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Federal Communications Commission

DA 97-380

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

DISPATCHED

In re Applications of)	MM Docket No. 97-79
)	
PATAPHYSICAL BROADCASTING)	File No. BPED-940316MB
FOUNDATION)	
(Hereafter "Pataphysical"))	
San Ardo, California)	
Req: 91.7 MHz, Channel 219B)	
2.7 kW (V); 543 meters)	
)	
CENTRAL COAST EDUCATIONAL)	File No. BPED-940606MB
BROADCASTERS)	
(Hereafter "Central Coast"))	
King City, California)	
Req: 91.3 MHz, Channel 217A)	
0.900 kW (V); -117 meters)	

For Construction Permit for a New,
Noncommercial Educational FM Station

HEARING DESIGNATION ORDER

Adopted: February 13, 1997

Released: February 24, 1997

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new, noncommercial educational FM station. The mutually exclusive proposals are presented for a Section 307(b) determination only, i.e., for a comparison of the respective communities' needs for the proposed new service rather than on an evaluation of the applicants' comparative qualifications.¹

¹ In its Notice of Proposed Rulemaking in MM Docket No. 95-31, In the Matter of Reexamination of the Comparative Standards for New Noncommercial Educational Applicants, 10 FCC Rcd 2877 (March 17, 1995), the Commission announced that it was imposing a partial freeze on the processing of noncommercial educational-FM applications ("NCE-FM") until the Commission adopted new or revised NCE-FM comparative criteria. Further, the Commission indicated that it would no longer issue decisions in pending hearing proceedings involving competing applicants for NCE-FM broadcast facilities where those decisions would rely upon the existing comparative criteria for NCE-FM applicants. By Memorandum Opinion and Order in Santa Monica Community College District, 11 FCC

2. Pataphysical's Main Studio Request. 47 C.F.R. § 73.1125(a) requires each broadcast station to maintain a main studio within the station's principal community contour to ensure that the station will serve the needs and interests of the residents of its community of license. Amendment of Sections 73.1125 and 73.1130, 3 FCC Rcd 5024, 5027 (1988). However, under Section 73.1125(a)(4), the Commission will waive this requirement where "good cause" exists to do so and where the proposed studio location "would be consistent with the operation of the station in the public interest." Each waiver request by an NCE station seeking to operate as the satellite of another NCE station is considered on a case-by-case basis. The Commission has recognized the benefits of centralized operations for NCE stations, given their limited funding, and thus found "good cause" exists to waive the main studio location requirement where satellite operations are proposed. *Id.* A satellite station must, however, demonstrate that it will meet its local service obligation to satisfy the Section 73.1125 "public interest" standard. *Id.*

3. Pataphysical seeks a waiver of 47 C.F.R. § 73.1125 for its proposed San Ardo facility to operate as a satellite repeater of KUSP, Santa Cruz, California. Pataphysical asserts that the waiver is necessary as the area is rural in nature, sparsely populated by 20,000 residents, without public radio service and, Pataphysical believes, would have difficulty supporting an independent noncommercial educational station. However, in order to ensure that local issues in San Ardo will be met, Pataphysical has agreed to undertake the following:

- (a) It will establish a south Monterey County news gathering group which will assist the news department at KUSP to report on issues and events that might not otherwise be available to the San Ardo area population;
- (b) It will continue to maintain an existing toll-free telephone service so that San Ardo residents can contact the station without charge; and
- (c) It will add citizens from the San Ardo area to its community advisory board to assist in addressing community needs and issues of local importance, along with increased features and news gathering from the San Ardo region; and
- (d) To maintain a local public inspection file in its community of license, as required by Commission rules.

4. Pataphysical's request is essentially based on the economies of scale which would be realized by grant of its waiver. We conclude that there is "good cause" to waive 47 C.F.R. § 73.1125(a)(4) in these circumstances. Furthermore, we concur that Pataphysical's proposals will ensure that the needs and interests of San Ardo, California are served. Accordingly, in the event that a construction permit is awarded to Pataphysical as a result of this proceeding, we will waive

Rcd 1123 (February 1, 1996), the Commission indicated that hearings for consideration of mutually exclusive NCE-FM proposals could proceed where consideration of the competing applications under the provisions of Section 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 307(b), would prove dispositive.

the provisions of 47 C.F.R. § 73.1125(a)(4) to the extent indicated herein.

5. Pataphysical's Financial Qualifications As originally filed, Pataphysical's application was financially dependent on a grant from the National Telecommunications and Information Administration ("NTIA"). Pataphysical has not informed the Commission that it received the requested grant and information received from NTIA indicates that Pataphysical has not reapplied for a grant during the current grant cycle. Accordingly, Pataphysical will be required to provide an amendment to the presiding Administrative Law Judge concerning the status of its request for funding from NTIA as well as any alternative sources of funding available.
6. Potential Share-Time Arrangement. Neither one of the applicants has indicated that an attempt has been made to negotiate a share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency, and thus better serve the public interest. Granfalloon Denver Educational Broadcasting, Inc., 43 Fed. Reg. 49,560, published October 24, 1978. In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a time-sharing issue is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time arrangement.
7. Section 307(b) Issue. The respective proposals are for different communities and would serve different areas. Thus one proposal may receive a decisive preference based on the comparative need for the proposed new services. Consequently, it will be necessary to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio services.
8. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.
9. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:
 1. To determine: (a) the number of other reserved channel noncommercial education FM services available in the proposed service area of each applicant, and the area and population served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; and (c) in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if either.

10. If, in view of the foregoing, no determination can be made as to which of the proposals would best provide a fair, efficient and equitable distribution of radio services pursuant to Section 307(b) of the Communications Act of 1934, as amended, then the proceeding shall be held in abeyance until such time as the Commission shall have adopted new or revised NCE-FM comparative criteria, in accordance with its NPRM in Reexamination of the Comparative Standards for New Noncommercial Educational Applicants, MM Docket 95-31, 10 FCC Rcd 2877, 2879 (March 17, 1995).

11. IT IS FURTHER ORDERED, That in the event a construction permit is awarded to Pataphysical, the provisions of 47 C.F.R. § 73.1125 ARE WAIVED to permit its proposed station to operate as a satellite station.

12. IT IS FURTHER ORDERED, that Pataphysical must amend its proposal to specify the status of funding available from NTIA or alternative services of funding available to the applicant.

13. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the day of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 418-1430. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

14. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

15. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Linda Blair, Chief
Audio Services Division
Mass Media Bureau