



Federal Communications Commission  
Washington, D.C. 20554

April 9, 2015

DA 15-437  
*In Reply Refer to:*  
1800B3-ATS  
Released: April 9, 2015

Mr. Justin Martin  
Fondren Community Voices  
622 Duling Ave.  
Jackson, MS 39216

In re: Fondren Community Voices  
New LPFM, Jackson, MS  
Facility ID No. 195635  
File No. BNPL-20131112CDL

**Petition for Reconsideration**

Dear Mr. Martin:

We have before us an amendment filed on February 18, 2015 (“Amendment”), by Fondren Community Voices (“Fondren”) seeking reconsideration of the Media Bureau (“Bureau”) dismissal<sup>1</sup> of its application for a construction permit for new LPFM station at Jackson, Mississippi (“Fondren Application”). For the reasons set forth below, we treat the Amendment as a Petition for Reconsideration under Section 1.106 of the Commission’s Rules<sup>2</sup> and deny it.

**Background.** Fondren filed the Fondren Application during the October 2013 LPFM filing window. The Bureau determined that the Fondren Application and the applications of Church in Jackson, Inc. (“CJI Application”), and Mississippi Catholic Radio, Inc. (“MCR Application”), were mutually exclusive and identified them as LPFM MX Group 216.<sup>3</sup> On December 23, 2014, the Commission issued a Public Notice in which it identified the CJI Application as the tentative selectee of LPFM MX Group 216, and also established deadlines for filing petitions to deny against that application and, for any member of MX Group 216, major change amendments to their applications to resolve their mutual exclusivities.<sup>4</sup> Subsequently, CJI Application and the MCR Application were amended, resulting in the Fondren Application becoming a singleton.

Fondren did not provide any documentation with the Fondren Application indicating its organizational status as required by FCC Form 318. Instead, it provided an educational purpose narrative that did not state its organizational form or whether it had received state certification or

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<sup>1</sup> *Fondren Community Voices*, Letter, Ref 1800B3 (MB Jan. 15, 2015) (“*Dismissal Letter*”). See also *Broadcast Actions*, Public Notice, Report No. 48409 (MB Jan. 21, 2015).

<sup>2</sup> 47 C.F.R. § 1.106.

<sup>3</sup> *Media Bureau Identifies Mutually Exclusive Applications Filed in the LPFM Window and Announces 60-Day Settlement Period; CDBS Is Now Accepting Form 318 Amendments*, Public Notice, 28 FCC Rcd 16713 (MB 2013).

<sup>4</sup> *Commission Identifies Tentative Selectees in 96 Groups of Mutually Exclusive Applications filed in the LPFM Window*, Public Notice, 29 FCC Rcd 16408 (2014).

recognition.<sup>5</sup> On January 15, 2015, the Bureau dismissed the Fondren Application because it failed to submit documentation showing its nonprofit status.<sup>6</sup> In the Amendment, Fondren states that it is an unincorporated association and that Mississippi law recognizes such entities, referring to a section of the Mississippi Code and two Mississippi state court decisions.<sup>7</sup> Thus, Fondren argues that the Fondren Application should be reinstated.

**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.<sup>8</sup> Fondren has not met this burden.

According to the Commission's Rules, an LPFM station can only be licensed to a nonprofit educational organization for the advancement of an educational program.<sup>9</sup> An applicant "must submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation. Applicants that fail to provide these materials are subject to dismissal."<sup>10</sup> We have previously stated that an applicant claiming to be an unincorporated association may provide "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>11</sup> Such documentation must include some explanation of how and when

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<sup>5</sup> Fondren Application at Exhibit 2 ("Fondren Community Voices was formed in August of 2013. The goal of the organization is twofold: 1) to offer a pure community voice for the growing Fondren community, and 2) to provide a practical experience for students of all ages that are interested in learning about broadcast communication. The studio will be located in the old Duling School, with access to Duling Hall, a community venue. The goal is to broadcast all Duling Hall events live to provide access to arts for people that may not be able to attend the shows.").

<sup>6</sup> *Dismissal Letter* at 1.

<sup>7</sup> Amendment at Exhibit 2 ("Mississippi law recognizes unincorporated organizations. Under Miss. Code. Ann. § 79-11-127, an "entity" is defined under the Mississippi Nonprofit Corporation Act as a "corporation and foreign corporation; business corporation and foreign business corporation; profit and nonprofit unincorporated association; corporation sole; business trust, estate, partnership, trust and two (2) or more persons having a joint or common economic interest; and state, United States and foreign government. Mississippi does not generally require the registration of unincorporated associations, but the Supreme Court of Mississippi has upheld the status of unincorporated associations as independent, suable organizations. See *Rolison v. City of Meridian*, 691 So. 2d 440, 445 (Miss. 1997). Mississippi common law has also upheld the ability of unincorporated associations to enter into leases. See *King v. O'Tuckolofa Gun & Rod Club*, 178 Miss. 606, 174 So. 83, 84 (1937).").

<sup>8</sup> See 47 C.F.R. § 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).

<sup>9</sup> 47 C.F.R. §73.853. See also *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 [47 U.S.C. § 397(6)(A)].")

<sup>10</sup> Instructions to FCC Form 318, Section II, Question 2, Subsection 2(a). See also FCC Form 318, Section II, Question 2, Note ("If the applicant is incorporated, the [educational program] exhibit must include the state and date of applicant's incorporation. If the applicant is unincorporated, the exhibit must include the state in which it is registered or otherwise recognized and the date of such registration or recognition.").

<sup>11</sup> *M&M Community Development, Inc.*, Letter, 21 FCC Rcd 7983, 7984 (MB 2006).

the applicant, prior to filing the application, satisfied the requirement for an unincorporated association under state law.<sup>12</sup>

Although Fondren cites to a Mississippi statute recognizing unincorporated associations and several Mississippi court decisions involving unincorporated associations, Fondren does not explain or discuss how its organizational structure is consistent with the requirements of Mississippi law. Additionally, Fondren has not provided a description of any actual activity it engaged in which would qualify it as an unincorporated association prior to filing the Fondren Application. Instead Fondren only states activities it intends to undertake in the future, if granted a construction permit.<sup>13</sup> Fondren has thus failed to demonstrate that it was recognized as a nonprofit entity at the time it filed the Fondren Application. Accordingly, we will deny its request for reinstatement.

**Conclusion/Actions.** Accordingly, for the reasons set forth above, IT IS ORDERED, that amendment filed by Fondren Community Voices on February 18, 2015, treated as a Petition for Reconsideration, IS DENIED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>12</sup> 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).

<sup>13</sup> See, e.g., *Montmorenci United Methodist Church and Mount Pisgah Adventist Educational Media*, Letter, 22 FCC Rcd 1110 (MB 2007) (merely preparing an LPFM application does not establish an unincorporated association), *aff'd*, *Applications for Review of Decisions Regarding Six Applications for New Low Power FM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13397-99 (2013). See also *Hope Radio of Rolla, Inc.*, Letter, 22 FCC Rcd 4833 (MB 2007) (rejecting argument that dismissed LPFM applicant qualified as an unincorporated association where applicant failed to show it was recognized as such an entity under state law), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 7754 (2013) (rejecting applicant's attempts to show on review that preparing the LPFM application satisfied the requirements for an unincorporated association where it had failed to provide documentation on reconsideration and only supported its argument with copies of relevant state statutes).