



Federal Communications Commission  
Washington, D.C. 20554

July 6, 2007

**DA 07-3002**  
*In Reply Refer to:*  
1800B3-TH

Donald E. Martin, Esq.  
P.O. Box 8433  
Falls Church, VA 22041

**Re: NEW(LPFM), Springdale, Arkansas**  
Springdale Adventist Educational Station, Inc.  
Facility ID No. 135761  
File No. BNPL-20010615BCU

Dear Counsel:

We have before us a Petition for Reconsideration (“Petition”) filed by Springdale Adventist Educational Station, Inc. (“SAES”) on July 22, 2005, seeking reconsideration of the dismissal of the referenced application (“Application”) of SAES for a proposed low power FM (“LPFM”) station in Springdale, Arkansas. The Audio Division of the Media Bureau dismissed the application in a letter dated June 17, 2005 (the “Dismissal Letter”). The Dismissal Letter held that SAES did not meet eligibility requirements to apply for an LPFM construction permit because it was not, as mandated by Section 397(6)(A) of the Communications Act of 1934, as amended (the “Act”), “a public agency or nonprofit private foundation, corporation, or association”<sup>1</sup> as of the application date, which was June 15, 2001. For the reasons set forth below, we deny the Petition.

**Background.** The facts of the case are uncontested. SAES certified in response to Section II, Question 2 of the Application, filed on FCC Form 318, that it was a nonprofit educational organization, and it attached Exhibit 2 to the application to provide further details. In Exhibit 2, SAES stated: “The applicant is a nonstock, not-for-profit corporation organized under the laws of the State of Arkansas in 2001.”<sup>2</sup> An informal objection to the Application filed by WTL Communications, Inc. on May 7, 2004, argued that SAES had not established its eligibility by providing its articles of incorporation or other incorporation information such as the exact date of incorporation. In Attachment 1 to its Opposition to the informal objection, SAES provided a printout from the Arkansas Secretary of State’s website indicating that SAES incorporated on July 3, 2001, eighteen days after SAES filed its Application.

**Discussion.** In its Petition, SAES argues that the Dismissal Letter’s “legalistic approach to an LFPM [sic] applicant’s corporate status is at odds with the Commission’s controlling precedent” with

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<sup>1</sup> 47 U.S.C. § 397(6)(A). *See Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2213 (2000) (“having decided to establish LPFM as a noncommercial service, we will require that LPFM licensees comply with the eligibility requirements of Section 397(6) of the Act.” *See also* FCC Form 318, Section II, Question 2, and Instructions for FCC Form 318, Section II, Question 2.

<sup>2</sup> Application, Exhibit 2. *See also* Application, Exhibit 7 (“Although the corporation was formed in 2001, . . .”).

regard to lapses in formal technical existence.<sup>3</sup> Specifically, SAES argues that the Dismissal Letter is inconsistent with cases where the Commission has stated that it generally will not deny an application based on the applicant's non-compliance with state corporation law where no challenge has been made in the state courts and the determination is one that is more appropriately a matter of state resolution.<sup>4</sup>

The cases cited by SAES are not on point because they involve commercial frequencies, and accordingly do not involve the issue of eligibility to operate as a noncommercial educational or LPFM station under Section 397(6) of the Act. A case that is directly on point is *M&M Community Development, Inc.*, Letter, 21 FCC Rcd 7983 (MB 2006). In that case the Media Bureau, after having dismissed the application of a non-incorporated LPFM applicant, reinstated and granted the application based on a petition for reconsideration that contained an opinion of an attorney licensed in Ohio that the applicant was an unincorporated association recognized under Ohio state law at the time it filed its application.<sup>5</sup> The Bureau described the eligibility requirements as follows:

[A]n LPFM applicant must certify its eligibility to own and operate such station at the time it files its application. This certification requires that the applicant be a non-profit educational institution, corporation or entity recognized under state law. The instruction to FCC Form 318, Section II, Question 2, Subsection 2(b) regarding non-profit educational organizations states that “[a]pplicants must be prepared to furnish supporting documentation for their statement upon request by the Commission staff.” 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 applicant's existence as a separate legal entity.<sup>6</sup>

SAES has not provided any documentation to demonstrate its existence as a separate legal entity as of June 15, 2001, the date it filed the Application. Rather, as set forth above in the Background paragraph, the only documentation that SAES has provided affirmatively establishes that

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<sup>3</sup> Petition at 2.

<sup>4</sup> See Petition at 2-4. The cases cited by SAES are *Abundant Life, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 4972 (2002), *app. dismissed sub nom. Unity Broadcasters v. FCC*, Case No. 01-1148 (D.C. Cir. 2002) (winning bidder in commercial FM spectrum auction formed as a corporation after its application was filed); *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852 (1997)(permittee of commercial FM station had its corporate status suspended due to failure to pay state taxes); *Kathleen N. Benfield*, Letter, 13 FCC Rcd 4102 (MMB 1997)(parent company of commercial FM licensee failed to maintain good standing to do business in the state in which the licensee operated); and *Fatima Response, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 18543 (1999)(licensee of a commercial-band FM station had functioned as a non-profit corporation without being validly incorporated, but provided an opinion of counsel that under California law it was a *de facto* corporation).

<sup>5</sup> The *Fatima Response* case cited by SAES, which involved a licensee operating as a non-profit corporation, had a similar outcome. In contrast to those cases, SAES did not present an opinion of local counsel that SAES was an entity recognized under state law when it filed the Application.

<sup>6</sup> 21 FCC Rcd at 7984. See also *WTL Communications, Inc.*, Letter, 20 FCC Rcd 12066, 12067-69 (MB 2005) (Bureau rejects leniency argument based on cases cited in note 4 above and denies reconsideration of dismissal of LPFM application because the applicant was not recognized as a legal entity).

SAES was not a separate legal entity when it filed the Application. Accordingly, we find that SAES fails to meet the eligibility requirement set forth in Section 397(6) of the Act.

**Conclusion/Actions.** The SAES Petition provides no basis for reconsideration of the Dismissal Letter.

Accordingly, IT IS ORDERED, pursuant to the authority delegated under 47 C.F.R. § 0.283, that the Petition for Reconsideration filed by Springdale Adventist Educational Station, Inc. on July 22, 2005, IS DENIED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau