



Federal Communications Commission
Washington, D.C. 20554

March 14, 2024

DA 24-252
In Reply Refer to:
1800B3-ATS
Released: March 14 2024

Mr. Gregory LaPorta
Portsonic Communications, LLC
400 South 4th Street, Suite 500
Las Vegas, NV 89101-6207
greg@portsonic.net

In re: **Portsonic Communications, LLC**
New LPFM, Las Vegas, Nevada
Facility Id No. 781847
Application File No. 0000231418

Dear Mr. LaPorta:

We have before us the application (Application) filed by Portsonic Communications, LLC (PCNV), for a construction permit for a new low power FM (LPFM) station in Las Vegas, Nevada. As explained below, PCNV is a for-profit entity and therefore ineligible to hold the LPFM authorization it seeks. Therefore, we dismiss the Application.¹ Furthermore, as an independent and alternative basis, we find the Application fails to comply with the spacing requirements of the Commission's rules (Rules), and is defective pursuant to section 73.807 of the Rules.²

Background. PCNV filed the Application during the 2023 LPFM Filing Window.³ PCNV explains that it is a Limited Liability Company and claims that the eligibility requirements in section 73.853(a)(2) of the Rules do “not require an entity providing a non-commercial public safety radio service to be a non-profit organization.”⁴

PCNV certifies that it is a “[s]tate or local government or non-government entity that proposes a noncommercial public safety radio service to protect the safety of life, health or property” and that “[i]t proposes a public safety radio service and has jurisdiction within the service area of the proposed LPFM station.”⁵ The Application contains an attachment that asserts, “PCNV is working on a public safety radio

¹ See 47 CFR § 73.853. See also 47 CFR § 73.3566(a).

² 47 CFR § 73.807.

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). 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 Application at Attach. “12062023_PCNV Legal Certifications.pdf”. See also Application at Attach. 11022023_PCNV_NV SOS_Business_Information.pdf”.

⁵ Application, Legal Certifications, Eligibility Certifications and Community-Based Criteria Certifications.

service and PCNV has jurisdiction within the service area of the LPFM station.”⁶ PCNV further claims that its “public safety radio service is geared to the travel and tourism industry within the greater Las Vegas metropolitan service area.”⁷

Separately, PCNV requests a waiver of section 73.807(a)(1) of the Rules with regard to the second adjacent channel licensed facility for station KVEG(FM), Mesquite, Nevada.⁸ PCNV recognizes its proposed station would be short-spaced to KVEG(FM) and requests a second-adjacent channel waiver.⁹

Finally, PCNV filed an amendment to the Application on February 14, 2024 (February 14 Amendment). In the February 14 Amendment, PCNV references DKVGK-LP, an LPFM station PCNV previously was licensed to operate before that license was cancelled and states that it “proposes to move KVGK-LP 97.9 FM completely out of the traditional FM band”¹⁰ citing to a Fact Sheet and draft Fifth Notice of Proposed Rulemaking in the Commission’s FM6 proceeding, MB Docket No. 03-185.¹¹ The February 14 Amendment also includes a waiver request in which PCNV “hereby requests a blanket waiver . . . for all rules in [sections] 73.801 [through] 73.881” of the Commission’s Rules (LPFM Rules).¹² PCNV again bases this waiver request on the *FM6 Fact Sheet and Draft Fifth NPRM*.¹³

Discussion. LPFM Eligibility. PCNV is a for-profit entity and thus prohibited from holding an LPFM license. We disagree with PCNV’s interpretation of section 73.853(a) of the Rules and PCNV’s claim that a non-governmental entity providing public safety radio services does not need to be a not-for-profit entity. Based on PCNV’s inability to comply with the basic eligibility requirements to hold an LPFM license, we dismiss the Application.

⁶ Application at Attach. “12062023_PCNV Legal Certifications.pdf”.

⁷ *Id.* (“PCNV is presently working with area casino(s) and a nationally well known timeshare company to position the marketplace for PCNV’s public safety messages to be aired. PCNV’s President was in the local law enforcement/justice community for more than 10+ years in Las Vegas, Nevada.”).

⁸ Application File No. BLH-20010711AAI.

⁹ Application at Attach. “11032023_PCNV Engineering Waiver.pdf” (Spacing Waiver Request).

¹⁰ PCNV explained that the Application “may not actually be needed as PCNV was already made the licensee of KVGK-LP 97.9 FM in Las Vegas, Nevada back on May 12, 2023. The [Application] is submitted to the FCC as a precautionary measure on the FCC Facility ID 190166 conversion of [KVGK-LP] during technical issues with the FCC CDBS to FCC LMS conversion completed in early October 2023.” Application at Attach. “12062023_PCNV Legal Certifications.pdf”. Although not dispositive to our determination, we note that the license for Station DKVGK-LP, Las Vegas, Nevada, automatically expired as a matter of law on September 5, 2023, because the station was silent for a period of 12 months. See *Las Vegas Public Radio Inc.*, Letter Order, Ref 1800B3-VMM (MB Oct. 4, 2023); see also *Actions*, Public Notice, Report No. PN-2-231006-01 (MB Oct. 6, 2023). That action is now final. See 47 CFR § 1.117(a) (providing for 40 days after public notice of the Bureau’s decision for the Commission on its own motion to order the record before it for review).

¹¹ Application at Attach. “02142024_PCNV Amendment.pdf” (citing FCC Fact Sheet, Operation of Analog Radio Services by Digital LPTV Stations as Ancillary or Supplementary Service (FM6), Fifth Notice of Proposed Rulemaking (*NPRM*) – MB Docket No. 03-185 (May 18, 2022) (*FM6 Fact Sheet and Draft Fifth NPRM*)).

¹² Application at Attach. “02142024_PCNV LPFM Rules Waiver.pdf” (LPFM Rules Waiver Request).

¹³ *Id.*

The Commission restricts the types of entities that may hold LPFM authorizations and the types of service those entities may provide.¹⁴ Among the entities eligible to hold LPFM authorizations are “[s]tate and local governments and non-government entities that will provide noncommercial public safety radio services.”¹⁵

We reject PCNV’s argument that section 73.853(a)(2) allows a for-profit entity to hold an LPFM authorization as a public safety entity. The Commission’s rules limit LPFM eligibility to nonprofit entities. When the Commission established the LPFM service and set the eligibility rules for a public safety radio service entity, it provided that only “state or local governments or *not-for-profit organizations*” would be able to hold an LPFM license as a public safety entity.¹⁶ PCNV cannot satisfy this requirement. Although the Application does not clarify whether PCNV is for-profit or nonprofit, the PCNV website explicitly states that PCNV is a for-profit entity.¹⁷ Thus, the Application is not consistent with the section 73.853 requirements and must be dismissed, regardless of whether it is providing a public safety service.

As an independent and alternative justification for dismissing the Application, even if PCNV were a nonprofit entity, we note it fails to explain what type of public safety radio service it proposes and neglects to explain how it has jurisdiction within its service area. 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). 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.”¹⁸ 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 noncommercial 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.¹⁹ The Application fails to explain how PCNV’s proposed public safety service complies with any of these categories.

¹⁴ 47 CFR § 73.853(a).

¹⁵ *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 noncommercial radio services. *Id.* § 73.853(a)(1), (3).

¹⁶ *Creation of Low Power Radio Service*, Report and Order, MM Docket No. 99-25, 15 FCC Rcd 2205, 2215, para. 23 (2000) (*LPFM Report and Order*) (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”). (emphasis added).

¹⁷ Portsonic, Who We Are, <https://www.portsonic.net/business.php> (last visited March 12, 2024) (“Portsonic Communications, LLC is a Nevada for profit company under Nevada Taxpayer ID: 1008770736-001”).

¹⁸ 47 U.S.C. § 309(j)(2)(A)(emphasis added).

¹⁹ *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).

Additionally, each LPFM applicant must also certify that it is a local entity. In the case of a public safety radio service applicant, the Commission considers the entity to be “local” if it “has jurisdiction within the service area of the proposed LPFM station.”²⁰ While PCNV certifies in the Application that it is a local entity, PCNV offers no evidence that it has *jurisdiction* to provide public safety services within the proposed LPFM station’s service area. Instead, PCNV asserts that it is “working with area casino(s) and a national well known timeshare company to position the marketplace for PCNV’s public safety messages to be aired.”²¹ PCNV nowhere demonstrates that it has jurisdiction in the service area of the proposed LPFM station or that it has been authorized by any of the traditional public safety organizations that do hold jurisdiction in its service area. Absent such a showing, PCNV has failed to show that it is eligible to hold an LPFM authorization as a public safety entity.²² Accordingly, this serves as a separate and independent basis to dismiss the Application.²³

Section 73.807(a)(1) Violation. Finally, even if PCNV were a nonprofit and a public safety entity, on independent and alternative grounds we would dismiss the Application because a staff engineering study reveals that the proposed transmitter site specified in the Application fails to meet the minimum spacing requirements of section 73.807(a)(1) of the Rules.²⁴ Specifically, the proposed site is short-spaced to the second-adjacent channel licensed facility for station KVEG(FM), Mesquite, Nevada.²⁵ Although section 3(b)(2)(A) of the Local Community Radio Act of 2010 (LCRA) authorizes the Commission to waive second-adjacent channel spacing requirements, an LPFM applicant must

²⁰ *Id.* § 73.853(b)(3).

²¹ Application at Attach. “12062023_PCNV Legal Certifications.pdf”.

²² See *Weather Alert Radio Network*, Letter Order, DA 24-164 (MB Feb. 23, 2024) (dismissing applications filed by applicant that certified that it was eligible as a public safety entity where applicant failed to show it had jurisdiction in the service areas of the proposed stations).

²³ Additionally, we note that PCNV’s President, Gregory LaPorta, holds an attributable interest in a construction permit for full-service noncommercial educational FM station KJPT(FM), Las Vegas, Nevada. Application at Attach. “11082023_PCNV Diversity of Ownership.pdf”. See also Application File No. 0000166753 (New NCE FM CP, granted June 9, 2022) (LVPR Permit). Section 73.860 of the Rules prohibits any party to an LPFM authorization from holding an attributable interest in any other broadcast authorization. See 47 CFR § 73.860(a) (“no license shall be granted to any party if the grant of such authorization will result in the same party holding an attributable interest in any other non-LPFM broadcast station, including any FM translator or low power television station, or any other media subject to our broadcast ownership restrictions.”); see also 47 CFR § 73.858 (“Ownership and other interests in LPFM station permittees and licensees will be attributed to their holders and deemed cognizable for the purposes of §§ 73.855 and 73.860, in accordance with the provisions of § 73.3555”). The Application did not include a pledge by LaPorta to divest his interest in the LVPR Permit. See 47 CFR § 73.860(d) (“a party with an attributable interest in a broadcast radio station must divest such interest prior to the commencement of operations of an LPFM station in which the party also holds an interest”); see also Instructions to FCC Form 2100, Schedule 318 – Low Power FM Station Construction Permit Application at 9-10 (“If the applicant (or any party to the application) has an attributable interest in a broadcast station or other media outlet that is prohibited under the Commission’s cross-ownership rule, the applicant (or the party to the application) must divest the interest prior to the commencement of operations of the LPFM station. In such circumstances, the applicant must . . . submit an explanatory exhibit identifying the broadcast station or other media outlet in which the applicant (or the party to the application) holds an attributable interest and setting forth the applicant’s (or party’s) intention to divest such interest.”).

²⁴ 47 CFR § 73.807(a)(1).

²⁵ Application File No. BLH-20010711AAI.

specifically request the waiver and demonstrate that its proposed LPFM facilities “will not result in interference to any authorized radio service.”²⁶

PCNV’s Spacing Waiver Request is deficient and does not adequately demonstrate that no interference will occur. The waiver fails to include any engineering studies or provide any explanation about how PCNV will protect KVEG(FM) from interference by the proposed facility. An acceptable demonstration of no interference should contain items such as a map of the proposed interference area, a tower diagram, a satellite or aerial photograph, the antenna manufacture’s vertical radiation pattern, and/or any details about any nearby structures or major roadways.²⁷ Therefore, the Application is not acceptable for filing and would be dismissed on this basis if we were not dismissing it for the reasons stated above.

LPFM Rules Waiver Request. Finally, we reject PCNV’s LPFM Rules Waiver Request, both to permit the proposed LPFM station to operate outside of the FM band and to the extent it requests an extensive “blanket waiver” of the LPFM Rules. The Commission’s Rules may be waived only for good cause shown.²⁸ The Commission must give waiver requests “a hard look,” but an applicant for waiver “faces a high hurdle even at the starting gate”²⁹ and must support its waiver request with a compelling showing.³⁰ Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.³¹

Initially, we note that the only support PCNV offers for its waiver request is a *draft* Notice of Proposed Rulemaking that is not binding on the Commission and cannot serve as precedent.³² Although the Commission ultimately adopted a Fifth Notice of Proposed Rulemaking in the FM6 proceeding,³³ the final Fifth Notice of Proposed Rulemaking did not adopt any rule changes or policies that would support PCNV’s waiver request. Additionally, in the subsequently adopted Fifth Report and Order in the FM6 proceeding, the Commission required that FM6 licensees broadcast an ATSC 3.0 signal in addition to an

²⁶ Pub. L. No. 111-371, 124 Stat. 4072 (2011); *see also* 47 CFR § 73.807(e) (outlining LPFM applicant requirements for a second-adjacent channel spacing waiver).

²⁷ *See, e.g., Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15428, para. 78 (2012).

²⁸ 47 CFR § 1.3.

²⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (subsequent history omitted).

³⁰ *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

³¹ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

³² *FM6 Fact Sheet and Draft Fifth NPRM* at 1 (“This document has been circulated for tentative consideration by the Commission at its June 2022 open meeting. The issues referenced in this document and the Commission’s ultimate resolutions of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairwoman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available.”).

³³ *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Fifth Notice of Proposed Rulemaking, MB Docket No. 03-185, FCC 22-40 (2022).

audio service.³⁴ PCNV cannot satisfy that requirement. Moreover, the Commission specifically rejected the idea of allowing additional stations to seek authorization for FM6 service.³⁵ We thus reject both PCNV's reliance on the *FM6 Fact Sheet and Draft Fifth NPRM*, as well as its (now-Commission rejected) proposal to allow FM operations outside of the FM band, as bases for waiving the LPFM Rules. Moreover, PCNV has not identified any special circumstances that warrant a waiver of the LPFM Rules, and has likewise failed to provide any argument that such a waiver would be in the public interest. We thus deny PCNV's request to waive the LPFM Rules in which it seeks authorization to operate its proposed LPFM station outside of the FM band.

Conclusion/Actions. For the reasons set forth above, we find that the Application is patently defective and must be dismissed. Accordingly, **IT IS ORDERED**, that the application for a new LPFM station filed by Portsonic Communications, LLC (Application File No. 0000231418) IS **DISMISSED** pursuant to section 73.3566(a) of the Commission's Rules.³⁶

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

³⁴ *Amendments of Part 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Fifth Report and Order, MB Docket No. 03-185, FCC 23-58 at 20, paras. 36 (2023).

³⁵ *Id.* at 31-34, paras. 61-64 ("We find that the plan is neither feasible, because of the possibility of interference; nor efficient, because receivers are not capable of receiving FM stations below 87.7 FM; nor appropriate, because TV6 spectrum is still needed for broadcast television use.").

³⁶ 47 CFR § 73.3566(a).