



Federal Communications Commission  
Washington, D.C. 20554

April 26, 2024

**DA 24-399**

*In Reply Refer to:*

1800B3-ARR

Released: April 26, 2024

University of Wisconsin-Milwaukee  
c/o Jonathan Joseph  
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Re: **University of Wisconsin-Milwaukee**  
New LPFM, Milwaukee, Wisconsin  
Facility ID No. 782317  
Application File No. 0000231836

**Petition for Reconsideration**

Dear Applicant:

We have before us two Petitions for Reconsideration (Petition)<sup>1</sup> filed by University of Wisconsin-Milwaukee (Petitioner), seeking reconsideration of the Media Bureau's (Bureau) dismissal of Petitioner's application (Application) for a construction permit for a new low power FM (LPFM) station at Milwaukee, Wisconsin.<sup>2</sup> For the reasons set forth below, we deny the Petitions.

**Background.** Petitioner filed the Application during the 2023 LPFM Filing Window.<sup>3</sup> On January 25, 2024, Bureau staff dismissed the Application for failure to meet the minimum distance spacing requirements enumerated in section 73.807(a)<sup>4</sup> of the Commission's rules (Rules) with respect to the co-channel license of station WMBI-FM, Chicago, Illinois, and with respect to the second-adjacent channel license of station WMTH(FM), Park Ridge, Illinois, and noted that an amendment was not permitted under section 73.870(c) of the Rules.<sup>5</sup>

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<sup>1</sup> Pleading File No. 0000239647 (filed Feb. 22, 2024). Petitioner filed a second petition, which appears to be identical to the first. See Pleading File No. 0000239822 (filed Feb. 26, 2024). Accordingly, we refer to both pleadings collectively as the Petitions.

<sup>2</sup> Application File No. 0000231836 (filed Dec. 7, 2023).

<sup>3</sup> *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).

<sup>4</sup> See 47 CFR § 73.807(a).

<sup>5</sup> See *Broadcast Actions*, Public Notice, Report No. PN-2-240125-01 (MB Jan. 25, 2024) (*Dismissal Public Notice*) (citing 47 CFR § 73.870(c)). See also Application File Nos. BLED-19970613KA and BLED-19850916KI (license applications for WMBI-FM and WMTH(FM)). The *Dismissal Public Notice* incorrectly identified the station's call sign as "WMBH-FM," but cited to the correct license application, File No. BLED-19970613KA, for station WMBI-FM.

In the Petitions, Petitioner seeks reinstatement of the Application and a waiver of section 73.870(c) in order to amend the Application to change the proposed Station coordinates to the coordinates the applicant had intended to use.<sup>6</sup> Specifically, Petitioner: 1) argues that while the Application Tech Box listed inaccurate coordinates of (42 04 38.8 N, 87 53 08.3 W) (Application Coordinates), the Second Adjacent Waiver Request attached to the Application includes the correct coordinates of (43 04 38.8 N, 87 53 08.3 W) (Intended Coordinates); and 2) notes that the Commission dismissed similar LPFM applications in previous processing rounds due to section 73.807 location typographical errors, but the applicants corrected those coordinates, and the Commission reinstated the applications.<sup>7</sup>

**Discussion.** The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission’s original determination, or raises additional facts not known or existing at the time of the petitioner’s last opportunity to present such matters.<sup>8</sup> Petitioner has not demonstrated any legal error in the Bureau’s dismissal of the Application, nor has it cited any precedent that warrants reinstatement.

*Section 73.807 Violation.* Bureau staff correctly dismissed the Application for failure to meet the co-channel and second-adjacent channel spacing requirements, as outlined in section 73.807(a).<sup>9</sup> Specifically, LPFM applicants must protect authorized FM stations, pending applications for new and existing FM stations filed prior to the release of the *Procedures Public Notice*, authorized LPFM stations, and vacant FM allotments, by meeting the minimum distance separation requirements specified in section 73.807 of the Commission’s Rules.<sup>10</sup> Pursuant to section 73.870(c), any application submitted during an LPFM filing window that fails to meet the spacing requirements of section 73.807 will be dismissed without opportunity to amend.<sup>11</sup> Moreover, the *Procedures Public Notice* warned LPFM applicants that, “[c]onsistent with established processing rules, an LPFM application that fails to protect these authorizations, applications, and vacant FM allotments will be *dismissed with no opportunity to correct the deficiency.*”<sup>12</sup>

The Commission has held that when determining technical acceptability, Bureau staff relies *only* on the technical parameters specified within the Tech Box of the application.<sup>13</sup> Bureau staff does *not* review attachments or information specified elsewhere in the application to resolve discrepancies caused by

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<sup>6</sup> Petitions at 1.

<sup>7</sup> *Id.* at 4-5 (citing Application File Nos. BNPL-20131114AUD, BNPL-20131112ABV, BNPL-20131114AVO, and BNPED-20100226AJU (collectively, Reinstated Applications)). See also Application at Attach. “Second Adjacent Waiver Request.pdf” (Second Adjacent Waiver Request).

<sup>8</sup> See 47 CFR § 1.106(c), (d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

<sup>9</sup> 47 CFR § 73.807(a).

<sup>10</sup> *Id.*

<sup>11</sup> See *id.* § 73.870(c).

<sup>12</sup> See *Procedures Public Notice* at 3 and n.14 (emphasis in original) (citing *Low Power FM Filing Window*, Public Notice, 15 FCC Rcd 24817, 24818 (MB 2000); *Media Bureau Announces Availability of the Revised FCC Form 318 and the Filing Procedures for October 15-October 29, 2013 Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 8854, 8855 (MB 2013); 47 CFR §73.870(c)); see also *Christian Charities Deliverance Church*, Memorandum Opinion and Order, 30 FCC Rcd 10548, 10552-53, paras. 11-12 (2015) (*Christian Charities*) (affirming section 73.870(c) dismissal of applications for failure to meet minimum spacing requirements).

<sup>13</sup> See *Roman Catholic Diocese of Portland*, Memorandum Opinion and Order, 29 FCC Rcd 15068, 15072, para. 8 (2014) (*Diocese of Portland*).

typographical or other applicant errors.<sup>14</sup> Accordingly, here, the Bureau correctly dismissed the Application because the Application Coordinates specified in the “Antenna Location Data” Tech Box section of the Application failed to meet the minimum distance spacing requirements of section 73.807(a)(1) with respect to co-channel station WMBI-FM, and with respect to second-adjacent channel station WMTH(FM). As noted, the Commission has previously held that the Bureau may properly prohibit dismissed LPFM applicants that did not comply with the co-channel and second-adjacent channel spacing rules in the filing window from filing amendments to correct violations of section 73.807.<sup>15</sup> Additionally, typographical error claims cannot be used to justify filing an otherwise prohibited amendment.<sup>16</sup>

Moreover, permitting applicants to file application amendments to resolve section 73.807 minimum distance separation requirements after the close of the filing window and the Commission’s dismissal of their applications would frustrate the processing efficiencies which sections 73.807 and 73.870(c) were designed to promote and be unfair to the many applicants who fully complied with the rules and filing requirements. It is, therefore, contrary to the public interest.<sup>17</sup> Petitioner has not demonstrated any basis to contravene the rules and established precedent and reinstate the Application.

*Reinstated Applications.* Finally, we reject Petitioner’s reliance on the four Reinstated Applications. The Bureau reinstated those applications pursuant to its former practice to allow applicants to correct defective site coordinates where an Antenna Site Registration (ASR) number or technical exhibit contained the intended location of the transmission antenna, or in cases that did not involve the section 73.807 minimum distance spacing requirements.<sup>18</sup> The Petitioner cannot rely on any of those exceptions in this case. The Application lacked an ASR number identifying the Intended Coordinates. Moreover, the Second Adjacent Waiver Request (Exhibit) includes both the Application Coordinates and the conflicting Intended Coordinates, and therefore, cannot be relied upon to verify correct coordinates.<sup>19</sup> Moreover, the Reinstated Applications predate *Diocese of Portland*, where the Commission clarified that

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<sup>14</sup> See *id.* (directing staff to “make any technical and legal evaluations of, and take any actions regarding, such applications based upon the stated antenna location coordinates specified in the Tech Box, without resort to any other data in the Tech Box or elsewhere in the application or attachments. Such staff actions may include, but are not limited to, dismissal of such defective applications and refusal to accept amendments where such amendments would conflict with accurate and rule-compliant window-filed applications.”); see also *Procedures Public Notice* at 8 (cautioning LPFM applicants of this practice).

<sup>15</sup> See, e.g., *Calvary Chapel of Bremerton*, Letter Order, 28 FCC Rcd 15537, 15538-39 (MB 2013) (dismissing LPFM applications that fail to meet minimum co-channel spacing requirements, and noting that the Commission does not have authority to waive co-channel spacing requirements); *Christian Charities*, 30 FCC Rcd at 10549, para. 5 (finding *nunc pro tunc* reinstatement inapplicable because it is superseded by section 73.870(c)) (citing *People of Progress*, Memorandum Opinion and Order, 29 FCC Rcd 15065 (2014) (*People of Progress*); *Clifford Brown*, Memorandum Opinion and Order, 29 FCC Rcd 13258 (2014)).

<sup>16</sup> *NCE MX Group 82*, Letter Order, DA 23-348 (MB Apr. 25, 2023) (rejecting argument to correct typographical error where corrective amendment was prohibited) (*NCE MX Group 82*).

<sup>17</sup> See *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2257 (2000) (“In accordance with our window filing procedure for commercial broadcast applications, after the LPFM window closes, the staff initially will screen applications for the purpose of identifying those that are mutually exclusive and those that fail to protect existing broadcast stations in accordance with the standards adopted herein. Applications that fail to properly protect these existing stations will be dismissed without the applicant being afforded an opportunity to amend. This will increase the speed and efficiency with which LPFM applications can be processed by the staff.”).

<sup>18</sup> See *People of Progress*, 29 FCC Rcd at 15066, para. 4 and n.12.

<sup>19</sup> Applicant’s use of conflicting coordinates within the Exhibit render it unreliable. Although Applicant included the Intended Coordinates (43 04 38.8 N, 87 53 08.3 W) on page two of the Exhibit, Applicant listed the Application Coordinates (42 04 38.8 N, 87 53 08.3 W) on page one of the Exhibit.

it would, going forward, rely solely on Tech Box data to determine technical acceptability and prohibit applicants from curing a location deficiency in an application with a prohibited amendment.<sup>20</sup> Since *Diocese of Portland*, the Commission has repeatedly adhered to this practice.<sup>21</sup>

**Conclusion.** For the reasons set forth above, **IT IS ORDERED** that the Petitions for Reconsideration filed by University of Wisconsin-Milwaukee, on February 22, 2024, and February 26, 2024 (Pleading File Nos. 0000239647 and 0000239822) **ARE DENIED**.

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>20</sup> See *Christian Charities*, 30 FCC Rcd at 10552, n.26 (citing *People of Progress* and *Diocese of Portland*).

<sup>21</sup> See, e.g., *Renew Taylorsville*, Letter, DA 24-289 (MB 2024) (dismissing application based on Tech Box data and rejecting prohibited amendment to correct typographical errors); *NCE MX Group 82*, *supra* note 17 (same).