

FCC MAIL SECTION

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

MAR 20 11 05 AM '95

MM Docket No. 94-88

In re Applications of

COMMUNITY File No. BPED-930316MF
 EDUCATIONAL
 ASSOCIATION
 Holly Hill, Florida

For a Construction Permit for a New
 Noncommercial Educational FM
 Station on Channel 212A

Appearances

Scott C. Cinnamon, on behalf of Community Educational Association; and *Robert A. Zauner*, on behalf of the Chief, Mass Media Bureau.

**INITIAL DECISION OF ADMINISTRATIVE LAW
 JUDGE JOSEPH CHACHKIN**

Issued: March 14, 1995; Released: March 20, 1995

PRELIMINARY STATEMENT

1. By *Hearing Designation Order*, DA 94-789, released August 2, 1994 (the HDO), the Chief, Audio Services Division set this proceeding for hearing. At the time, CEA's application was mutually exclusive with the application of Cornerstone Community Radio, Inc. (CCR). In addition to the standard non-commercial comparative issues, the HDO specified the following two issues against CEA:

To determine whether CEA is a qualified educational organization proposing an acceptable educational format in compliance with 47 C.F.R. § 73.503(a) of the Commission's Rules.

To determine whether there is a reasonable possibility that the tower height and location proposed by CEA in this proceeding would constitute a hazard to air navigation.

2. On August 30, 1994, CEA filed an engineering amendment intended to resolve the mutual exclusivity between its application and the application of CCR. By *Memorandum Opinion and Order*, FCC 94M-521, released September 13, 1994 (MO&O), the Presiding Judge accepted CEA's amendment, and granted CCR's application. The

MO&O left CEA in the docketed proceeding as a "singleton" applicant pending resolution of the Section 73.503(a) issue specified against it.¹

3. A hearing session was held on December 15, 1994. The record was closed on that date. Proposed findings of fact and conclusions of law were filed January 26, 1995.

FINDINGS OF FACT

4. According to CEA's "Organization and Board of Directors Agreement," CEA is an association formed "not for gain or individual profit." Its purpose is to assume its share "of responsibility and the privilege of propagating high quality educational programs (broadcast and otherwise) by all available means and in pursuance of said purpose to promote such purposes; to operate, conduct and engage in any lawful activity including all mediums (sic) of media and broadcasting..." CEA Ex. 1, p. 1.

5. CEA recites in its "Statement of Educational Goal and Purposes..."

Community Educational Association... is an educational organization committed to promoting and assisting the various charitable, religious and educational organizations in the area. CEA's programming will be used to increase political and social awareness, improve relationships and provide better understanding between different cultural/ethnic groups (with a special emphasis on Hispanic/Anglo relations). Teaming with local community leaders and educators, CEA also plans to keep its community educated and informed [about] issues of local concern. To keep aware of the community's changing needs, CEA will conduct informal ascertainments of local business, religious and political leaders, as well as assess letters and phone calls from our listening audience. CEA Ex. 2, p. 1.

6. CEA plans to present programming that will address the following issues of public concern in the proposed service area:

Health Care: CEA will offer locally produced programs addressing such issues as personal health care, family life, AIDS, teenage pregnancy and drug abuse. These programs will use a call in/interview format.

Education: CEA plans to set aside air time for student produced programs dealing with issues that concern them. CEA also plans to develop a "Radio School" which, using written material developed with the aid of local educators, will offer courses in basic skills such as Math, English, Reading Skills, Health and Hygiene. CEA plans to offer educational programming in English and Spanish.

Family Matters: Interview, panel discussion and call-in shows will be broadcast dealing with divorce and single parent households and how children of such families cope. CEA will also offer programs on drug and alcohol abuse prevention. Finally, CEA will present programming focusing on Bible studies.

¹ The air hazard issue was summarily resolved in favor of

CEA. See MO&O, FCC 95M-42, released February 9, 1995

CEA Ex. 3.

7. The following is a description of some of the specific programs CEA intends to produce:

The Radio School will be produced in conjunction with the Holly Hill Public School System and local colleges and universities. CEA intends to use this program to offer for credit courses with local educational institutions if the details can be worked out. The target of the program will be students who did not complete their secondary education. Many of the programs will be offered in Spanish and English.

The Student Hour will deal with issues facing youth today. Topics will include violence and drug abuse. The program will be produced by students from various secondary and post secondary schools.

The Church Hour will present services of local churches of all denominations. The program will also include panel discussions on religious teachings and philosophies.

The Health Hour will be an interview/call in program featuring health professionals.

Learning New Skills will feature local businessmen explaining the techniques they used to develop their businesses. Other programs will instruct listeners on how to start their own businesses.

The News Hour will be broadcast daily for one hour. It will offer news, sports and weather.

Community Hotline will focus on consumer problems.

Other programs offered by CEA will focus on the environment, politics, interviews on important events of the day and the use of the public library. CEA Ex. 6. CEA plans to initially broadcast 12 hours per day, seven days a week for a total of 84 hours per week. CEA Ex. 6.

CONCLUSIONS

8. Section 73.503(a) of the Rules provides that:

A noncommercial educational FM broadcast station will be licensed only to a nonprofit educational organization and upon showing that the station will be used for the advancement of an educational program.

47 C.F.R. § 73.503(a). The Commission's noncommercial educational FM application processing guidelines state that an applicant may qualify for an authorization in the reserved band as either an educational *institution* or an educational *organization*. See Appendix A to *Notice of Inquiry*, Docket 78-164, 53 FR 30842 (1989). See also *Palm Bay Public Radio, Inc.*, 6 FCC Rcd 1772, 1773 (1991). Since CEA is not owned or controlled by an educational institution, it can only qualify for a reserved band license as an educational organization.

9. To qualify as educational organizations, applicants must demonstrate that they "have an educational goal and are committed to the advancement of an educational program." *Palm Bay* at 1773. In evaluating compliance with these standards, emphasis is given to those programs that are instructional (for credit) and general educational (no formal credit). *Palm Bay* at 1773.

10. The Commission has stated that its basic role:

in the history and development of public broadcasting has been to insure that spectrum space is available for its use and to broadly classify its program service. It has meant that the Commission has had the appropriately limited role of facilitating the development of the public broadcasting system rather than determining the content of its programming. From the perspective of the Commission, public broadcasting is characterized largely by a negative distinction, *i.e.*, public stations are not operated by profit seeking organizations...

This basic regulatory scheme has had several public interest advantages. It has made the service possible and its (sic) has maintained its separate identity. At the same time, it has allowed the system to develop in response to the diverse and proximate needs of the communities within which it operates and not according to a standard Commission mold. Rather than imposing broadcasting, the Commission has allowed those who operate, support, and consume public broadcasting to directly determine the nature of its service, especially its programming.

Public Radio and TV Programming, 87 FCC 2d 716, 732 (1981). Traditionally, the Commission has sought to "avoid all unnecessary intrusion into the programming decisions of licensees, including those of public broadcasters." *Id.* 87 FCC 2d at 730.

11. CEA has demonstrated that it qualifies as an educational organization for purposes of becoming a reserved band FM licensee. CEA is not organized for gain and profit. In addition, it has set forth an acceptable educational goal, and a sufficient plan to advance its educational program. Commission policy and precedent support resolution of the Section 73.503(a) issue in favor of CEA.

Accordingly, IT IS ORDERED, That unless an appeal from this Initial Decision is taken by a party, or it is reviewed by the Commission on its own motion in accordance with Section 1.276 of the Rules,² the application of Community Educational Association for a construction permit for a new noncommercial educational FM station on Channel 212A at Holly Hill, Florida, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph Chachkin
Administrative Law Judge

² In the event exceptions are not filed within 30 days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision shall

become effective 50 days after its public release pursuant to Section 1.276(d).