



Federal Communications Commission
Washington, D.C. 20554

February 15, 2024

DA 24-140
In Reply Refer to:
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Hippy Dippy Tree Hugger Radio
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Galax, VA 24333
(sent by electronic mail to: franchescamedic@icloud.com)

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In re: **Hippy Dippy Tree Hugger Radio**
New LPFM, Galax, VA
Facility ID No. 788734
Application File No. 0000232974

Informal Objection

Dear Applicant and Objector:

We have before us the application filed by Hippy Dippy Tree Hugger Radio (Hippy) for a construction permit for a new low power FM (LPFM) station at Galax, Virginia.¹ We also have before us the Informal Objection (Objection) filed by Albert Adam David (David), seeking dismissal of the Application.² For the reasons set forth below, we grant the Objection and dismiss the Application.

Background. Hippy filed the Application during the 2023 LPFM Filing Window.³ Hippy asserted in an attachment to its Application that it is an “unincorporated association located in the [Commonwealth] of Virginia . . . since 11/1/2021.”⁴ On January 19, 2024, David filed the Objection, arguing that the Application fails to include required documentation demonstrating that the applicant

¹ Application File No. 0000232974 (Application).

² Pleading File No. 0000235818 (filed Jan. 19, 2024). Hippy did not file an opposition to the Objection.

³ *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642 (MB July 31, 2023) (*Procedures Public Notice*). Based on a request from LPFM advocates, the Bureau subsequently delayed the window until December 6, 2023. *Media Bureau Announces Revised Dates for LPFM New Station Application Filing Window*, Public Notice, DA 23-984 (MB Oct. 17, 2023). The Bureau subsequently extended the close of the window until December 15, 2023. *Media Bureau Announces Extension of LPFM New Station Application Filing Window*, Public Notice, DA 23-1150 (MB Dec. 11, 2023).

⁴ See Application at Attach. “Hippy Dippy.pdf”.

organization is an unincorporated association recognized in its relevant jurisdiction.⁵ Thus, David argues, the Application fails to demonstrate that Hippy is an entity eligible to hold an LPFM license.⁶

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),⁷ petitions to deny and informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.⁸

An LPFM applicant must meet basic eligibility requirements⁹ and certify its eligibility to own and operate an LPFM station at the time that it files its FCC Form 2100, Schedule 318 application (LPFM Application).¹⁰ Specifically, each applicant claiming eligibility as a nonprofit educational organization must certify it is a noncommercial educational institution, corporation, foundation, association, or entity that is recognized under state law.¹¹ Thus, an LPFM applicant must be incorporated, registered, or otherwise organized under the laws of the state in which it proposes to operate the proposed LPFM station at the time its application is submitted.¹² Each applicant must submit an explanatory exhibit in connection with its application.¹³

In the Application, Hippy certifies that it is a nonprofit educational institution or organization,¹⁴ and in an attachment to the Application, Hippy states that it is an “unincorporated association located in the [Commonwealth] of Virginia . . . since 11/1/2021.”¹⁵ Commission precedent establishes that an unincorporated association applicant “must submit documents demonstrating it is recognized in its relevant jurisdiction and that the organization meets the requirements for such an entity.”¹⁶ Such documentation may, for example, include a letter signed by a local attorney licensed to practice in the

⁵ Objection at 1 (citing *Procedures Public Notice* at 6 (“Any applicant that is an unincorporated association must submit documents demonstrating it is recognized in its relevant jurisdiction and that the organization meets the requirements for such an entity.”)).

⁶ *See id.*

⁷ 47 U.S.C. § 309(d).

⁸ *See, e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff’d sub nom. Garden State Broad. L.P. v. FCC*, 996 F. 2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

⁹ *See* 47 CFR § 73.853.

¹⁰ *See* Instructions for LPFM Application, Legal Certifications, Eligibility Certifications. *See also* LPFM Application, Legal Certifications, Eligibility Certifications.

¹¹ *See id.*

¹² *See id.* *See also* 47 U.S.C. § 397(6)(A).

¹³ *See* LPFM Application, Legal Certifications, Eligibility Certifications. *See also Procedures Public Notice* at 6 (nonprofit educational organizations “also must submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation.”).

¹⁴ *See* Application at Legal Certifications, Eligibility Certifications.

¹⁵ *See* Application at Attach. “Hippy Dippy.pdf”.

¹⁶ *Procedures Public Notice* at 6 (citing *Applications for Review of Decisions Regarding Six Applications for New Low Power FM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13397-98, para. 22 (2013)).

state where the applicant proposes to operate, the citation and text of a state statute permitting unincorporated entities, or any other official documentation showing the applicant's existence as a separate legal entity.¹⁷ Such documentation must include some explanation of how and when the applicant, prior to filing the application, satisfied the requirements for an unincorporated association under state law.¹⁸ Applicants which neglect to provide the requisite eligibility documentation are subject to dismissal.¹⁹

Hippy neglects to provide any evidence, as required, demonstrating that it is an unincorporated association recognized under state law.²⁰ Hippy does not cite to any Virginia law recognizing unincorporated associations and fails to explain or discuss how its organizational structure is consistent with the requirements of Virginia law.²¹ Additionally, Hippy has not provided a description of any actual activity it engaged in which would qualify it as an unincorporated association prior to filing the Application.²² Therefore, we find that Hippy has failed to demonstrate that it was organized as a nonprofit entity in a form recognized by Virginia law at the time it filed the Application. Accordingly, we grant the Objection, and dismiss the Application.

Conclusion/Action. Accordingly, **IT IS ORDERED** that the Informal Objection filed on January 19, 2024 (Pleading No. 0000235818) by Albert Adam David **IS GRANTED**.

¹⁷ See *M&M Community Development, Inc.*, Letter Order, 21 FCC Rcd 7983, 7984 (2006) (listing documents that could support an applicant's claim to being an unincorporated association). See also *Hope Radio of Rolla, Inc.*, Letter Order, 22 FCC Rcd 4822, 4823 (2007).

¹⁸ 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). See also *Fondren Community Voices*, Letter Order, 30 FCC Rcd 3003, 3004-5 (2015) (citation to state statute without explanation of how organization complies with requirements of unincorporated association law insufficient to demonstrate applicant was recognized as such an entity) (*Fondren Community Voices*).

¹⁹ See *Procedures Public Notice* at 6.

²⁰ See Application at Attach. "Hippy Dippy.pdf". We note that Hippy also fails to provide documentation specifically demonstrating its nonprofit status.

²¹ See *Fondren Community Voices*, 30 FCC Rcd at 3004-5 (applicant's citation of a state statute recognizing unincorporated associations was insufficient to demonstrate that the applicant was recognized as such an entity because the applicant failed to describe how its activities or organizational structure qualified it as an unincorporated association under state law).

²² See *id.*

IT IS FURTHER ORDERED that the application of Hippy Dippy Tree Hugger Radio for a construction permit for a new low power FM station at Galax, Virginia (Application File No. 0000232974) **IS DISMISSED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau