

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

In Re Application of)	
Saint Cloud Community Mission)	File No.: 0000232518
For New Low Power FM Construction Permit)	Facility ID: 787243
)	

To: The Commission
Attn: Media Bureau, Audio Division

REPLY TO OPPOSITION TO INFORMAL OBJECTIONS

Manuel E. Arroyo, by his counsel and pursuant to Sections 73.3587 and 73.3584 of the Commission's Rules,¹ respectfully submits this Reply in response to the Opposition to Informal Objections ("Opposition") filed on April 3, 2024, in the above-captioned proceeding by Saint Cloud Community Mission ("Saint Cloud" or "Applicant").

I. Introduction

The Commission should dismiss the application of Saint Cloud for a new LPFM Construction Permit ("Application") because Saint Cloud is ineligible to hold an LPFM authorization. The April 4 amendment ("Amendment") providing information regarding an entity that came into existence after the Application was filed, Saint Cloud Community Mission, Inc., fails to correct the eligibility problem. The Application suffers infirmities incapable of correction by amendment. Thus, Mr. Arroyo respectfully submits that the Commission must dismiss the Saint Cloud Application.

¹ 47 C.F.R. §§ 73.3587 and 73.3584.

II. Discussion

a. The Applicant was Ineligible for an LPFM License at the Time of Filing.

The Opposition and underlying Application should be denied because Saint Cloud was not, *at the time of filing*, a qualified non-profit² foundation, corporation, or association for the purposes of eligibility for an LPFM authorization.

On December 15, 2023, Saint Cloud submitted its application for a new Low Power FM station in Saint Cloud, Florida (File No. 0000232518). That date was also the deadline for filing an application for a new LPFM station.³ The applicant was not, as of that date, a nonprofit educational organization recognized under state law. Moreover, the application lacked sufficient documentation to support its certification of existence as a nonprofit educational organization. Saint Cloud asserts that it corrected this infirmity by becoming a corporation on December 19, 2023, and on February 23, 2024, by amending its Articles of Incorporation to state an effective date of December 14, 2023. It was not until April 4, 2024, three and one-half months later, that Saint Cloud filed an amendment asserting that it was a corporation. Yet, as of the close of the window filing on December 15, 2023, the Saint Cloud application remained defective.

² “The term ‘nonprofit’ (as applied to any foundation, corporation, or association) means a foundation, corporation, or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.” 47 U.S.C. § 73.397(8).

³ *Media Bureau Announces Filing Procs. & Requirements for Nov. 1 - Nov. 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642, at 5-6 (MB July 31, 2023) (“LPFM Filing Procedures Public Notice”), deadline extended by *Media Bureau Provides Guidance on the Processing of Schedule 318 Applications Filed in the LPFM Window*, DA 24-92 (MB February 1, 2024).

i. Recognition Under State Law *at the Time of Filing* is a Fundamental Requirement to Hold an LPFM License.

The Applicant must demonstrate that it was recognized as an entity under Florida law at the time of filing the application.

Although the Commission generally will not deny an application for a *commercial* broadcast facility based on a licensee's or permittee's non-compliance with state corporate law 'when no challenge has been made in the State Courts and the determination is one that is more appropriately a matter of state resolution,' applicants for *NCE* stations, including LPFM stations, whose eligibility is restricted by statute, must demonstrate their legal existence under pertinent state law at the time that their applications are filed.⁴

The Commission has expressly rejected arguments by LPFM applicants that "failures to incorporate [are] lapses in formal technical existence" and are not fatal to their eligibility for authorization.⁵ Its rationale turns on the unique importance of entity existence to an NCE applicant's statutory eligibility. Cases involving the rule for commercial stations "are not on point because they do not involve issue of statutory eligibility...under Section 397(6)(A)."⁶

ii. At the Time of Filing, Saint Cloud Was Not Recognized by Florida

Saint Cloud was not, at the time it filed the LPFM application, recognized under Florida law as an entity of any type. First, the document attached to its application fails to establish state recognition. Second, the Saint Cloud "partnership" failed to satisfy the elements of a partnership under Florida law. Third, Saint Cloud could not have been recognized as an unincorporated

⁴ *In the Matter of Applications for Rev. of Decisions Regarding Six Applications for New Low Power FM Stations*, Memorandum Opinion and Order, 28 F.C.C. Rcd. 13390, 13394 (2013) ("*Six Applications*").

⁵ *Six Applications* at 13395.

⁶ *Id.* ("The question of [the applicant's] adherence to organizational formalities in their formation is of paramount importance").

association under Florida law. Fourth, Saint Cloud failed to perform the steps required for Florida to recognize the “partnership” as one and the same with the corporation.

There is ample case law stating that the applicant must be recognized as an eligible entity at the time of filing its application.⁷ In *Alert* and *Lajefa*, the Commission granted two objections and dismissed the underlying LPFM applications for insufficient documentation supporting their respective certifications of existence as noncommercial educational organizations. In each, the applicant submitted only “Organizational Documents” that simply stated its existence as a “non-stock, not-for-profit foundation organized under the laws of the State of Texas.” The Commission reasoned in both decisions that the document “bears no evidence that it has been filed and accepted by a state, and thus does not establish [the Applicant’s] status as a valid nonprofit organization” *at the time of filing*. Here, Saint Cloud likewise submitted a self-authored “Organizational Document.” The document was neither filed nor accepted by the state but recites that Saint Cloud is a “non-stock, not-for-profit organization that was established in St. Cloud, Florida....”⁸ The fact that the document was notarized speaks neither to filing nor acceptance by the State. The document fails to establish that, at the time of filing, it was a valid nonprofit organization recognized by the State of Florida.

1. Saint Cloud was not Recognized by Florida as a Partnership.

As discussed above, the Commission evaluates an entity’s recognition under state law in establishing an LPFM applicant’s statutory eligibility. Profit is an element of Florida Partnerships. “Partnership means an association of two or more persons to carry on as co-owners a business for profit formed [under Florida or comparable foreign law].”⁹ “Saint Cloud admits it was first

⁷ Two recent cases support this proposition—*Alert Community Broadcasting*, Letter, DA 24-391, (rel. April 25, 2024) (“*Alert*”), and *Lajefa Community Radio*, Letter, DA 24-390, (rel. April 25, 2024) (“*Lajefa*”).

⁸ Application at Attach. “Bylaws” (“Bylaws”).

⁹ Fla. Stat. § 620.8101 (7).

organized as a partnership”¹⁰ and its bylaws state that Applicant was formed in St. Cloud, Florida.¹¹ Assuming the truth of the “admission” and bylaws, the entity was, by definition, a Florida *for-profit* entity. As a for-profit entity, Saint Cloud was not a *nonprofit* educational institution, as defined by the Commission, and therefore ineligible for an LPFM authorization.

2. Nor Was Saint Cloud a Florida Unincorporated Association

To the extent that Saint Cloud was at the time an “unincorporated association,” the Opposition and Application should be denied because Florida does not recognize *nonprofit* unincorporated associations as business entities. The Florida Supreme Court has held that unincorporated voluntary *business* associations are treated as partnerships.¹² There is a crucial distinction between Florida for-profit and non-profit unincorporated associations: “[w]e [distinguish] unincorporated associations whose functions are fraternal or social as opposed to business or profit. The latter are governed by partnership law. The former are a legal enigma in Florida. Although we can talk about them, define them, pledge allegiance to them and contribute money to them (often for tax deductions), we cannot sue them.”¹³ This distinction squares neatly with the profit element of partnerships in Florida. Whether Saint Cloud purports to have been, at the time of filing, a Florida partnership or a Florida unincorporated association, it was then ineligible for an LPFM license as either an entity not recognized under state law or as a for-profit entity.¹⁴

¹⁰ Application at Attach. “Attorney Letter” at 9 (“Attorney Letter”).

¹¹ Bylaws.

¹² *Johnston v. Albritton*, 134 So. 563, 565 (1931). The Supreme Court of Florida has held that unincorporated religious organizations have no legal existence, are unable to enter into contracts as an entity, and individuals who purport to contract for nonexistent principals are instead entering into contract as individuals in a personal capacity. *I.W. Phillips & Co. v. Hall*, 99 Fla. 1206, 1211, 128 So. 635, 637 (1930).

¹³ *Guyton v. Howard*, 525 So. 2d 948, 956 (Fla. Dist. Ct. App. 1988).

¹⁴ Moreover, Saint Cloud’s arguments with respect to Florida’s recognition of unincorporated associations heavily rely on a footnote in *Hammock* in which Commission simply acknowledged receipt of the applicant’s submission containing citations and text to Florida law

3. If a Florida Entity Existed at the Time of Filing, it Was Not the Predecessor to the Corporation

The Opposition and Application should be dismissed because Saint Cloud failed to engage in the process required by Florida business law to properly “convert” its entity into a successor entity that is “for all purposes the same entity that existed before the conversion.”¹⁵ Contrary to Saint Cloud’s assertions, continuity of life does not render its corporation the successor to the “partnership.”¹⁶ Under applicable law, conversion would establish that relationship. Florida requires partnerships to file a registration statement, “if such a statement was not previously filed,” and a certificate of conversion.¹⁷ Saint Cloud did neither. Saint Cloud not only failed to take the “requisite steps to receive recognition from the State of Florida *prior to filing its application*,”¹⁸ but it failed to take available, necessary steps for the corporation to be deemed a successor entity. The corporation did not exist in any form at the time of filing.

b. The April 4 Amendment Was Unauthorized and Should Be Returned Without Consideration.

i. Untimely Amendment

Saint Cloud submitted an untimely amendment to reflect its formation after the LPFM filing deadline of a state-recognized entity. The Amendment should be returned as untimely.¹⁹ “Each applicant bears full responsibility for submitting an accurate, complete, and timely

substantiating the validity of unincorporated associations. The mere acknowledgement of material submitted is strongly outweighed by the Commission’s distillation of the relevant inquiry down to “whether Hammock took the requisite steps to receive recognition from the State of Florida prior to filing its Application.” *Hammock Env’t & Educ. Cmty. Servs.*, 25 F.C.C. Rcd. 12804, 12807 (2010) (emphasis added).

¹⁵ Fla. Stat. §§ 620.8915(1), 620.8914(1).

¹⁶ Attorney Letter at 11.

¹⁷ Fla. Stat. § 620.8914(1).

¹⁸ *Hammock* at 12807.

¹⁹ 47 C.F.R. § 73.871(d).

application.”²⁰ Saint Cloud claimed LPFM eligibility based on its status as a nonprofit educational organization. Such organizations “must submit complete copies of the documents establishing their nonprofit status” to support the certification that the applicant “was legally recognized or authorized [by the claimed state] as a valid nonprofit corporate entity.”²¹ “Following the Application Deadline...[e]ach applicant must notify the Commission, by electronically filing an amendment, of any substantial change that may be of decisional significance to the application.”²² In those events, or whenever the application loses substantial accuracy or completeness, “the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend.”²³ Saint Cloud was required to attach complete documentation that it was a state-recognized nonprofit entity, and amend within 30 days after its application lost accuracy or completeness. If it failed to timely do so, Saint Cloud was required to show good cause.

Here, the Applicant waited nearly four times that duration – about 114 days – before submitting an amendment that provides information on a corporation for which it admits it did not complete the initial filing until *after* filing the Application.²⁴ Saint Cloud argues that formation was consummated on that same day. Assuming the truth of that generous interpretation, on that seventh day after filing, the application “los[t] substantial completeness” when Saint Cloud “consummate[ed] the partnership’s planned transformation.” Its application became incomplete because it lacked information regarding the metamorphosis of the entity through which it claimed LPFM eligibility.²⁵ Nevertheless, Saint Cloud waited until April 4, 2024, 107 additional days, to file the Amendment containing information and documents pertaining to the entity that it states

²⁰ LPFM Filing Procedures Public Notice.

²¹ LPFM Filing Procedures Public Notice at 6.

²² LPFM Filing Procedures Public Notice (citing 47 C.F.R. § 1.65).

²³ 47 C.F.R. § 1.65(a).

²⁴ Attorney Letter at 11.

²⁵ Attorney Letter at 11.

was registered on December 19, 2023.²⁶ Saint Cloud fails to show any good cause for that delay. Thus, Saint Cloud’s amendment was untimely and should be returned without consideration.

ii. Improperly Filed Amendment

The Amendment is also unauthorized because it submits major changes when only minor changes are allowed. “Only minor amendments to new and major change applications will be accepted after the close of the pertinent filing window.”²⁷ Amendments to LPFM applications are major unless enumerated in Section 73.871(c). As demonstrated above, entity status is a basic eligibility criterion. Entity status, in the context of applications for noncommercial educational licenses, could not be characterized as an “other change[] in general and/or legal information” or an insubstantial transfer of control.²⁸ 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.”²⁹ Here, Saint Cloud filed an amendment on April 4, 2023, 111 days after the window closed on December 15, 2023. The Amendment changes the entity through which Saint Cloud claims status as a nonprofit educational organization – a fundamental basis for LPFM eligibility. The change should have been submitted as a major amendment. However, by the time that Saint Cloud submitted the Amendment, only minor amendments were allowed. The Amendment is unauthorized and should be returned without consideration as a major amendment.³⁰

²⁶ Attorney Letter at 11.

²⁷ 47 C.F.R. § 73.871(c).

²⁸ 47 C.F.R. §§ 73.871(c)(3) and (5).

²⁹ *Six Applications* at 13396. The Commission has explicitly addressed the issue of amending applicant self-identification as NCE in the context of auctions: “[b]ecause an applicant’s self-identification as ‘noncommercial educational’ affects its eligibility to hold an NCE station license ... we will treat any applicant’s attempt to change its self-identification as a major amendment....” *Radio Training Network, Inc. c/o A. Wray Fitch III, Esq.*, 22 F.C.C. Rcd. 5055, 5056 (2007) (citing *Reexamination of the Comparative Standard for Noncommercial Educational Applicants*, Second Report and Order, 18 FCC Rcd 6691, 6700 (2003)).

³⁰ 47 C.F.R. § 73.871(d).

iii. Infirmity Incapable of Correction by Amendment

Saint Cloud’s ineligibility cannot be remedied by amendment. The relevant period is *at the time of filing*. As discussed in prior sections, Saint Cloud did not exist as an entity at the time of filing in a form recognized by Florida law. Saint Cloud fails to meet even the relaxed requirement of taking “the requisite steps to receive recognition from the State of Florida *prior to filing its Application*,”³¹ In *Hammock*, after filing its NCE application, the applicant supported its entity existence at the time of filing with a copy of a date-stamped letter to the Florida Secretary of State requesting registration.³² The date stamp there indicated receipt date prior to the LPFM filing.

Here, Saint Cloud’s post-deadline efforts to argue its existence are severely lacking. Both the date stamp on the Corporation’s Amended Articles of Incorporation attached to the April 4 Amendment³³ and records on the Florida Division of Corporations website³⁴ indicate that the applicant waited until February 20 to file Amended Articles. Those records also display a corporate filing date of December 19, 2023, and an effective date of January 1, 2024. The April 4 Amendment does not even list the corporation as the applicant and identifies the applicant type as a partnership rather than a not-for-profit corporation.³⁵ Saint Cloud’s amendment attempts to support the existence of an entity other than the applicant.

At the time of filing, not only did Saint Cloud fail to exist as a state-recognized entity, but Saint Cloud fails to provide evidence that it took the “requisite steps to receive recognition from

³¹ *Hammock* at 12806.

³² *Id.*

³³ Amended Articles of Incorporation.

³⁴ Florida Department of State, Division of Corporations, Saint Cloud Community Mission, Inc., <https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=SAINTCLOUDCOMMUNITYMISSION%20N230000151660&aggregateId=domnp-n23000015166-9ecb96dc-91bc-4815-be84-c8d0512a1a49&searchTerm=saint%20cloud%20community%20mission&listNameOrder=SAINTCLOUDCOMMUNITYMISSION%20N230000151660> (last visited May 3, 2024).

³⁵ Amendment.

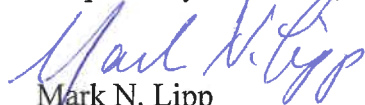
the State of Florida *prior to filing its application.*”³⁶ Under these facts and the applicable standard, no amendment could retroactively render Saint Cloud eligible by December 15, 2023.

III. Conclusion

It appears that, upon realizing that it did not exist as a Florida not-for-profit entity, Saint Cloud hurriedly attempted to form a not-for-profit corporation. However, even its post-filing efforts to rectify its error are strongly indicative of a failure to prosecute. Saint Cloud waited roughly 107 days from its post-deadline corporate formation (about 111 days after the LPFM window closed) to file the Amendment. It waited approximately two months after that post-deadline formation to file with Florida the Amended Articles of Incorporation that attempt to address the corporation’s effective date of January 1, 2024. Saint Cloud fails to meet the state’s requirements for recognition as a partnership or an unincorporated association. As such, the application is patently defective pursuant to Section 73.853 and 73.871 of the Commission’s Rules and the Instructions to Form 2100, Schedule 318.³⁷

In light of the forgoing, Manuel E. Arroyo respectfully requests that the Media Bureau dismiss the Saint Cloud Application.

Respectfully submitted,



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May 7, 2024

³⁶ *Hammock* at 12807.

³⁷ *See* LPFM Filing Procedures Public Notice.

CERTIFICATE OF SERVICE

I, Mark N. Lipp with Fletcher Heald & Hildreth PLC, hereby certify that I have this 7th day of May, caused a copy of the Reply to Opposition to Informal Objections to be sent via US mail or electronic mail, as indicated below, to:

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A handwritten signature in black ink that reads "Mark N. Lipp". The signature is written in a cursive style with a horizontal line drawn through the middle of the name.