

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

In re Applications of)
) MB Docket No. 04-144
PISCATAWAY BOARD OF EDUCATION)
)
 For Renewal of License) Facility ID No. 52686
 For Noncommercial Educational) File No. BRED-19980427WA
 Station WVPH(FM), Piscataway, New Jersey)
)
 and)
)
KING'S TEMPLE MINISTRIES, INC.)
)
 For a Construction Permit) Facility ID No. 91347
 For a New Noncommercial Educational) File No. BPED-19980805MB
 FM Station, Plainfield, New Jersey)

HEARING DESIGNATION ORDER

Adopted: April 5, 2004

Released: April 9, 2004

By the Chief, Audio Division, Media Bureau:

1. The Commission, by the Chief, Audio Division, acting pursuant to delegated authority, has before it: (1) the application of Piscataway Board of Education ("Piscataway Board") for renewal of license for noncommercial educational ("NCE") FM station WVPH(FM) on Channel 212 in Piscataway, New Jersey; and (2) the mutually exclusive application of King's Temple Ministries, Inc. ("King's Temple") for authority to construct a new NCE FM station on Channel 212 in Plainfield, New Jersey, on a time sharing basis with WVPH(FM). Piscataway Board and King's Temple would not serve substantial areas in common.

2. The Telecommunications Act of 1996 ("Act") generally eliminated comparative renewal proceedings by prohibiting the Commission from considering whether the public interest would be served by granting a license to someone other than the renewal applicant.¹ The Act did not, however, eliminate the Commission's longstanding policy to consider time sharing proposals to accommodate competing demand for limited NCE FM spectrum.² NCE new station applicants can propose to share time in

¹ 47 U.S.C. § 309(k). See *Implementation of Sections 204(A) and 204(C) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

² See *Nassau Community College*, 12 FCC Rcd 12234, 12234-5 (1997). See also *Comparative Standards for Noncommercial Educational Applicants, Memorandum Opinion and Order*, 16 FCC Rcd 5074 (2001) (affirming use of time sharing as tie breaker of last resort in selecting among competing applicants for new NCE stations) ("NCE MO&O").

response to renewal applications from NCE licensees, like Piscataway Board, that do not operate at least 12 hours per day each day of the year.³ In such circumstances, our rules require the current licensee "to share use of the frequency upon grant of an appropriate application proposing such share time arrangement."⁴ The rules further require the licensee and the competing applicant(s) to endeavor to reach an agreement on a definite schedule of times to be used by each.⁵ If, however, they are unable to reach such an agreement, and if no qualifications issues arise regarding the renewal or new station applicant(s), the rules require the Commission to set the matter for expedited hearing on the issue of sharing time.⁶

3. Here, the applicants indicate that they have attempted but failed to negotiate a time sharing agreement. We have examined the applications and find no qualifications issues regarding either party. We further find that conditional grant of both Piscataway Board's renewal application and King's Temple's application for a new NCE FM station, which includes a proposal to share time with Piscataway Board, will serve the public interest, convenience, and necessity. Pursuant to Section 73.561(b)(2) of the Commission's rules,⁷ we are designating this matter for an expedited hearing limited solely to the issue of sharing time. It should be noted that this action 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 negotiating a time sharing agreement.

4. Accordingly, IT IS ORDERED, that the application of Piscataway Board of Education for renewal of license of WVPH(FM), Piscataway, New Jersey, File No. BRED-19980427WA, and the mutually exclusive application of King's Temple Ministries, Inc. for authority to construct a new NCE FM station on Channel 212 in Plainfield, New Jersey, File No. BPED-19980805MB, on a time sharing basis with WVPH(FM), ARE GRANTED, subject to the conditions that (1) either (a) the parties negotiate and jointly file with the Commission a time sharing agreement, or (b) the hearing ordered in Paragraph 6, below, is concluded, and a copy of the resulting written time sharing arrangement is provided to the Chief of the Commission's Audio Division; and (2) the authorizations of Piscataway Board of Education and King's Temple Ministries, Inc. are modified in accordance with the terms and conditions of either the negotiated time sharing agreement or the time sharing arrangement imposed as a result of the hearing, as applicable.

5. IT IS FURTHER ORDERED, that such time sharing agreement or arrangement, as applicable, SHALL BECOME EFFECTIVE as of the date on which King's Temple Ministries, Inc. files an application for a license to cover its construction permit and begins program tests, and SHALL BECOME PART OF THE TERMS OF EACH STATION'S LICENSE by attachment thereto.

6. IT IS FURTHER ORDERED, that pursuant to 47 C.F.R. Section 73.561(b)(2), the application of Piscataway Board of Education for renewal of license of WVPH(FM), Piscataway, New Jersey, File No. BRED-19980427WA, and the mutually exclusive application of King's Temple Ministries, Inc. for authority to construct a new NCE FM station on Channel 212 in Plainfield, New

³ 47 C.F.R. § 73.561(b).

⁴ *Id.*

⁵ *Id.* § 73.561(b)(1).

⁶ *Id.* § 73.561(b)(2).

⁷ *Id.*

Jersey, File No. BPED-19980805MB, on a time sharing basis with WVPH(FM), ARE DESIGNATED FOR EXPEDITED HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issue:

To establish the terms and conditions of a time sharing arrangement, including the hours of the day throughout the year during which each licensee is to operate, and to set forth such terms and conditions in a written document. Such arrangement shall not include simultaneous operation of the stations.

7. IT IS FURTHER ORDERED, that pursuant to 47 C.F.R. Section 1.221(b), the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND copies of this Order, by certified mail, return receipt requested, to the parties through counsel, as listed below:

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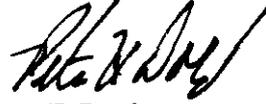
8. IT IS FURTHER ORDERED, that a copy of each document filed in this proceeding subsequent to the date of adoption of this Order SHALL BE SERVED on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations and Hearings Division of the Enforcement Bureau at (202) 418-1420. Such service copy SHALL BE ADDRESSED to the named counsel of record, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-B443, Washington, D.C. 20554.

9. IT IS FURTHER ORDERED, that to avail themselves of the opportunity to be heard, Piscataway Board of Education and King's Temple Ministries, Inc., pursuant to 47 C.F.R. Section 1.221(c), in person or by their respective attorneys, within twenty (20) days of the mailing of this Order, SHALL FILE in triplicate A WRITTEN APPEARANCE stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

10. IT IS FURTHER ORDERED, that the applicants herein, pursuant to 47 U.S.C. Section 311(a)(2) and 47 C.F.R. Section 73.3594, SHALL GIVE NOTICE of the hearing within the time and in the manner prescribed in 47 C.F.R. Section 73.3594, and SHALL ADVISE the Commission of the publication of such notice as required by 47 C.F.R. Section 73.3594(g).

11. IT IS FURTHER ORDERED, that the Secretary of the Commission, pursuant to 47 C.F.R. Section 1.221(b), SHALL HAVE this Order or a summary thereof PUBLISHED in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION



Peter H. Doyle
Chief, Audio Division
Media Bureau