



Federal Communications Commission
Washington, D.C. 20554

November 17, 2014

In Reply Refer to:
1800B3-ATS

Mr. Martin K. Reeves
Albert Partlow Science Foundation
P.O. Box 48603
Watagua, TX 76148

Mr. Jerry G. Rowland
Pahrump Film Festival, Inc.
4111 Jasmine Street
Pahrump, NV 89408

In re: **LPFM MX Group 253**

Albert Partlow Science Foundation
New LPFM, Pahrump, Nevada
Facility ID No. 193380
File No. BNPL-20131018AHI

Pahrump Film Festival
New LPFM, Pahrump, Nevada
Facility ID No. 191768
File No. BNPL-20131021AAC

**Informal Objections
Petition for Reconsideration**

Dear Messrs. Reeves and Rowland:

We have before us: 1) the Application of Pahrump Film Festival (“PFF”) for a new LPFM station at Pahrump, Nevada (“PFF Application”); 2) the Informal Objection filed by Albert Partlow Science Foundation (“APSF”) against the PFF Application (“APSF Objection”);¹ 3) the Petition for Reconsideration filed by APSF (“APSF Petition”) seeking reinstatement of its application for a new LPFM station at Pahrump, Nevada (“APSF Application”); and 4) the Informal Objection filed by PFF against the APSF Application (“PFF Objection”).² For the reasons set forth below, we dismiss the PFF Objection as moot, dismiss the APSF Petition as moot, deny the APSF Objection, and grant the PFF Application.

Background. APSF and PFF filed their respective applications during the October 2013 LPFM filing window, both proposing to serve Pahrump, Nevada, on Channel 249. On December 16, 2013, the

¹ The APSF Objection was filed on December 23, 2013. APSF had previously filed a “Motion to Dismiss” the PFF Application on December 3, 2013, which raises the same arguments as the APSF Objection. Accordingly, we will not consider it separately. In response to the APSF Objection, PFF filed two pleadings styled as “Replies” on January 13, 2014, and January 21, 2014. We will consider the first pleading an Opposition (“PFF Opposition”). The filing dated January 21, 2014, merely corrects typographical errors in the PFF Opposition.

² The PFF Objection was filed on December 30, 2013. On the same day, PFF also filed a Petition to Deny against the APSF Application, which is identical to the PFF Objection. The Petition to Deny was not accompanied by an affidavit or declaration. We will therefore dismiss the Petition to Deny and only consider the PFF Objection. *See* 47 U.S.C. § 309(d)(1) (requiring that petitions to deny “be supported by affidavit of a person or persons with personal knowledge” of the factual allegations made in the petition). APSF filed an opposition to both pleadings on January 26, 2014 (“APSF Opposition”).

Media Bureau (“Bureau”) identified the two applications as being mutually exclusive.³ Martin Reeves (“Reeves”), the President of APSF, filed the APSF Objection on December 23, 2013. The APSF Objection alleges that PFF is not eligible to hold an LPFM license because two of its board members, Geraldine Ahrens (“Ahrens”) and Harvey Caplan (“Caplan”), are also board members of Talk Radio of Pahrump, Inc. (“TRP”), which also filed an application in the October 2013 window.⁴

PFF argues in its opposition that the APSF Objection relied on an outdated board member list, and explains that Ahrens and Caplan both resigned from the PFF board prior to filing of the PFF Application.⁵ PFF includes a copy of the minutes from its September 4, 2013, meeting, which indicates that Ahrens and Caplan had resigned their positions.⁶ PFF also includes a printout from the website of the Nevada Secretary of State indicating that its current board does not include either Ahrens or Caplan, and a filing submitted to the State of Nevada on September 6, 2013, indicating the composition of its new board, of which Ahrens and Caplan are not members.⁷

On December 30, 2013, PFF filed its informal objection against the APSF Application, alleging that the address identified by APSF in its application is a vacant parcel and that the sole APSF board member, Reeves, resides in Texas.⁸ Thus, PFF argues that APSF is not eligible to be an LPFM licensee because it does not meet the localism requirements.⁹ APSF argues in its opposition that it satisfies the requirements of Section 73.853(b) of the Commission’s Rules (“Rules”) because it owns two parcels of land in Pahrump, which “are considered to be a ‘campus’ of [APSF] and within 10 miles of the proposed transmitting site.”¹⁰ APSF adds that “[t]he properties are currently offered to local astronomers and educational groups to aid in their research. Construction on a broadcast studio will not begin until an LPFM license is granted.”¹¹

On July 19, 2014, the Commission issued a Public Notice in which it identified both applications as tentative selectees of LPFM MX Group 253 on a time-share basis, and allowed both parties the opportunity to file major change amendments to their applications to resolve their mutual exclusivities.¹² On July 11, 2014, APSF filed an amendment to its application changing the proposed channel from 249 to 231 (“July Amendment”). The Bureau dismissed the amended APSF Application on July 14, 2014,

³ *Media Bureau Identifies Mutually Exclusive Applications Filed in the LPFM Window and Announces 60-Day Settlement Period*, Public Notice, 28 FCC Rcd 16713 (MB 2013).

⁴ APSF Objection at 1, *citing* 47 C.F.R. § 73.855. *See also* File No. BNPL-20131021AAE (“TRP Application”). APSF filed a Petition to Deny the TRP Application as well, in which it raised the same allegations that it raised in the APSF Objection to the PFF Application. The Bureau denied the petition to deny and granted the TRP Application on March 14, 2014. *See Talk Radio of Pahrump, Inc.*, Letter, Ref 1800B3-PPD (MB Mar. 14, 2014). *See also Broadcast Actions*, Public Notice, Report No. 48199 (MB Mar. 19, 2014).

⁵ PFF Opposition at 1.

⁶ *Id.* at “Minutes of September 4, 2013 Meeting.”

⁷ *Id.* at “Entity Details - Secretary of State, Nevada” and “Annual List of Officers, Directors and Registers Agent of Pahrump Film Festival”.

⁸ PFF Objection at 1. In a subsequent filing on January 7, 2014, PFF indicates that the copy of its Petition to Deny mailed to APSF at the address provided in the APSF Application was returned by the U.S. Postal Service because there is no such address nor was a forwarding address provided.

⁹ *Id.* *See also* 47 C.F.R. § 73.853(b) (localism requirements for LPFM licensees).

¹⁰ APSF Opposition at 3.

¹¹ *Id.*

¹² *Commission Identifies Tentative Selectees in 79 Groups of Mutually Exclusive Applications filed in the LPFM Window*, Public Notice, 29 FCC Rcd 8665 (2014).

because it failed to comply with the minimum spacing requirements of Section 73.807(a)(1) of the Rules.¹³ On July 22, 2014, APSF filed the APSF Petition, seeking reinstatement of the APSF Application on Channel 249 because its engineer, Greg Dingley, filed the July Amendment without the authorization of APSF.¹⁴

Discussion. APSF Petition. We do not need to consider the merits of the APSF Petition because we have determined that APSF is not eligible to hold an LPFM license. Section 73.853(b) provides that “[o]nly local organizations will be permitted to submit applications and to hold authorizations in the LPFM service” and states that an applicant may demonstrate localism by satisfying the following criteria:

(1) The applicant, its local chapter or branch is physically headquartered or has a campus within 16.1 km (10 miles) of the proposed site for the transmitting antenna for applicants in the top 50 urban markets, and 32.1 km (20 miles) for applicants outside of the top 50 urban markets;

(2) It has 75% of its board members residing within 16.1 km (10 miles) of the proposed site for the transmitting antenna for applicants in the top 50 urban markets, and 32.1 km (20 miles) for applicants outside of the top 50 urban markets . . .¹⁵

APSF does not dispute that it does not satisfy the requirements of Section 73.853(b)(2), but argues instead that it satisfies Section 73.853(b)(1) because it owns two parcels of land in Pahrump, which “are considered to be a ‘campus’ of [APSF] and within 10 miles of the proposed transmitting site.”¹⁶ We disagree and find that these two undeveloped parcels cannot be considered a “campus” of APSF. APSF itself does not offer courses or hold any activities of its own on these parcels, but merely allows other organizations to engage in their own activities there.¹⁷ Thus APSF has not demonstrated that it is a local organization that is eligible to hold an LPFM license.¹⁸ We will thus dismiss the APSF Petition as moot.

¹³ See *Albert Partlow Science Foundation*, Letter, Ref 1800B3 (MB July 14, 2014) (“*Dismissal Letter*”). See also *Broadcast Actions*, Public Notice, Report No. 48283 (MB July 17, 2014). The *Dismissal Letter* explained that the Application failed to satisfy the minimum spacing requirements for co-channel station KMXB(FM), Henderson, Nevada. See 47 C.F.R. § 73.807(a)(1). The *Dismissal Letter* further stated that the Application was dismissed without opportunity to amend pursuant to Section 73.870(c) of the Rules. See 47 C.F.R. 73.870(c) (“[A]pplications . . . the fail to meet the 73.807 minimum distance separations . . . will be dismissed without any opportunity to amend such applications.”).

¹⁴ APSF Petition at 1.

¹⁵ 47 C.F.R. §§ 73.853(b)(1); 73.853(b)(2). Sections 73.853(b)(3) and (4) provide for eligibility for public safety entities and Tribal Applicants, respectively.

¹⁶ APSF Opposition at 3.

¹⁷ *Id.*

¹⁸ In the context of full service noncommercial educational stations, we have indicated that an applicant must demonstrate actual activity at their claimed headquarters and campuses to receive credit as an established local applicant. For example, the Commission has held that a “headquarters” requires actual activity on the part of the applicant at the site it identifies as its headquarters. See *Comparative Consideration of 33 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, 26 FCC Rcd 9058, 9098-9092 (finding an applicant ineligible for points as an established local applicant where virtually no activity took place at the office it claimed as its headquarters). Similarly, an applicant must show what activities take places at its campuses, such as by providing copies of brochures indicating courses offered there. See *Instructions to FCC Form 340, Question IV(1)*. See also *Instruction to FCC Form 340, Worksheet #4* (“Local Campus. Applicant operates a school campus . . .”). APSF provided no documentation to show it has engaged in activities or offered courses at either of the two parcels in Pahrump.

APSF Objection. Section 73.855(a) of the Rules prohibits a party from having an attributable interest in more than one LPFM station.¹⁹ APSF provides a printout from the website of the Nevada Secretary of State that lists both Ahrens and Caplan as officers for PFF and TRP.²⁰ However, that listing provides “Inactive Officers” of the two organizations, rather than their current officers.²¹ On the other hand, PFF provides an updated listing of officers from the Nevada Secretary of State website, which no longer lists Geraldine Ahrens and Harvey Caplan as officers for PFF but instead lists a new set of officers and directors.²² PFF also provides a document from the Nevada Secretary of State that confirms PFF had a new set of officers and directors as of September 4, 2013, before PFF and TRP filed their respective applications.²³ Thus, at the time of the filing of the LPFM Application, neither Ahrens nor Caplan had an attributable interest in PFF. We will thus deny the APSF Objection and grant the PFF Application.

Conclusion/Actions. Accordingly, for the reasons set forth above, IT IS ORDERED THAT the Informal Objection and Petition to Deny filed on December 30, 2013, by Pahrump Film Festival ARE DISMISSED.

IT IS FURTHER ORDERED, that the Petition for Reconsideration filed on July 22, 2014, by Albert Partlow Science Foundation IS DISMISSED.

IT IS FURTHER ORDERED, that the December 3, 2013, Motion to Dismiss and December 12, 2013 Informal Objection filed by Albert Partlow Science Foundation ARE DENIED.

IT IS FURTHER ORDERED, that the application of Pahrump Film Festival (BNPL-20131021AAC) for a new LPFM station at Pahrump, Nevada, IS GRANTED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Greg Dingley

¹⁹ 47 C.F.R. § 73.855(a).

²⁰ APSF Objection.

²¹ *Id.*

²² PFF Opposition at “Entity Details - Secretary of State, Nevada.”

²³ PFF Opposition at “Annual List of Officers, Directors and Registered Agent of Pahrump Film Festival.”