



Federal Communications Commission
Washington, D.C. 20554

April 25, 2024

DA 24-391
In Reply Refer to:
1800B3-RDM
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Alert Community Broadcasting
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REC Networks
11541 Riverton Wharf Rd.
Mardela Springs, MD 21837
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In re: **Alert Community Broadcasting**
New LPFM, Princeton, TX
Facility ID No. 788500
Application File No. 0000232745

Informal Objection

Dear Applicant and Objector:

We have before us the application filed by Alert Community Broadcasting (Alert) for a construction permit for a new low power FM (LPFM) station at Princeton, Texas (Application).¹ We also have before us an Informal Objection filed by REC Networks (REC), seeking dismissal of the Application (Objection).² For the reasons set forth below, we grant the Objection and dismiss the Application.

Background. Alert filed the Application during the 2023 LPFM Filing Window.³ Alert certifies in the Application that it is a nonprofit educational institution or organization.⁴ In the Objection, REC argues that the Application fails to include required documentation demonstrating that the applicant

¹ Application File No. 0000232745.

² Pleading File No. 0000236740 (filed Jan. 26, 2024). The Objection did not indicate whether it was served on Alert. Accordingly, the Bureau forwarded a copy of the Objection to Alert, affording it 15 days in which to file an opposition, consistent with the Bureau's practice. See Email from Ryan McClafferty, Attorney Advisor, Audio Division, FCC Media Bureau to Alert Community Broadcasting (Jan. 30, 2024, 17:02 EDT). Alert filed a Motion for Extension of Time. See Pleading File No. 0000238849 (filed Feb. 12, 2024). REC filed a Supplement opposing the Motion for Extension of Time. See Pleading File No. 0000238863 (filed Feb. 13, 2024). Alert 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 Legal Certifications section, Eligibility Certifications questions.

organization is a nonprofit educational institution or organization recognized under state law.⁵ REC contends that the “Organizational Document” submitted by Alert does not bear “a state stamp or other indicia which would normally include a state assigned file number and the date for which the application was filed with the state.”⁶ REC notes that a search of the Texas Comptroller of Public Accounts database of corporations shows no entity named “Alert Community Broadcasting.”⁷ REC further argues that if Alert is an unincorporated association, it has failed to submit the requisite documentation demonstrating that it is recognized in its relevant jurisdiction and meets the requirements for unincorporated associations under state law.⁸ Thus, REC argues, the Application fails to demonstrate that Alert is an entity eligible to hold an LPFM license.⁹

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),¹⁰ 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.¹¹

An LPFM applicant must meet basic eligibility requirements¹² 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).¹³ 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.¹⁴ Thus, an LPFM applicant must be incorporated, registered, or otherwise organized under state law at the time its application is submitted.¹⁵ Each applicant must submit

⁵ See Objection at 2 (citing *Procedures Public Notice* at 6 and *Applications for Review of Decisions Regarding Six Applications for New Low Power FM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13396 at para. 14 (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.”)).

⁶ See Objection at 2 (citing Application at Attach. “TX Princeton Organizational Document.pdf”).

⁷ See Objection at 2.

⁸ See *id.*

⁹ See *id.* REC also contends that “commonalities” in the contact information provided with the Application and another application (Application File No. 0000232748) filed during the 2023 LPFM Filing Window indicates prohibited LPFM cross-ownership. See Objection at 3. Because we resolve REC’s Objection on other grounds, and concurrently dismiss the other application by separate action, this argument is moot and will not be considered.

¹⁰ 47 U.S.C. § 309(d).

¹¹ 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).

¹² See 47 CFR § 73.853(a); see also 47 U.S.C. § 397(6)(A).

¹³ See Instructions for LPFM Application, Legal Certifications section, Eligibility Certifications questions. See also LPFM Application, Legal Certifications section, Eligibility Certifications questions.

¹⁴ See *id.* See also *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2213-2215 (2000).

¹⁵ See *id.* See also 47 U.S.C. § 397(6)(A).

an explanatory exhibit establishing its nonprofit status in connection with its application.¹⁶ The *Procedures Public Notice* instructs nonprofit educational organization applicants to “submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation.”¹⁷ Applicants that neglect to provide the requisite eligibility documentation are subject to dismissal.¹⁸

In the Application, Alert certifies that it is a nonprofit educational institution or organization,¹⁹ but neglects to provide sufficient evidence, as required, demonstrating that it is recognized as a nonprofit educational institution or organization by a state. Alert includes an “Organizational Document” with its Application stating that it is a non-stock, not-for-profit foundation organized under the laws of the State of Texas.²⁰ However, the “Organizational Document” bears no evidence that it has been filed and accepted by a state, and thus does not establish Alert’s status as a valid nonprofit organization. Additionally, a search of the Texas Comptroller of Public Accounts database by the Bureau staff shows no incorporated entity with the name “Alert Community Broadcasting.”²¹ Therefore, we find that Alert has failed to demonstrate that it was organized as a nonprofit entity, either incorporated or unincorporated, in a form recognized by Texas, or any other state, at the time it filed the Application. Accordingly, we find Alert ineligible to hold an LPFM license, grant the Objection, and dismiss the Application.

Conclusion/Action. Accordingly, **IT IS ORDERED** that the Informal Objection filed on January 26, 2024 (Pleading File Nos. 0000236740) by REC Networks **IS GRANTED**.

IT IS FURTHER ORDERED that the application of Alert Community Broadcasting for a construction permit for a new low power FM station at Princeton, Texas (Application File No. 0000232745) **IS DISMISSED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc (via electronic mail):
Jim Turvaville (jimturbo61@gmail.com)
(Technical Representative for Alert Community Broadcasting)

¹⁶ See LPFM Application, Legal Certifications section, Eligibility Certifications questions. See also *Procedures Public Notice* at 6 .

¹⁷ See *Procedures Public Notice* at 6.

¹⁸ See *id.*

¹⁹ See Application at Legal Certifications, Eligibility Certifications.

²⁰ See Application at Attach. “TX Princeton Organizational Document.pdf”.

²¹ Texas Comptroller of Public Accounts, Taxable Entity Search, <https://mycpa.cpa.state.tx.us/coa/> (last visited Apr. 18, 2024).