



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

December 18, 2015

DA 15-1452
In Reply Refer To:
1800B3-EA/ATS
Released: December 18, 2015

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Ms. Megan Pierce
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In re: A Home for Everyone
New LPFM, Lebanon, OR
Facility ID No. 195688
File No. BNPL-20131112CGV

Blue Stone Media Activists
New LPFM, Bend, OR
Facility ID No. 195944
File No. BNPL-20131113AHP

Cascadia Sound Waves
New LPFM, Cascadia, OR
Facility ID No. 195367
File No. BNPL-20131112BEO

Central Oregon Spiritual
Awareness Advocates
New LPFM, Bend, OR
Facility ID No. 195728
File No. BNPL-20131113AEF

Futurist Prophetic Advancement
New LPFM, Madras, OR
Facility ID No. 196948
File No. BNPL-20131114ANG

Health Freedom For All
New LPFM, Sweet Home, OR
Facility ID No. 195664
File No. BNPL-20131112CGR

Second Chance Ministry
New LPFM, Brownsville, OR
Facility ID No. 195752
File No. BNPL-20131112CGT

Sweet Home All for One and
One for All
New LPFM, Sweet Home, OR
Facility ID No. 195614
File No. BNPL-20131112CGN

The Bride of Christ As One
New LPFM, Sweet Home, OR
Facility ID No. 195628
File No. BNPL-20131112CGP

Petitions for Reconsideration

Dear Applicants:

We have before us nine Petitions for Reconsideration filed on March 30, 2015 (Petitions) by A Home for Everyone (Home), Blue Stone Media Activists (Blue Stone), Cascadia Sound Waves (Cascadia), Central Oregon Spiritual Awareness Advocates (Central Oregon), Futurist Prophetic Advancement (Futurist), Health Freedom For All (Health), Second Chance Ministry (Second Chance), Sweet Home All for One and One for All (Sweet Home), and The Bride of Christ As One (Bride) (collectively, Lund Corporations), seeking reconsideration of the Media Bureau (Bureau) dismissal¹ of their applications for construction permits for new LPFM stations in Oregon (Applications).² For the reasons set forth below, we grant the Petitions in part and deny them in all other respects.

Background. Robert Lund, an engineering consultant, prepared and filed the Applications during the 2013 LPFM filing window. Each of the Lund Corporations—which were all incorporated between September and November of 2013—submitted articles of incorporation to the Oregon Secretary of State (OSOS) that named one director for each corporation and classified each of the entities being formed as a “public benefit corporation.”³ Likewise, the Applications identified the respective sole directors as holding 100% of each board’s voting share.⁴

The *Dismissal Letters* stated that, according to the records of the OSOS, the Lund Corporations were administratively dissolved in January 2015.⁵ Thus, the *Dismissal Letters* held that the Lund Corporations were no longer eligible to hold LPFM authorizations and dismissed the Applications.⁶ In the Petitions, the Lund Corporations argue that the Bureau erred in its dismissing the Applications because: 1) Section 73.853(b) of the Commission’s Rules (Rules) is concerned with “localism eligibility,” and not the Lund Corporations’ corporate status;⁷ and 2)

¹ *A Home for Everyone*, Letter Order, Ref. No. 1800B3 (MB Feb. 25, 2015); *Blue Stone Media Activists*, Letter Order, Ref. No. 1800B3 (MB Feb. 25, 2015); *Cascadia Sound Waves*, Letter Order, Ref. No. 1800B3 (MB Feb. 25, 2015); *Central Oregon Spiritual Awareness Advocates*, Letter Order, Ref. No. 1800B3 (MB Feb. 25, 2015); *Futurist Prophetic Advancement*, Letter Order, Ref. No. 1800B3 (MB Feb. 25, 2015); *Health Freedom For All*, Letter Order, Ref. No. 1800B3 (MB Feb. 25, 2015); *Second Chance Ministry*, Letter Order, Ref. No. 1800B3 (MB Feb. 25, 2015); *Sweet Home All for One and One for All*, Letter Order, Ref. No. 1800B3 (MB Feb. 25, 2015); *The Bride of Christ As One*, Letter Order, Ref. No. 1800B3 (MB Feb. 25, 2015) (collectively, *Dismissal Letters*).

² On December 12, 2013, Prometheus Radio Project (Prometheus) filed an Informal Objection (Prometheus Objection) to the applications of Cascadia, Central Oregon, Futurist, Health, Second Chance, Sweet Home, and Bride. On January 12, 2014, Eads Broadcasting Corporation filed an Informal Objection to the applications of Home, Health, Sweet Home, and Bride. Cascadia, Central Oregon, Futurist, Health, Second Chance, Sweet Home, and Bride filed oppositions on August 7, 2014. Prometheus filed replies to these oppositions on September 11, 2014.

³ Applications at Attach. 2. Home listed Tylor Stone; Blue Stone listed Leanna McKendree; Cascadia listed Sonya McKendree; Central Oregon listed Joelle Lund; Futurist listed Donna McKendree; Health listed Walter Lund; Second Chance listed Stan Barr; Sweet Home listed Colleen Lund; and Bride listed Megan Pierce.

⁴ *Id.* at Section II, Question 3.a.

⁵ *Dismissal Letters* at 1.

⁶ *Id.*, citing 47 CFR § 73.853(b).

⁷ Petitions at 1-2.

although the Lund Corporations were “administratively dissolved” in January 2015, they have since been reinstated.⁸

In September of 2014, a representative from the Oregon Department of Justice, Civil Enforcement Division, Charitable Activities Section (ODOJ) contacted the Bureau to indicate that the ODOJ was investigating the Lund Corporations to determine whether they complied with Oregon state law and who controlled the entities. The Bureau agreed to cooperate with the ODOJ and the two agencies agreed to share any information their respective investigations yielded.⁹ On June 2, 2015, at the request of the Commission, the ODOJ submitted a letter (attached) discussing its findings that the Lund Corporations do not conform to Oregon law, even though they are actively registered with the OSOS.¹⁰ The ODOJ Letter states that Oregon Revised Statutes (ORS) § 65.307(1) requires that the board of directors of a public benefit corporation—such as the Lund Corporations—must consist of three or more individuals.¹¹ Furthermore, the Lund Corporations never held meetings to elect a complete initial slate of directors.¹² Thus, at the time the Applications were filed, the Lund Corporations did not comply with ORS § 65.307(1) and the organization of the Lund Corporations “was never properly completed.”¹³

The ODOJ Letter also notes that, shortly after ODOJ sent letters to certain of the Lund Corporations concerning registration requirements, each of the Lund Corporations filed Articles of Amendments (Amendments) with the OSOS to convert from public benefit corporations to religious corporations.¹⁴ Moreover, the ODOJ Letter finds that the Amendments did not cure the defects in the structure of the Lund Corporations because, as single-member public benefit

⁸ *Id.* at 3-5. In support of this assertion, the Petitions provide: (1) references to two Oregon statutes that define administrative dissolution and state that when reinstatement is effective, it relates back to the date of the administrative dissolution as if the dissolution had never occurred; (2) copies of the Lund Corporations’ applications for reinstatement / reactivation; (3) certificates of existence from the OSOS; and (4) a letter from Andrew J. Bean, an Oregon attorney, explaining the law of administrative dissolution of corporations in Oregon, and concluding that the legal effect of administrative dissolution is “minimal or non-existent under Oregon state law.” *Id.* at 3-4, and Attachs. 2-4.

⁹ The Rules on *ex parte* presentations permit the Commission staff to receive such information from the ODOJ because it was part of an investigation into possible violations of the Rules. See 47 CFR § 1.204(a)(10)(ii) (“The Commission or its staff may determine that service or public notice would interfere with the effective conduct of an investigation and dispense with the service and public notice requirements.”).

¹⁰ Letter from Elizabeth M. Grant, State of Oregon Department of Justice, to Chairman Thomas Wheeler, Federal Communications Commission (June 12, 2015) (ODOJ Letter). The ODOJ Letter references several other organizations with ties to Lund, in addition to the nine Lund Applications discussed here.

¹¹ *Id.* at 2, citing ORS § 65.307 (“A board of directors must consist of one or more individuals for a mutual benefit or religious corporation and three or more individuals for a public benefit corporation, with the number specified or fixed in accordance with the articles of incorporation or bylaws.”).

¹² ODOJ Letter at 2, citing ORS § 65.057

¹³ ODOJ Letter at 2.

¹⁴ *Id.* at 3. ODOJ sent three letters on September 16, 2014, to Robert Lund as the registered agent for three of the corporations and a fourth letter to another registered agent. The Amendments were filed on September 23, 2014. The Amendments may be found by accessing the OSOS website at http://egov.sos.state.or.us/br/pkg_web_name_srch_inq.login. Although the Amendments purported to convert each corporation to a religious corporation, the ODOJ Letter notes that many of the corporations do not appear to have religious purposes. *Id.* at 3 n.2.

corporations, the Lund Corporations never had a three-person board that could authorize the conversion to a religious corporation.¹⁵

Finally, the ODOJ Letter states that an ODOJ investigation found that the Lund Corporations “are effectively controlled by Robert Lund and that he orchestrated [their] activities”¹⁶ and that “[p]ossibly, given their shell-like nature, the Lund Corporations may have been formed to circumvent [Commission] licensing restrictions limiting the ability of persons to have an interest in more than one [LPFM] license.”¹⁷ This finding is based on interviews with the nominal directors of several of the Lund Corporations, wherein they provided information indicating that Lund created and controlled each of the Lund Corporations in which they were listed as the sole directors.¹⁸

On July 21, 2015, the Bureau issued a Letter of Inquiry (LOIs) to each of the Lund Corporations, affording them a 30-day opportunity to respond to the allegations raised in the ODOJ Letter. On August 21, 2015, counsel for the Lund Corporations submitted a request for an additional 30 days in which to file a response, which the Bureau granted.¹⁹ On September 25, counsel for the Lund Corporations submitted a request for a further extension of time, until October 19, 2015, and that request was granted.²⁰ On October 22, 2015, counsel for the Lund Corporations submitted a third extension request, seeking an extension until November 25, 2015.²¹ In response, the Bureau granted an extension until October 30, 2015, and warned that no further extensions would be allowed.²²

On October 30, 2015, Lund submitted a letter in response to the LOIs (Lund Response). Lund states that each of the Lund Corporations remains in good standing with the OSOS, that the OSOS “is not within the jurisdiction of the [ODOJ],” and that the ODOJ Letter is “a legal

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 3. *See also* 47 CFR § 73.855(a) (“No authorization for an LPFM station shall be granted to any party if the grant of that authorization will result in any such party holding an attributable interest in two or more LPFM stations.”).

¹⁸ ODOJ Letter at 3-6. Lund appears to be the only person associated with the Lund Corporations who has experience with FCC filings and broadcast operations. *See* Commission records for Station KRAD-LP, Millersburg, Oregon (*e.g.*, File No. BNPL-20010615BDY). Lund “has an ownership interest in all but one or two of the trailers in the trailer park” in Sweet Home, Oregon where several of the nominal directors lived, and he is related to certain other directors who lived elsewhere. ODOJ Letter at 4.

¹⁹ Email from Dan J. Alpert, Esq., to Alexander T. Sanjenis, Esq., Attorney, Audio Division, Media Bureau, FCC (Aug. 21, 2015, 12:36 EST); Email from Alexander T. Sanjenis, Esq. to Dan J. Alpert, Esq. (Aug. 21, 2015 11:50 EST). On September 25, 2015, counsel for the Lund Corporations requested yet another extension of time, until October 19, 2015, which the Bureau also granted.

²⁰ Email from Dan J. Alpert, Esq., to Alexander T. Sanjenis, Esq., Attorney, Audio Division, Media Bureau, FCC (Sep. 25, 2015, 1:48 EST); Email from Alexander T. Sanjenis, Esq., Attorney, Audio Division, Media Bureau, FCC, to Dan J. Alpert, Esq. (Sep. 27, 2015 22:38 EST).

²¹ Email from Dan J. Alpert, Esq., to Alexander T. Sanjenis, Esq., Attorney, Audio Division, Media Bureau, FCC (Oct. 22, 2015, 17:03 EST).

²² Email from Tom Hutton, Esq., Deputy Division Chief, Audio Division, Media Bureau, FCC, to Dan J. Alpert, Esq. (Oct. 23, 2015, 10:19 EST).

opinion, not a legal adjudication.²³ Regarding his alleged control of the Lund Corporations, Lund states that “all the letter contains is allegation after allegation, supported only by hearsay, all of which should not even be admissible.”²⁴ He further states that “these allegations as to ‘excessive involvement’ of Robert Lund were already answered previously in response to [the Prometheus Objection].”²⁵ Attached to the Lund Response are declarations from six of the Lund Corporations’ directors which were submitted in August of 2014 in response to the Prometheus Objection: Stanley Warren Barr from Second Chance; Collen Lund from Sweet Home; Sonya McKendree from Cascadia; Walter Lund from Health Freedom; Joelle Lund from Central Oregon; and Taylor Stone from Home.²⁶ Also attached to the Lund Response are copies of various oppositions filed in August of 2014 by five of the Lund Corporations (Central Oregon, Futurist, Cascadia, Health, and Second Chance) in response to the Prometheus Objection.²⁷

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts, not known or existing at the time of the petitioner's last opportunity to present such matters.²⁸ With one minor exception discussed in the next paragraph, the Lund Corporations have not met this burden.

As an initial matter, we agree with Petitioners that the *Dismissal Letters* cited to Section 73.853(b) and to this extent grant the Petitions. At issue in this case (as correctly described in the *Dismissal Letters*) is whether the Lund Corporations satisfied the corporate eligibility requirement set forth in Section 73.853(a).²⁹ LPFM applicants must submit an exhibit identifying the state in which the organization is incorporated or otherwise recognized.³⁰ The Commission has stated that an LPFM applicant must be recognized as a nonprofit entity at the time it files its application,³¹ and for applicants claiming to be corporations, they must be properly incorporated

²³ Lund Response at 1 (emphasis in original).

²⁴ *Id.* at 2.

²⁵ *Id.*

²⁶ *Id.* at Attach. 2.

²⁷ *Id.* at Attachs. 3, 4, 5, 6, and 7. Also included is a copy of a sixth opposition dated August 5, 2014, submitted by Sweet Home House of Prayer in response to the Prometheus Objection. *Id.* at Attach. 8. The Commission’s records do not reflect that it was previously filed. Moreover, Sweet Home House of Prayer’s application was dismissed on February 2, 2015, and no petition for reconsideration of that action has been filed. See File No. BNPL-20131112CGJ.

²⁸ See 47 CFR § 1.106(c), (d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff’d sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

²⁹ See 47 CFR § 73.853(a).

³⁰ Applications at Note to Section II, Question 2 (“If the applicant is incorporated, the exhibit must include the state and date of applicant's incorporation.”).

³¹ *Applications for Review of Decisions Regarding Six Applications for Low Power FM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13396 (2013) (“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”).

at that time.³² The ODOJ Letter demonstrates that the Lund Corporations were not valid corporations under Oregon law at the time that the Applications were filed, and that the Amendments failed to correct the defects in their corporate structures.

We reject Lund's suggestion that the ODOJ Letter is merely advisory. The ODOJ Letter was issued by the Charitable Service Division, which oversees nonprofit entities' compliance with Oregon Law and explicitly states that the Lund Applications "are facially inconsistent with Oregon legal requirements" because the Lund Corporations "were non-conforming with Oregon state law when their respective FCC LPFM applications were submitted."³³ Moreover, the Commission may take official notice of government records³⁴ and defer to state agency findings.³⁵ If Lund believes the ODOJ Letter is erroneous, he may pursue a remedy in state court, which is the appropriate forum to resolve matters of state law.³⁶ As the ODOJ Letter shows, mere compliance with the filing requirements of the OSOS does not indicate that the Lund Corporations have met the legal requirements of a nonprofit corporation under Oregon law. We accordingly uphold the dismissal of the Applications on this basis and deny the Petitions.

Inconsistent Application Rule. The ODOJ Letter also makes a *prima facie* case that the Lund Corporations were not independent entities, but were in fact all controlled by Lund³⁷ and that he is the real party in interest behind each of the Applications.³⁸ We reject Lund's suggestion

³² *Malibu FM Emergency and Cmty. Broad., Inc.*, Memorandum Opinion and Order, 30 FCC Rcd 7705 (2015) (affirming dismissal of LPFM applicant that had not completed incorporation process with State of California at the time it filed its application).

³³ ODOJ Letter at 6.

³⁴ See *Citadel Broadcasting Company, Memorandum Opinion and Order*, 22 FCC Rcd 7083, 7094 ¶21 (2007) (taking official notice of public records from the New York Attorney General). See also *David L. Titus*, Decision, 29 FCC Rcd 14066 (2014) at 14072 (evidence in record includes a Seattle Police Department bulletin and a treatment summary from a sex offender program) and at 14073 n.65 (taking official notice of sex offender's petition to restore his civil rights and terminate his obligation to register as a sex offender, and state court decision denying the petition); *Blues and Gospel Heritage Ass'n*, Letter Order, 25 FCC Rcd 8472, 8474 n.16 (MB 2010) (staff takes official notice of Mississippi state corporate records); *Malin Christian Church, Inc.*, Letter Order, 25 FCC Rcd 915, 916 (MB 2010) (taking official notice of state records, state court decision, and letter from Bureau of Land Management).

³⁵ See, e.g., *Bienville Parish Sch. Bd. et al.*, Order, 21 FCC Rcd 1234, 1239 ¶6 (WCB 2006) (deferring to state attorney general's advisory opinion).

³⁶ See *Northwest Broad., Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 3289, 3293 ¶14 (1997); see also *North Am. Broad. Co.*, Memorandum Opinion and Order, 15 FCC 2d 979, 983, ¶10 (1969).

³⁷ See *Edwin L. Edwards, Sr.*, Memorandum Opinion and Order and Notice of Apparent Liability, 16 FCC Rcd 22236, 22248 (2001), *aff'd sub nom. Rainbow/PUSH Coalition v. FCC*, 330 F.3d 539 (D.C. Cir. 2003) ("[W]e find that Kelley and Rainbow have set forth specific allegations of fact sufficient to show that certain of the current transactions in this proceeding have resulted in Sinclair exercising *de facto* control over Glencairn in violation of Section 310(d) of the Communications Act."). In assessing the locus of control, the Commission examines who establishes an entity's basic operating policies with respect to programming, personnel, and finances. See *WGPR, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8140, 8142-46 (1995), *vacated on other grounds sub nom. Serafyn v. FCC*, 149 F.3d 1213 (D.C. Cir. 1998); *Choctaw Broad. Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 8534, 8538-39 (1997).

³⁸ In a real-party-in-interest inquiry, the focus is whether a third person has an undisclosed ownership interest in an application or will be in a position to actually or potentially control the applicant. See *Georgia Public Telecom. Comm.*, Memorandum Opinion and Order, 7 FCC Rcd 7996, 7998 (1992), *citing Astroline Commc'ns. Co. v. FCC*, 857 F.2d 1556, 1564 (D.C. Cir. 1998); *KOWL, Inc.*,

(continued....)

that the ODOJ Letter is based on hearsay. The statements made to the ODOJ by the putative directors of the Lund Corporations were made during a government investigation and are admissible as exceptions to the rule against hearsay.³⁹ With respect to the declarations and oppositions provided in the Lund Response, they were submitted before the ODOJ Letter and do not respond to the allegations raised therein or in the LOIs.

Based on this record, we conclude that the Lund Corporations were created in an attempt to circumvent Section 73.855(a) of the Rules, which prohibits a party from holding an attributable interest in more than one LPFM authorization.⁴⁰ Because Lund was the real party in interest behind the Lund Corporations, he held an attributable interest in each of them at the time of application filing.⁴¹ Accordingly, the Applications could not be granted because they were inconsistent applications.⁴² We thus affirm the dismissal of the Applications as inconsistent applications as well.

Conclusion/Actions. Accordingly, for the reasons set forth above, IT IS ORDERED, that the Petitions for Reconsideration filed by A Home for Everyone (File No. BNPL-20131112CGV), Blue Stone Media Activists (File No. BNPL-20131113AHP), Cascadia Sound Waves (File No. BNPL-20131112BEO), Central Oregon Spiritual Awareness Advocates (File No. BNPL-20131113AEF), Futurist Prophetic Advancement (File No. BNPL-20131114ANG), Health Freedom For All (File No. BNPL-20131112CGR), Second Chance Ministry (File No. BNPL-20131112CGT), Sweet Home All for One and One for All (File No. BNPL-

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Memorandum Opinion and Order, 49 FCC 2d 962 (1974) (same, citing *Creek County Broad. Co.*, 31 FCC 2d 462, 22 RR 2d 891 (1971) and *Sumiton Broad. Co.*, 15 FCC 2d 400, 14 RR 2d 1000 (1968)). The ODOJ Letter states in part:

This explanation [that Lund effectively controls the Lund Corporations] is consistent with information this office obtained in our interviews of several persons identified as the corporate director for a number of the Lund Corporations. They indicated that Robert Lund initiated the discussion regarding LPFM licenses and forming nonprofit corporations to obtain such licenses. Lund prepared the articles of incorporation for each entity, secured the nominal key person's signature on each of the respective articles, and filed the articles of incorporation with the Oregon Secretary of State for each entity. The nominal directors we interviewed indicated that they did not pay the corporate filing fees. In at least one instance, the nominal director did not even know an LPFM radio station license application had been filed on behalf of the corporation with which she is associated until after being notified that the license had been granted.

ODOJ Letter at 4.

³⁹ Fed R. Evid. 803(8). See also *Nancy Naleszkiewicz*, Memorandum Opinion and Order, 10 FCC Rcd 1083, Appendix n.18 (1995) (prosecutor's conclusory opinion admissible under Rule 803(8) because it was "an official's finding based on an investigation conducted pursuant to authority granted by law").

⁴⁰ 47 CFR § 73.855(a).

⁴¹ See Instructions to FCC Form 318, Section II, Question 3 ("the term 'party to the application' includes any individual or entity whose ownership or positional interest in the applicant is 'attributable.' An 'attributable interest' is an ownership interest in or in relation to an applicant or licensee which will give its holder that degree of influence or control over the applicant or licensee sufficient to implicate the Commission's multiple ownership rules."). See also 47 CFR § 73.858.

⁴² See *Hispanic Broad. Inst., Inc.*, Memorandum Opinion and Order, 30 FCC Rcd 10560, 10562, para. 4 (2015) (affirming dismissal of inconsistent application).

20131112CGN), and The Bride of Christ As One (File No. BNPL-20131112CGP) on March 30, 2015, ARE GRANTED IN PART and OTHERWISE ARE DENIED.

Sincerely,

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