



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

**April 22, 2024**

In Reply Refer to:  
1800B3-ALV

Des Moines Community Broadcasting  
c/o Kathryn Harris  
2019 Crown Flair Dt.  
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REC Networks  
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In re: **Des Moines Community Broadcasting**  
New LPFM, Des Moines, IA  
Facility ID No. 787928  
Application File No. 0000233097

**Informal Objection**

Dear Applicant and Objector:

We have before us the above-referenced application (Application) for a construction permit for a new low power FM (LPFM) station at Des Moines, Iowa, filed by Des Moines Community Broadcasting (DMCB) on December 15, 2023. We also have before us an Informal Objection (Objection) to the Application, filed by REC Networks (REC) on January 24, 2024.<sup>1</sup> For the reasons set forth below, we grant the Objection and dismiss the Application.

*Background.* DMCB filed the Application on December 15, 2023, during the 2023 LPFM filing window.<sup>2</sup> DMCB certifies in its Application that it is a nonprofit educational institution or organization<sup>3</sup> eligible for an LPFM authorization and includes a one-page exhibit, stating that “[w]e are a non-profit organization, driven by the belief that every voice matters...”<sup>4</sup>

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<sup>1</sup> Pleading File No. 0000236228. On February 28, 2024, REC filed a Supplement to the Objection. *See* Pleading File No. 0000239940. DMCB has not filed an opposition to the Objection.

<sup>2</sup> *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642 (MB July 31, 2023) (*Procedures Public Notice*). Based on a request from LPFM advocates, the Bureau subsequently delayed the window until December 6, 2023. *Media Bureau Announces Revised Dates for LPFM New Station Application Filing Window*, Public Notice, DA 23-984 (MB Oct. 17, 2023). The Bureau subsequently extended the close of the window until December 15, 2023. *Media Bureau Announces Extension of LPFM New Station Application Filing Window*, Public Notice, DA 23-1150 (MB Dec. 11, 2023).

<sup>3</sup> *See* Application at Legal Certifications Section, Eligibility Certifications questions.

<sup>4</sup> Application at Attach. “Des Monies Community Broadcasting.pdf”.

REC alleges that DMCB is not qualified for an LPFM license.<sup>5</sup> Specifically, REC asserts that DMCB neglected to submit any documentation to establish that it is either a valid nonprofit educational organization or unincorporated association recognized under state law.<sup>6</sup> REC states that absent any legal recognition by any state, DMCB is not qualified to hold an LPFM license.<sup>7</sup> REC, therefore, urges the Commission to dismiss the Application.

*Discussion.* Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),<sup>8</sup> petitions to deny and informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.<sup>9</sup> We find that REC has met this burden.

An LPFM applicant must meet basic eligibility requirements<sup>10</sup> and certify its eligibility to own and operate an LPFM station at the time that it files its FCC Form 2100, Schedule 318 application.<sup>11</sup> Specifically, each applicant claiming eligibility as a nonprofit educational organization must certify it is a noncommercial educational institution, corporation, foundation, association, or entity that is recognized under state law at the time the application is submitted.<sup>12</sup> Each applicant must also submit an explanatory exhibit, establishing its nonprofit status, in connection with its application.<sup>13</sup>

In its Application, DMCB certified that it is a nonprofit educational organization, but initially neglected to provide any supporting documentation, as required, to establish its nonprofit status. On February 23, 2024, DMCB amended its Application to include a copy of its Articles of Incorporation.<sup>14</sup> The Articles of Incorporation, however, are not date stamped, and a review of the Iowa Secretary of State business entities database establishes that DMCB was not incorporated until February 12, 2024, almost two months after it filed its LPFM Application. Accordingly, because DMCB was not incorporated, nor

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<sup>5</sup> Objection at 2.

<sup>6</sup> See Objection at 2 (citing *Applications for Review of Decisions Regarding Six Applications for New Low Power FM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13396 at para. 14 (2013) (*Six LPFM Applications*) (“An LPFM applicant’s status as a valid non-profit organization at the time it files its application is fundamental to our determination of the applicant’s qualifications to hold an LPFM authorization.”)).

<sup>7</sup> *Id.*

<sup>8</sup> 47 U.S.C. § 309(d).

<sup>9</sup> See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff’d sub nom. Garden State Broad. L.P. v. FCC*, 996 F. 2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

<sup>10</sup> See 47 CFR § 73.853.

<sup>11</sup> See Instructions for LPFM Application, Legal Certifications Section, Eligibility Certifications questions. See also LPFM Application, Legal Certifications Section, Eligibility Certifications questions.

<sup>12</sup> *Id.* See also *Six LPFM Applications*, 28 FCC Rcd at 13396, para. 14; *Hope Radio of Rolla, Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 7754 (2013) (emphasizing that to be eligible to hold an authorization for an NCE service, the applicant “must be a public agency or non-profit private foundation, corporation, or association that is recognized by the laws of the state in which it proposes to operate at the time it submits its application”).

<sup>13</sup> See *Procedures Public Notice* at 6 (nonprofit educational organizations “must submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation.”).

<sup>14</sup> Application at Attach. “ArticlesofIncorporation.pdf”.

demonstrated that it was organized in a form recognized by Iowa state law, on December 15, 2023, when it submitted its Application, we find DMCB ineligible to hold an LPFM license and dismiss the Application.<sup>15</sup>

*Conclusion/Action.* Accordingly, **IT IS ORDERED** that the Informal Objection filed by REC Networks on January 24, 2024, (Pleading File No. 0000236228) **IS GRANTED**.

**IT IS FURTHER ORDERED** that the application of Des Moines Community Broadcasting for a construction permit for a new low power FM station at Des Moines, Iowa (Application File No. 0000233097) **IS DISMISSED**.

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>15</sup> See, e.g., *WTL Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 2475, 2478 (2008) (dismissing LPFM application because applicant was not incorporated as of the date on which it filed its application); *Sonido International Cristiano, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 2444, 2449 (2008) (same).