild objection should be dismissed for ignoring "clearly-established Commission procedures," but "reserves the right to respond to the Guild's submission in the event that the Bureau chooses to consider it." Because Calvary Chapel's application will be dismissed on comparative grounds, we find that we need not discuss the Lawyers Guild allegations. Accordingly, we will dismiss the Lawyers Guild objection as moot. See Lawyers Guild informal objection at 2 and 5; see also Calvary Chapel Opposition at 2-3.

<sup>49</sup> SOPR requests that the Commission withhold action on Christian Hits' application until civil litigation between SOPR and a "William Spry" *et al.* is concluded in two Ohio courts. SOPR alleges a link between Spry and Christian Hits. In response, Christian Hits states that Spry merely aided Christian Hits in preparing its application and time-share agreement, and that Spry "is not an employee of Christian Hits, nor is he a board member." Because Christian Hits' application will be dismissed as being a non-prevailing tentative selectee, we find that we need not resolve the SOPR allegations. Accordingly, we will dismiss the SOPR Objection as moot. See Christian Hits Response filed April 7, 2005; see also n.7, *supra*.

<sup>50</sup> See 47 C.F.R. §73.872. Section 73.872(c) states in part:

(continued . . .)

Spirit, Forest Hills, Victory, and Media Bridges are the prevailing tentative selectees in LPFM Mutually Exclusive Group No. 66. Because the remaining parties did not file a voluntary time-share agreement, the applicants are eligible for equal, successive license terms of two years each.<sup>51</sup> The terms of the grant will also be made part of the authorization issued to each of these applicants. We conclude that grant of the Holy Spirit, Forest Hills, Victory, and Media Bridges applications would serve the public interest, convenience and necessity.

### III. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that the informal objections filed by Edward P. Cunningham to the applications of Christian Hits, Dennison, Calvary Chapel, and UUF, respectively, ARE HEREBY GRANTED to the extent indicated and otherwise DENIED.

16. IT IS FURTHER ORDERED that the application of MKWS, Inc. (File No. BNPL-20010119ABK) IS DISMISSED AS INADVERTENTLY ACCEPTED FOR FILING.

17. IT IS FURTHER ORDERED, that the applications of Northside Community Council (File No. BNPL-20010119AEB); the Nathan B. Stubblefield Wireless Group (File No. BNPL-20010122ALQ); Cincinnati Community Radio, Inc. (File No. BNPL-20010122AFO); O'Connor Communications, Inc. (File No. BNPL-20010117AAC); Public Radio of Camp Dennison (File No. BNPL-20010116ABC); Calvary Chapel of the Tri-State (File No. BNPL-20010122ABR); Christian Hits, Inc. (File No. BNPL-20010122ABW); and United Universal Fellowship (File No. BNPL-20010116ABS) ARE DISMISSED.

18. IT IS FURTHER ORDERED that the Informal Objection of Lawyers Guild to the application of Calvary Chapel of the Tri-State (File No. BNPL-20010122ABR) IS HEREBY DISMISSED as moot.

19. IT IS FURTHER ORDERED that the Informal Objection of Southwestern Ohio Public Radio, Inc. to the application of Christian Hits, Inc. (File No. BNPL-20010122ABW) IS HEREBY DISMISSED as moot.

20. IT IS FURTHER ORDERED that the Informal Objection of Edward P. Cunningham to the application of MKWS, Inc. IS DISMISSED as moot. IT IS FURTHER ORDERED that the Informal Objection of Edward P. Cunningham to the dismissed application of Vineyard Community Church (File No. BNPL-20010122ACA) IS DISMISSED as moot.

21. IT IS FURTHER ORDERED that the Informal Objection of Christian Community FM and the Petition to Deny filed by Edward P. Cunningham regarding the dismissed application of M&M Community Development, Inc. (File No. BNPL-20010122AGJ) and all related pleadings ARE HEREBY DISMISSED as moot.

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(Continued from previous page)

*Voluntary time-sharing.* If mutually exclusive applications have the same point total, any two or more of the tied applicants may propose to share use of the frequency by submitting, within 30 days of the release of a public notice announcing the tie, a time-share proposal. Such proposals shall be treated as amendments to the time-share proponents' applications, and shall become part of the terms of the station license. Where such proposals include all of the tied applications, all of the tied applications will be treated as tentative selectees; otherwise, time-share proponents' points will be aggregated to determine the tentative selectees. . . .

<sup>51</sup> See 47 C.F.R. § 73.872(d); see also 47 C.F.R. § 73.873.

22. IT IS FURTHER ORDERED that the voluntary time-share agreement filed on February 26, 2004, by Christian Hits, Calvary Chapel, Forest Hills, and Dennison IS DISMISSED.

23. IT IS FURTHER ORDERED, that the applications of Media Bridges Cincinnati, Inc. (File No. BNPL-20010122ALM); Victory Church (File No. BNPL-20010122AHT); Our Lady of the Holy Spirit Center (File No. BNPL-20010116ABP); and Forest Hills School District (File No. BNPL-20010119ADR) ARE GRANTED.

24. IT IS FURTHER ORDERED that copies of this *Memorandum Opinion and Order* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Public Radio Camp of Dennison, 9550 Cunningham Road, Cincinnati, Ohio 45243; Our Lady of the Holy Spirit Center, 5440 Moeller Avenue, Norwood, Ohio 45212; United Universal Fellowship, 3418 Laron Avenue, Cincinnati, Ohio 45229; MKWS, Inc., P.O. Box 37463, Cincinnati, Ohio 45222; Forest Hills School District, 7550 Forest Road, Cincinnati, Ohio 45255; Calvary Chapel of the Tri-State, 946 Summit Avenue, Cincinnati, Ohio 45246; Christian Hits, Inc., 3243 Sovereign Drive, Cincinnati, Ohio 45251; Victory Church, 1114 Simmons Avenue, Cincinnati, Ohio 45215, and to its counsel Perry Thompson, Esq., Osborne Craig, PLC, 9625 Surveyor, Manassas, Virginia 20110; Media Bridges Cincinnati, Inc., 2114 Reading Road, Cincinnati, Ohio 45202; O'Connor Communications, Inc., 415 Greenwell Avenue, Cincinnati, Ohio 45248; Cincinnati Community Radio, Inc., 7617 Reading Road, Suite 213, Cincinnati, Ohio 45237, and to its counsel Christine McLaughlin, Esq., Alston and Bird, LLP, 601 Pennsylvania Avenue, N.W., North Building, 10<sup>th</sup> Floor, Washington, DC 20004; The Nathan B. Stubblefield Wireless Group, 9120 Trinidad Drive, Cincinnati, Ohio 45231; and Northside Community Council, 2931 Feltz Avenue, Cincinnati, Ohio 45211.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary