

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

|  |   |                           |
|--|---|---------------------------|
| In re Applications of:   | ) |                           |
|  | ) |                           |
| <b>EVERGLADES COMMUNITY ASSOCIATION, INC.</b>                        | ) | File No. BNPL-20010614AFX |
|  | ) | Facility ID No. 134315    |
|  | ) |                           |
| For a Construction Permit for a New LPFM Station at Florida City, FL | ) |                           |
|  | ) |                           |
| <b>THE BARNACLE SOCIETY, INC.</b>                                    | ) | File No. BNLP-20010615AUC |
|  | ) | Facility ID No. 135461    |
|  | ) |                           |
| For a Construction Permit for a New LPFM Station at Florida City, FL | ) |                           |
|  | ) |                           |
| <b>RADIO REGOCIJO, INC.</b>  | ) | File No. BNPL-20010614AEH |
|  | ) | Facility ID No. 133972    |
|  | ) |                           |
| For a Construction Permit for a New LPFM Station at Florida City, FL | ) |                           |

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 17, 2005**

**Released: May 27, 2005**

By the Commission: Commissioners Copps and Adelstein issuing a joint statement.

**I. INTRODUCTION**

1. The Commission has before it the captioned, mutually exclusive applications of Everglades Community Association, Inc. (“Everglades”), The Barnacle Society, Inc. (“TBS”), and Radio Regocijo, Inc. (“RRI”) seeking construction permits in the Low Power FM (“LPFM”) Broadcast Service at Florida City, Florida. In accordance with our procedures,<sup>1</sup> the Commission published notice of the applications’ tentative selectee status.<sup>2</sup> No parties filed petitions to deny or informal objections in response to these applications.

**II. DISCUSSION**

2. Before applying the mutually exclusive selection procedure preference 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. Additionally, to foster the local nature of LPFM service, we have limited eligibility to

<sup>1</sup> See *Creation of a Low Power Radio Service, Report & Order*, 15 FCC Rcd 2205 (2000); *Creation of a Low Power Radio Service, Memorandum Opinion & Order on Reconsideration*, 15 FCC Rcd 19208 (2000); and *Creation of Low Power Radio Service, Second Report & Order*, 16 FCC Rcd 8026 (2001).

<sup>2</sup> See *Public Notice, Closed Groups of Pending Low Power FM Mutually Exclusive Applications Accepted for Filing*, DA 04-679, (rel. Mar. 12, 2004).

local entities during the first two years that LPFM licenses are available. Based on the complete application record, we conclude that Everglades, TBS, and RRI are qualified to hold an LPFM station license.

3. Mutually exclusive LPFM applications are subject to the comparative selection procedures set forth in Section 73.872 of the Commission's rules.<sup>3</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.<sup>4</sup> 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. Second, an applicant that has *pledged to operate at least 12 hours per day* is awarded one point. Third, 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>5</sup> The tentative selectee is the applicant with the highest score.

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

*Established Community Presence.* Everglades is entitled to one point because it certifies that for a period of at least two years prior to the filing date of its application, it has existed as an educational institution or organization and has been physically headquartered, has had a campus, or has had 75 percent of its board members residing within 10 miles of the coordinates of the proposed transmitting antenna.<sup>6</sup> TBS is entitled to a point because it certifies that it meets the requirements of 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 the filing date of its application.<sup>7</sup> RRI is not entitled to a point because it certifies that it does not meet the requirements of 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 the filing date of its application.<sup>8</sup>

*Proposed Operating Hours.* Each applicant is entitled to one point because it pledges to operate at least 12 hours per day.<sup>9</sup>

*Local Program Origination.* Each applicant is entitled to one point because it pledges to originate at least eight hours of local programming per day.<sup>10</sup>

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<sup>3</sup> 47 C.F.R. § 73.872.

<sup>4</sup> *Id.*

<sup>5</sup> *See id.*

<sup>6</sup> *See* File No. BNPL-20010614AFX ("Everglades Application") at Section III, Question 1(a); *see also* Exhibit 7.

<sup>7</sup> *See* File No. BNPL-20010615AUC ("TBS Application") at Section III, Question 1(a); *see also* Exhibit 7.

<sup>8</sup> *See* File No. BNPL-20010614AEH ("RRI Application") at Section III, Question 1(a); *see also* Exhibit 7.

<sup>9</sup> *See* Everglades Application at Question 2; *see also* TBS Application at Question 2; RRI Application at Question 2.

<sup>10</sup> *See* Everglades Application at Question 3; *see also* TBS Application at Question 3; RRI Application at Question 3.

*Total.* Accordingly, Everglades and TBS are entitled to three points, and RRI is entitled to two points. Thus, Everglades and TBS are the prevailing tentative selectees in LPFM Mutually Exclusive Group No. 28. Because the parties did not file a voluntary time-share agreement, the applicants are eligible for equal, successive license terms of four years each.<sup>11</sup> The terms of the grant will be made part of the authorization issued to each of these applicants. We conclude that grant of Everglades' and TBS's application would serve the public interest, convenience and necessity.

### III. ORDERING CLAUSES

5. Accordingly, IT IS ORDERED, that the application Radio Regocijo, Inc. (File No. BNPL-20010614AEH) IS DISMISSED.

6. IT IS FURTHER ORDERED, that the applications of Everglades Community Association, Inc. (File No. BNPL-20010614AFX) and The Barnacle Society, Inc. (File No. BNPL-20010615AUC) ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>11</sup> See 47 C.F.R. § 73.872(d); see also 47 C.F.R. § 73.873.

**JOINT STATEMENT OF  
COMMISSIONERS MICHAEL J. COPPS AND JONATHAN S. ADELSTEIN**

*Re: Applications for Construction Permits for New LPFM Stations*

We are pleased that the Commission is moving ahead to license additional low power FM radio stations. These community-based stations are licensed to churches, schools and other local organizations and can help in significant ways to meet the needs of under-represented communities. Low power benefits recording artists by providing more outlets for airplay, especially on a local or regional level. It provides community coverage in often strikingly-successful ways. To promote these local stations, we hope the Commission would also move forward on its recent proceeding on low power FM radio and consider opening a new filing window for the many noncommercial entities that want to offer new low power FM radio services wherever possible.