



Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer to:
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Cheq Up
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In re: Cheq Up
New LPFM, Ashland, Wisconsin
Facility ID No. 788724
Application File No. 0000232964

Informal Objection

Dear Applicant:

We have before us the above-referenced application (Application) for a construction permit for a new low power FM (LPFM) station at Ashland, Wisconsin (Station), filed by Cheq Up (Cheq). For the reasons set forth below, we dismiss the Application.

Background. Cheq filed the Application on December 14, 2023, during the 2023 LPFM filing window.¹ In the Application, Cheq certifies that it is eligible for an LPFM authorization because it is a state or local government or non-government entity that proposes a noncommercial public safety radio service.² Cheq also certifies that it is a nonprofit entity, with both its headquarters and 75% of its board members residing within 20 miles of its transmitter site,³ and certified “no” as to whether it proposes a public safety radio service and has jurisdiction within the service area of the proposed LPFM station.⁴

In support of these certifications, Cheq submits a single attachment which states, in its entirety, “WCHQ is an unincorporated nonprofit entity in the State of Wisconsin which recognizes unincorporated non profits. WCHQ serves the Ashland, Wisconsin, community through educational outreach to artists,

¹ *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).

² Application, Legal Certifications Section, Eligibility Certifications questions.

³ Because the transmitter is not located in a top 50 urban market, either Cheq’s headquarters must be within 20 miles of the proposed transmitter site, or, alternatively, 75% of Cheq’s board members must reside within 20 miles of the proposed transmitter site. 47 CFR § 73.853(b)(1) and (2).

⁴ Application at Legal Certifications Section, Community-Based Criteria questions.

writers, DJs, and audio producers. WCHQ registered with the State of Wisconsin on December 15th, 2023.”⁵

Discussion. An LPFM applicant must meet basic eligibility requirements,⁶ and certify its eligibility to own and operate an LPFM station at the time that it files its FCC Form 2100, Schedule 318 application (LPFM Application).⁷ Each applicant must also qualify as local.⁸ We find that Cheq fails to demonstrate eligibility as (1) a non-government entity proposing to provide a noncommercial public safety radio service and (2) a nonprofit educational organization.

Public Safety Radio Service Applicant: Eligibility Requirements. In the LPFM context, the Commission uses the definition of “public safety radio services” set forth in section 309(j)(2)(A) of the Communications Act of 1934, as amended (Act).⁹ That section defines “public safety radio services” as “including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that—(i) are used to protect the safety of life, health, or property; and (ii) are not made commercially available to the public.”¹⁰ The Commission has explained that the phrase “public safety radio services” encompasses three categories of services: (1) traditional public safety services such as police, fire, and emergency medical services, (2) private internal radio services designated for noncommercial use by entities such as utilities, railroads, transit systems, and others that provide essential services to the public at large and that need reliable internal communications in order to prevent or respond to disasters or crises affecting their service to the public, and (3) private internal radio services used by not-for-profit organizations providing emergency road services.¹¹ The Application fails to explain how Cheq’s proposed public safety radio service complies with any of these categories. In fact, the Eligibility Attachment does not even reference any public safety radio services.

Additionally, each LPFM applicant must also certify that it is a local entity. In the case of a public safety radio service applicant, the Commission considers the entity to be “local” if it “has jurisdiction within the service area of the proposed LPFM station.”¹² Cheq certified “no” to this question and fails to show that it has jurisdiction within the service area of its proposed station. Thus, Cheq does

⁵ Application at Attach. ”WCHQ Eligibility Upload.pdf” (Eligibility Attachment). Cheq does not explain the relationship between “WCHQ” and Cheq.

⁶ See 47 CFR § 73.853.

⁷ See Instructions for LPFM Application, Legal Certifications Section, Eligibility Certifications questions. See also LPFM Application, Legal Certifications Section, Eligibility Certifications questions.

⁸ See 47 CFR § 73.853(b).

⁹ *Creation of Low Power Radio Service*, Report and Order, MM Docket No. 99-25, 15 FCC Rcd 2205, 2215, para. 23 (2000) (*LPFM Report and Order*) (stating that “public safety radio services used by state or local governments or not-for-profit organizations, as defined in 47 U.S.C. § 309(j)(2)(A), will be eligible for LPFM licenses”).

¹⁰ 47 U.S.C. § 309(j)(2)(A).

¹¹ *Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 99-87, 15 FCC Rcd 22709, 22716, para. 16, 22740, para. 64, 22743, para. 71 (2000). See also H.R. Conf. Rep. No. 105-217, 105th Cong., 1st Sess., at 572 (1997).

¹² 47 CFR § 73.853(b)(3).

not demonstrate that it is eligible to hold an LPFM authorization as a non-government entity that will provide a public safety radio service.¹³

Nonprofit Educational Organization Applicant: Eligibility Requirements. 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 its application is submitted.¹⁴ Each applicant must also submit an explanatory exhibit in connection with its application.¹⁵ An LPFM applicant's status as a valid nonprofit organization at the time it files its application is fundamental to our determination of the applicant's qualifications to hold an LPFM authorization.¹⁶ Applicants who fail to meet these requirements are subject to dismissal.¹⁷

In the Application, Cheq states that "WCHQ is an unincorporated nonprofit entity in the State of Wisconsin which recognizes unincorporated non profits. . . . WCHQ registered with the State of Wisconsin on December 15th, 2023."¹⁸ Commission precedent establishes that an unincorporated association applicant "must submit documents demonstrating it is recognized in its relevant jurisdiction and that the organization meets the requirements for such an entity."¹⁹ Such documentation may, for example, include a letter signed by a local attorney licensed to practice in the state where the applicant proposes to operate, the citation and text of a state statute permitting unincorporated entities, or any other official documentation showing the applicant's existence as a separate legal entity.²⁰ Such documentation must include some explanation of how and when the applicant, prior to filing the application, satisfied the requirements for an unincorporated association under state law.²¹

Cheq neglects to provide sufficient evidence, as required, demonstrating that it is recognized as a nonprofit unincorporated entity under Wisconsin law. Staff's search of the Wisconsin One Stop Business

¹³ See *Weather Alert Radio Network*, Letter Order, DA 24-164 (MB Feb. 23, 2024) (dismissing applications filed by applicant that certified that it was eligible as a public safety entity where applicant failed to show it had jurisdiction in the service areas of the proposed stations).

¹⁴ See *id.*; 47 U.S.C. § 397(6)(A); *Procedures Public Notice at 5-6; Applications for Review of Decisions Regarding Six Applications for New Low Power FM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13397-98, para. 22 (2013) (*Six Applications*).

¹⁵ See LPFM Application, Legal Certifications Section, Eligibility Certifications questions. See also *Procedures Public Notice at 6* (nonprofit educational organizations "also must submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation.").

¹⁶ *Six Applications*, 28 FCC Rcd at 13395-96, para. 14.

¹⁷ See *Procedures Public Notice at 6*.

¹⁸ See Eligibility Attachment.

¹⁹ *Procedures Public Notice at 6* (citing *Six Applications*, 28 FCC Rcd at 13397-98, para. 22).

²⁰ See *M&M Community Development, Inc.*, Letter Order, 21 FCC Rcd 7983, 7984 (2006) (listing documents that could support an applicant's claim to being an unincorporated association); *Hope Radio of Rolla, Inc.*, Letter Order, 22 FCC Rcd 4822, 4823 (2007).

²¹ See *Wynnewood Community Radio Association*, Memorandum Opinion and Order, 29 FCC Rcd 6309 (2014) (affirming dismissal of noncommercial educational application where applicant showed that Oklahoma law recognizes unincorporated associations, but failed to demonstrate that it satisfied requirements of unincorporated associations under Oklahoma law); *Fondren Community Voices*, Letter Decision, 30 FCC Rcd 3003, 3004-5 (2015) (finding that an applicant's citation to state statute without explanation of how the organization complied with applicable requirements of unincorporated association law was insufficient to demonstrate applicant was recognized as such an entity).

Portal database found no records for WCHQ, and only shows that an entity named “CHEQ UP UA” is “In Process”.²² Moreover, Cheq does not cite to a state law under which it would be recognized as a valid nonprofit unincorporated association. Cheq does not provide any authority or analysis for how its organizational structure is consistent with the requirements for a nonprofit unincorporated association under Wisconsin state law. Therefore, we find that Cheq has failed to demonstrate that it was organized as a nonprofit entity in a form recognized by Wisconsin law at the time it filed the Application.

Finally, we also find that Cheq fails to meet the localism requirements of either sections 73.853(b)(1) or 73.853(b)(2) of the Commission’s rules (Rules) for nonprofit educational organizations. To qualify as local, such LPFM applicants must either (1) be physically headquartered or have a campus within 10 miles, for applicants in the top 50 urban markets, or 20 miles, for applicants outside of the top 50 urban markets, of the transmitting antenna site proposed in its application; or (2) have 75% of its board members residing within 10 miles, for applicants in the top 50 urban markets, or 20 miles, for applicants outside of the top 50 urban markets, of the transmitting antenna site proposed in its application.²³

The transmitter site that Cheq identifies is located at 45 59 24.0 N, 90 59 38.0 W.²⁴ Cheq’s headquarters, located at 1803 4th Ave W, Ashland, Wisconsin,²⁵ is 40.9 miles from its transmitter site. Cheq identifies two board members: Cindy Garver, who resides at the 4th Avenue address, and Leandro Jesse Martinez, who resides at 713 Main Street E, Apt. G, Ashland, WI 54806. Accordingly, Cheq cannot meet the requirements of either sections 73.853(b)(1) or 73.853(b)(2) of the Rules to establish that it is a local entity. For these reasons, Cheq is also ineligible to hold an LPFM license as a nonprofit educational organization.

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED that the application for a construction permit for a new LPFM station at Ashland, Wisconsin, filed by Cheq Up on December 14, 2023 (Application File No. 0000232964) IS DISMISSED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

²² See Wisconsin One Stop Business Portal, Search for Business, <https://onestop.wi.gov/DFIAnnualReports/SearchBusiness> (last visited May 8, 2024).

²³ 47 CFR § 73.853(b)(1)-(2). See also *LPFM Report and Order*, 15 FCC Rcd at 2220-21, para. 33 (localism requirement may be met by relying on either headquarters or board member residences).

²⁴ Application at Antenna Location Data Section, Coordinates question.

²⁵ The coordinates for this address are: 46 34 37.056 N, 90 52 27.48 W. The staff calculated this distance using the tools available on the Commission’s website. <https://www.fcc.gov/media/radio/distance-and-azimuths>.