

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

In the Matter of)	
)	
Iglesia Pentecostal Cristo Misionera)	File No. BNPL-20010118ABD
)	
For Application for a New Low Power FM)	Facility ID No. 131884
Broadcast station in Lorain, Ohio)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: January 15, 2008

Released: February 4, 2008

By the Commission: Commissioner Copps concurring and issuing a statement.

1. The Commission has before it a February 23, 2004, Application for Review filed by Iglesia Pentecostal Cristo Misionera (“Iglesia”) regarding the dismissal of its application for a new low power FM (“LPFM”) station on Channel 229 (93.7 MHz) in Lorain, Ohio.¹ The Media Bureau (“Bureau”) dismissed the Iglesia application on July 31, 2003,² and denied Iglesia’s petition for reconsideration on January 23, 2004.³ For the reasons set forth below, we deny the Application for Review.

2. In December of 2000, Congress passed the “Making Appropriations for the Government of the District of Columbia for FY 2001” Act (“the Act”), which required the Commission to modify its rules to prescribe LPFM station third-adjacent channel interference protection standards.⁴ In response to this mandate, the Commission amended Section 73.807 of the Commission’s Rules (the “Rules”).⁵ It also modified the Commission-developed “Channel Finder” tool prior to the opening of the third LPFM window to include third-adjacent channel protection standards.⁶ Applicants using that tool – as suggested

¹ Application for Construction Permit for a New Low Power FM Broadcast Station (File No. BNPL-20010118ABD).

² *Letter to Iglesia Pentecostal Cristo Misionera*, Reference 1800B3 (MB Jul. 31, 2003).

³ *Letter to Iglesia Pentecostal Cristo Misionera*, Reference 1800B3 (MB Jan. 23, 2004).

⁴ Pub. L. No. 106-553, 114 Stat. 2762 (2000). Section 632(a)(1) of the Act states, “[t]he Federal Communications Commission shall modify the rules authorizing the operation of low-power FM radio stations, as proposed in MM Docket No. 99-25, to -- (A) prescribe minimum distance separations for third-adjacent channels (as well as for co-channels and first -- and second-adjacent channels). . . .” Section 632(a)(3) of the Act states, “any license that was issued by the Commission to a low-power FM station prior to the date on which the Commission modifies its rules as required by paragraph (1) and that does not comply with such modifications shall be invalid.”

⁵ See *Creation of a Low Power Radio Service*, Second Report and Order, 16 FCC Rcd 8026 (2001) (“*LPFM Second Report and Order*”), 47 C.F.R. § 73.807.

⁶ *Id.* at 8031 n.16.

by the *Public Notice* announcing the third LPFM filing window⁷ -- were advised of the third-adjacent channel protection requirements. Iglesia participated in the third LPFM filing window and filed its application on January 18, 2001. Iglesia's proposed transmitter site location is 49.4 kilometers from the licensed facility for third-adjacent channel station WZAK(FM) on Channel 226B (93.1 MHz) in Cleveland, Ohio; the spacing protection required by Section 73.807 of the Rules for Class B stations is 67 kilometers. The Bureau therefore dismissed Iglesia's defective application.

3. In its Application for Review, Iglesia first argues that dismissal of its application was premature because "the technical merits of the third-adjacent channel interference standard are currently under review."⁸ Iglesia continues that, under the "report-back" provision of the Act, Congress directed the Commission to conduct independent field tests to determine whether elimination of the third-adjacent channel protection standards would result in harmful interference to existing FM stations, and to report its findings at a later date.⁹ The Commission's Report to Congress supported MITRE's recommendation that Congress eliminate the third-adjacent channel restriction.¹⁰ Iglesia therefore requests that its application be reinstated and that any action on the application be stayed until the third-adjacent channel issue is resolved by Congress.

4. Congressional statutes give the Commission the authority to take actions and promulgate regulations consistent with those statutes, and they define the scope of this authority.¹¹ The Commission does not have the authority to change or waive statutory requirements. Section 632(a)(1) of the Act restricted the Commission's authority to grant LPFM licenses. The Commission's recommendations regarding the LPFM interference study do not have the force of law, and cannot overturn this directive. Therefore, applications must conform to this standard unless Congress repeals or changes Section 632(a)(1) of the Act. An application, such as Iglesia's, that fails to provide protection for third-adjacent channel facilities is patently defective and is properly dismissed under Sections 73.807 and 73.3566 of the Rules.¹²

5. Iglesia also argues that reinstatement of its LPFM application is in the public interest because it facilitates the establishment of LPFM service and supports the Commission's "Localism in Broadcasting" initiative. It is true that LPFM service has a uniquely local character, and the Commission remains committed to fostering a vibrant and meaningful LPFM service consistent with its public interest

⁷ *Public Notice*, "Low Power FM Filing Window," 15 FCC Rcd 24817, 24818 (MMB Dec. 15, 2000) ("Applicants may use the MMB LPFM Channel Finder to help determine if a proposed transmitter site would meet minimum LPFM station spacing requirements.").

⁸ Application for Review at 2-3. This argument repeats *verbatim* the contention raised in Iglesia's Petition for Reconsideration.

⁹ The Commission contracted with The MITRE Corporation ("MITRE") to conduct these tests. It subsequently sought comment on MITRE's report before submitting its own report to Congress. *Comments Sought on the MITRE Corporation's Technical Report, "Experimental Measurements of the Third-Adjacent-Channel Impacts of Low-Power FM Stations,"* Public Notice, 18 FCC Rcd 14445 (MB Jul. 11, 2003), *comment period extended*, Order, 18 FCC Rcd 18128 (MB Aug. 29, 2003).

¹⁰ MITRE concluded that "the elimination of existing third-adjacent channel LPFM minimum distance separation requirements is possible without increasing the potential for third-adjacent channel LPFM interference to existing stations." *Report to Congress on the Low Power FM Interference Testing Program*, Pub. L. No. 106-553 (Feb. 19, 2004).

¹¹ See *Bower v. Georgetown University Hospital*, 488 U.S. 204, 208 (1988).

¹² 47 C.F.R. §§ 73.807, 73.3566.

obligations under the Communications Act of 1934, as amended.¹³ We must do so, however, within the scope of the authority granted by Congress and therefore must, at this point, require LPFM stations to provide protection to other stations operating on third-adjacent channels.

6. Accordingly, IT IS ORDERED, that the Application for Review filed by Iglesia Pentecostal Christo Missionera IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹³ 47 U.S.C. § 309(a); *LPFM Second Report and Order*, 16 FCC Rcd at 8028.

**CONCURRING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *In the Matter of Iglesia Pentecostal Cristo Missionera for Application for a New Low Power FM Broadcast Station in Lorain, Ohio, File No. BNPL-20010118ABD*

The Commission has dismissed hundreds of LPFM applications because they did not meet the third-adjacent channel spacing requirements mandated by Congress. This may be the last such application still on file. While the Order reaches a defensible legal conclusion, it is not good news for localism, competition and diversity that this is the outcome.

The Commission three years ago recommended to Congress that, based on the independent Mitre study, the third-adjacency restrictions should be eliminated. The Commission unanimously reiterated that recommendation in its recent *LPFM Order*.

Hopefully Congress will act soon to amend the statute. Such action will not come in time for *Iglesia Pentecostal Cristo Missionera* and the other dismissed applicants. So I would hope that, at the appropriate time, the Commission can find a way to take proper account of the fact that *Iglesia* and others filed in the previous LPFM window but were dismissed based on third-adjacency concerns.