February 23, 2024

**DA 24-164**

***In Reply Refer to:***

**1800B3-HD**

**Released: February 23, 2024**

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 **In re: Weather Alert Radio Network**

Applications for Construction Permits for New Low Power FM Stations in Communities in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, Virginia and the Virgin Islands

Dear Counsel:

We have before us the applications listed in the Attachment to this letter (Applications) filed by the Weather Alert Radio Network (WARN) for construction permits for new low power FM (LPFM) stations in communities located in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, Virginia, and the Virgin Islands.[[1]](#footnote-3) As explained below, with respect to each of the Applications, WARN has failed to demonstrate that it is eligible to hold the LPFM authorization it seeks. Accordingly, we dismiss the Applications as defective pursuant to section 73.3566(a) of the Commission’s rules (Rules).[[2]](#footnote-4)

**Background.** WARN filed the Applications during a filing window for new LPFM station construction permits that the Commission opened between December 6, 2023, and December 15, 2023.[[3]](#footnote-5) In each of the Applications, WARN certified that “[i]t proposes a public safety radio service and has jurisdiction within the service area of the proposed LPFM station.”[[4]](#footnote-6) Attached to the Applications were documents entitled “Exhibit in Support of LPFM Application Public Safety Radio Program” (Exhibits).[[5]](#footnote-7) The Exhibits explain that WARN proposes to use each LPFM station to “provide current local weather information, preparedness information and local resource information 24 hours per day and 7 days per week.”[[6]](#footnote-8) They also state that WARN has been in contact with various public safety organizations, “each of whom holds jurisdiction as a local, county, state or national government entity” and that the organizations “have agreed to work with [WARN] and have received information and correspondence regarding the programming and proposed application plans of [WARN’s] proposed LPFM stations” in that state.[[7]](#footnote-9)

**Discussion.** The Commission restricts the types of entities that may hold LPFM authorizations and the types of service those entities may provide.[[8]](#footnote-10) Among the entities eligible to hold LPFM authorizations are “[s]tate and local governments and non-government entities that will provide non-commercial public safety radio services.”[[9]](#footnote-11) The Commission also requires that entities receiving LPFM authorizations be based in the community their proposed LPFM stations will serve.[[10]](#footnote-12) In the case of a state or local government or non-government entity proposing a non-commercial public safety radio service, the Commission considers the entity to be community-based if it “has jurisdiction within the service area of the proposed LPFM station.”[[11]](#footnote-13) As discussed below, we find that WARN is not eligible to hold an LPFM license because it will not provide a “public safety radio service” and is not community-based with respect to its proposed LPFM stations.

*Public Safety Radio Service.* We reject WARN’s claim that it is eligible to hold LPFM licenses because it is a non-governmental entity proposing to provide a public safety radio service.[[12]](#footnote-14) In the LPFM context, the Commission uses the definition of “public safety radio services” set forth in section 309(j)(2)(A) of the Communications Act of 1934, as amended (Act).[[13]](#footnote-15) That section defines “public safety radio services” as “including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that—(i) are used to protect the safety of life, health, or property; and (ii) are not made commercially available to the public.”[[14]](#footnote-16) The Commission has explained that the phrase “public safety radio services” encompasses three categories of services: (1) traditional public safety services such as police, fire, and emergency medical services, (2) private internal radio services designated for non-commercial use by entities such as utilities, railroads, transit systems, and others that provide essential services to the public at large and that need reliable internal communications in order to prevent or respond to disasters or crises affecting their service to the public, and (3) private internal radio services used by not-for-profit organizations providing emergency road services.[[15]](#footnote-17) WARN proposes to use each LPFM station to provide weather and weather-preparedness information to the general public. This type of service does not fall into any of the “public safety radio service” categories. The service WARN proposes, therefore, cannot qualify as a “public safety radio service” absent a waiver, which WARN did not request.

*Community-Based.*We also find that WARN is ineligible to hold the LPFM authorizations it seeks because it is not local (*i.e*., based in the communities the proposed LPFM stations will serve). The Commission considers an LPFM applicant proposing a “public safety radio service” to be local with respect to its proposed LPFM station if the applicant has jurisdiction within the service area of its proposed LPFM station.[[16]](#footnote-18) While WARN certified in the Applications that it is local with respect to each of the proposed LPFM stations, WARN offered no evidence that it has jurisdiction within any of those stations’ service areas. Instead, in the Exhibits, WARN asserts that it has “been in contact with” various public safety organizations, “each of whom holds jurisdiction as a local, county, state or national government entity regarding the dissemination of public safety information.” WARN goes on to claim that “[t]he organizations have agreed to work with [WARN] and have received information and correspondence regarding the programming and proposed application plans of [WARN]’s proposed LPFM stations.” WARN nowhere states that it has jurisdiction in the service areas of the proposed LPFM stations or that it has been authorized by any of the public safety organizations that do hold jurisdiction in those service areas, nor did it request a waiver of the jurisdiction requirement.

**Conclusion/Actions.** WARN has not satisfied the eligibility requirements set forth in sections 73.853(a) and 73.853(b) of the Rules, and did not submit requests for waiver of those requirements with the Applications. For this reason, we find that the Applications are patently defective and must be dismissed. Accordingly, **IT IS ORDERED**, that the applications for new LPFM stations filed by the Weather Alert Radio Network in December 2023 (and listed in the Attachment hereto)[[17]](#footnote-19) **ARE DISMISSED** pursuant to section 73.3566(a) of the Commission’s rules.[[18]](#footnote-20)

 Sincerely,

 Albert Shuldiner

 Chief, Audio Division

 Media Bureau

Attachment

**ATTACHMENT**

| **Facility ID No.** | **Application File No.\*** | **City** | **State** |
| --- | --- | --- | --- |
| 782960 | 231543 | Dauphin Island | AL |
| 782952 | 231834 | Foley | AL |
| 782957 | 231835 | Foley | AL |
| 778100 | 231833 | Robertsdale | AL |
| 777979 | 231857 | Seminole | AL |
| 778102 | 231544 | Spanish Fort | AL |
| 778105 | 231521 | Theodore | AL |
| 778104 | 231522 | Theodore | AL |
| 778103 | 231523 | Theodore | AL |
| 782827 | 231573 | Alma | FL |
| 781915 | 231632 | Baker | FL |
| 781918 | 231634 | Baker | FL |
| 782831 | 231568 | Big Pine Key | FL |
| 782836 | 231569 | Big Pine Key | FL |
| 778145 | 231553 | Brooksville | FL |
| 781978 | 231639 | Cantonment | FL |
| 781979 | 231641 | Cantonment | FL |
| 781974 | 231647 | Chiefland | FL |
| 781976 | 231649 | Chiefland | FL |
| 778164 | 231565 | Chipley | FL |
| 782848 | 231593 | Cocoa | FL |
| 782849 | 231594 | Cocoa | FL |
| 782850 | 231595 | Cocoa | FL |
| 782838 | 231570 | Crestview | FL |
| 781986 | 231650 | Crystal River | FL |
| 778156 | 231571 | Cudjoe Key | FL |
| 778217 | 231572 | Cudjoe Key | FL |
| 781969 | 231869 | Daytona Beach | FL |
| 782841 | 231578 | DeFuniak Springs | FL |
| 782845 | 231580 | DeFuniak Springs | FL |
| 778146 | 231870 | Dunnellon | FL |
| 782822 | 231581 | Everglades City | FL |
| 782826 | 231582 | Everglades City | FL |
| 782729 | 231583 | Everglades National Park | FL |
| 782730 | 231585 | Everglades National Park | FL |
| 778131 | 231586 | Fernandina Beach | FL |
| 778129 | 231588 | Fernandina Beach | FL |
| 778132 | 231589 | Fernandina Beach | FL |
| 778133 | 231591 | Fernandina Beach | FL |
| 778141 | 231883 | Fort Pierce | FL |
| 778142 | 231884 | Fort Pierce | FL |
| 778108 | 231510 | Holiday | FL |
| 778147 | 231901 | Homosassa | FL |
| 778136 | 231878 | Inglis | FL |
| 778137 | 231879 | Inglis | FL |
| 778179 | 231663 | Key Lar | FL |
| 778180 | 231665 | Key Lar | FL |
| 778158 | 231653 | Key West | FL |
| 778155 | 231657 | Key West | FL |
| 778218 | 231905 | Labelle | FL |
| 778177 | 231890 | Lecanto | FL |
| 778178 | 231891 | Lecanto | FL |
| 782852 | 231659 | Marathon | FL |
| 782854 | 231661 | Marathon | FL |
| 782881 | 231902 | Marco Island | FL |
| 782882 | 231903 | Marco Island | FL |
| 778228 | 231909 | Middleburg | FL |
| 778229 | 231910 | Middleburg | FL |
| 778112 | 231874 | Nokomis | FL |
| 782734 | 231942 | Ochopee | FL |
| 781965 | 231517 | Ormond Beach | FL |
| 781967 | 231963 | Ormond Beach | FL |
| 778134 | 231881 | Port Saint Lucie | FL |
| 778135 | 231882 | Port Saint Lucie | FL |
| 782728 | 231542 | Riverview | FL |
| 781960 | 231926 | Santa Rosa Beach | FL |
| 781963 | 231927 | Santa Rosa Beach | FL |
| 781984 | 231934 | Sopchoppy | FL |
| 781985 | 231935 | Sopchoppy | FL |
| 778159 | 231860 | Sugarloaf Key | FL |
| 778160 | 231861 | Sugarloaf Key | FL |
| 778161 | 231862 | Sugarloaf Key | FL |
| 778117 | 231848 | Tavernier | FL |
| 778118 | 231876 | Tavernier | FL |
| 778119 | 231877 | Tavernier | FL |
| 778163 | 231961 | Trenton | FL |
| 781991 | 231937 | Venice | FL |
| 778154 | 231886 | Vero Beach | FL |
| 778153 | 231887 | Vero Beach | FL |
| 778111 | 231628 | Wabasso | FL |
| 778113 | 231888 | Wabasso | FL |
| 778110 | 231889 | Wabasso | FL |
| 778162 | 231959 | Westville | FL |
| 778270 | 231554 | Brunswick | GA |
| 781678 | 231601 | Darien | GA |
| 781675 | 231603 | Darien | GA |
| 781665 | 231643 | Folkston | GA |
| 781478 | 231644 | Folkston | GA |
| 781470 | 231620 | Hinesville | GA |
| 781471 | 231621 | Hinesville | GA |
| 782883 | 231911 | Midway | GA |
| 781667 | 231604 | Saint Simons Island | GA |
| 781669 | 231605 | Saint Simons Island | GA |
| 778257 | 231859 | Shellman Bluff | GA |
| 778269 | 231841 | St Marys | GA |
| 778150 | 231610 | Townsend | GA |
| 778151 | 231611 | Townsend | GA |
| 778152 | 231613 | Woodbine | GA |
| 781468 | 231614 | Woodbine | GA |
| 778215 | 231498 | Abbeville | LA |
| 778214 | 231499 | Abbeville | LA |
| 778230 | 231545 | Bell City | LA |
| 778212 | 231563 | Chauvin | LA |
| 778211 | 231564 | Chauvin | LA |
| 778216 | 231566 | Covington | LA |
| 778213 | 231567 | Covington | LA |
| 778116 | 231845 | Houma | LA |
| 778054 | 231529 | New Iberia | LA |
| 778053 | 231530 | New Iberia | LA |
| 778055 | 231532 | New Iberia | LA |
| 778093 | 231629 | Thibodaux | LA |
| 778094 | 231630 | Thibodaux | LA |
| 778139 | 231549 | Biloxi | MS |
| 778140 | 231550 | Biloxi | MS |
| 778138 | 231551 | Biloxi | MS |
| 778095 | 231866 | Diamondhead | MS |
| 778182 | 231846 | Pascaula | MS |
| 778097 | 231626 | Pass Christian | MS |
| 778096 | 231627 | Pass Christian | MS |
| 778183 | 231645 | Poplarville | MS |
| 778184 | 231646 | Poplarville | MS |
| 778099 | 231524 | Saucier | MS |
| 778098 | 231525 | Saucier | MS |
| 778051 | 231526 | Vancleave | MS |
| 778050 | 231527 | Vancleave | MS |
| 783155 | 231837 | Barco | NC |
| 778061 | 231503 | Bath | NC |
| 778062 | 231504 | Bath | NC |
| 782021 | 231596 | Beaufort | NC |
| 782031 | 231600 | Beaufort | NC |
| 782034 | 231636 | Bolivia | NC |
| 783029 | 231557 | Buxton | NC |
| 783033 | 231558 | Buxton | NC |
| 783109 | 231561 | Cedar Island | NC |
| 783113 | 231562 | Cedar Island | NC |
| 783024 | 231893 | Hatteras | NC |
| 783027 | 231894 | Hatteras | NC |
| 782088 | 231830 | Havelock | NC |
| 782090 | 231895 | Havelock | NC |
| 783158 | 231899 | Holly Ridge | NC |
| 783159 | 231900 | Holly Ridge | NC |
| 783019 | 231540 | Jacksonville | NC |
| 783018 | 231904 | Jacksonville | NC |
| 783012 | 231513 | Kitty Hawk | NC |
| 783014 | 231515 | Kitty Hawk | NC |
| 778016 | 231906 | Leland | NC |
| 783117 | 231516 | Manteo | NC |
| 783154 | 231908 | Manteo | NC |
| 783156 | 231913 | Morehead City | NC |
| 783157 | 231914 | Morehead City | NC |
| 782091 | 231922 | New Bern | NC |
| 782092 | 231925 | New Bern | NC |
| 783104 | 231916 | Ocracoke | NC |
| 783108 | 231917 | Ocracoke | NC |
| 778224 | 231850 | Supply | NC |
| 778225 | 231852 | Supply | NC |
| 778060 | 231955 | Washington | NC |
| 778086 | 231969 | Washington | NC |
| 778254 | 231957 | Wilmington | NC |
| 778255 | 231956 | Wrightsville Beach | NC |
| 778260 | 231855 | Bluffton | SC |
| 778259 | 231897 | Hilton Head Island | SC |
| 781694 | 231898 | Hilton Head Island | SC |
| 781875 | 231907 | Longs | SC |
| 778258 | 231858 | Mount Pleasant | SC |
| 781871 | 231940 | Murrells Inlet | SC |
| 778223 | 231941 | Ridgeland | SC |
| 781708 | 231964 | Walterboro | SC |
| 777998 | 231502 | Alvin | TX |
| 778010 | 231505 | Bay City | TX |
| 778019 | 231507 | Beaumont | TX |
| 783193 | 231854 | Bishop | TX |
| 778015 | 231535 | Deweyville | TX |
| 778014 | 231536 | Deweyville | TX |
| 778013 | 231537 | Deweyville | TX |
| 783170 | 231509 | Hitchcock | TX |
| 778017 | 231831 | Orange | TX |
| 778128 | 231608 | Port Aransas | TX |
| 778149 | 231609 | Port Aransas | TX |
| 778227 | 231839 | Port Arthur | TX |
| 783189 | 231938 | Port Lavaca | TX |
| 783190 | 231939 | Port Lavaca | TX |
| 783166 | 231946 | Refugio | TX |
| 783167 | 231947 | Refugio | TX |
| 778126 | 231606 | Rockport | TX |
| 778127 | 231607 | Rockport | TX |
| 783188 | 231952 | San Perlita | TX |
| 783187 | 231954 | San Perlita | TX |
| 783171 | 231965 | Santa Rosa | TX |
| 783191 | 231944 | Sarita | TX |
| 783192 | 231945 | Sarita | TX |
| 783169 | 231519 | Stowell | TX |
| 778125 | 231840 | Sweeny | TX |
| 778006 | 231872 | Victoria | TX |
| 778007 | 231873 | Victoria | TX |
| 782963 | 231920 | Suffolk | VA |
| 782966 | 231921 | Suffolk | VA |
| 788761 | 233077 | Charlotte Amalie | VI |
| 788762 | 233078 | Charlotte Amalie | VI |
| 788764 | 233080 | Charlotte Amalie | VI |
| 788766 | 233087 | Cruz Bay | VI |
| 788765 | 233089 | Cruz Bay | VI |
| 788769 | 233093 | Cruz Bay | VI |

1. While the Commission generally prohibits an entity or party from holding an attributable interest in more than one LPFM station, WARN seeks to take advantage of an exception to the general prohibition which allows “not-for-profit organizations and governmental entities with a public safety purpose [to] be granted multiple licenses if: (1) One of the multiple applications is submitted as a priority application; and (2) The remaining non-priority applications do not face a mutually exclusive challenge.”  *See* 47 CFR § 73.855. WARN has designated its application for a construction permit for a new LPFM station at Riverview, Florida as its priority application. *See* Application File No. 0000231542. [↑](#footnote-ref-3)
2. 47 CFR § 73.3566(a). [↑](#footnote-ref-4)
3. *See Media Bureau Announces Extension of LPFM New Station Filing Window,* Public Notice, DA 23-1150 (MB Dec. 11, 2023). [↑](#footnote-ref-5)
4. Applications, Legal Certifications, Community-Based Criteria. [↑](#footnote-ref-6)
5. WARN attached the same exhibit to each application for a proposed LPFM station in a particular state. The exhibits varied slightly depending on the state involved but generally contained the same information. [↑](#footnote-ref-7)
6. Exhibits at para. 2. [↑](#footnote-ref-8)
7. *Id*. at para. 5. [↑](#footnote-ref-9)
8. 47 CFR § 73.853(a). [↑](#footnote-ref-10)
9. *Id.* § 73.853(a)(2). The other eligible entities and services are (1) nonprofit educational organizations that will use their LPFM stations to advance an educational program, and (2) Tribal Applicants that will provide non-commercial radio services. *Id.* § 73.853(a)(1), (3). [↑](#footnote-ref-11)
10. *Id.* § 73.853(b). [↑](#footnote-ref-12)
11. *Id.* § 73.853(b)(3). [↑](#footnote-ref-13)
12. Applications, Legal Certifications, Community-Based Criteria, and Exhibits. [↑](#footnote-ref-14)
13. *Creation of Low Power Radio Service*, Report and Order, MM Docket No. 99-25, 15 FCC Rcd 2205, 2215, para. 23 (2000) (stating that “public safety radio services used by state or local governments or not-for-profit organizations, as defined in 47 U.S.C. § 309(j)(2)(A), will be eligible for LPFM licenses”). [↑](#footnote-ref-15)
14. 47 U.S.C. § 309(j)(2)(A). [↑](#footnote-ref-16)
15. *Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 99-87, 15 FCC Rcd 22709, 22716, para. 16, 22740, para. 64, 22743, para. 71 (2000). *See also* H.R. Conf. Rep. No. 105-217, 105th Cong., 1st Sess., at 572 (1997). [↑](#footnote-ref-17)
16. 47 CFR § 73.853(b)(3). [↑](#footnote-ref-18)
17. Because we find that WARN has not satisfied the eligibility requirements of sections 73.853(a)(2) and 73.853(b)(1)-(3), we dismiss all of the Applications, including its priority application for Riverview, Florida (*see* *supra* note 1) as well as its non-priority applications (including singletons). [↑](#footnote-ref-19)
18. 47 CFR § 73.3566(a). [↑](#footnote-ref-20)