



Federal Communications Commission
Washington, D.C. 20554

April 30, 2024

DA 24-408

In Reply Refer to:

1800B3-JCB

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Selma Weather and Information Forum
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Re: **Selma Weather and Information
Forum**
New LPFM, Selma, AL
Facility ID No. 787789
Application File No. 0000231868

Petition for Reconsideration

Dear Applicant:

We have before us the Petition for Reconsideration (Petition)¹ filed by the Selma Weather and Information Forum (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 Selma, Alabama.² For the reasons set forth below, we deny the Petition.

Background. Petitioner filed the Application during the 2023 LPFM Filing Window,³ and certified that it qualifies as local, as defined by the Commission's rules.⁴ On January 19, 2024, Bureau staff dismissed the Application for failure to meet the localism requirements in section 73.853(b)⁵ of the Commission's rules (Rules) because the Application identified a transmitting antenna site 560 miles east of the coast of North Carolina and noted that an amendment was not permitted under section 73.870(a) of the Rules.⁶

On February 1, 2024, Petitioner filed the Petition, seeking reinstatement of the Application and a change or amendment to correct a "clerical error" affecting the coordinates of its proposed antenna site

¹ Pleading File No. 0000237930 (filed Feb. 1, 2024).

² Application File No. 0000231868 (filed Dec. 7, 2023).

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 Application at Legal Certifications Section, Community-Based Criteria questions.

⁵ See 47 CFR § 73.853(b).

⁶ See *Broadcast Actions*, Public Notice, Report No. PN-2-240123-01 (MB Jan. 23, 2024) (citing 47 CFR § 73.870(a)) (*Dismissal Public Notice*).

location.⁷ Specifically, Petitioner: 1) characterizes the coordinate error as a “single digit” “clerical error” on the part of its consultant; 2) states that its consultant, while manually entering coordinate data into LMS, “missed [a] transcription error despite a visible double check” and failed to “distinguish between ‘6’ and ‘8’ because of the small typeface size”; 3) states the Application indicates the intended location of the antenna “in several redundant ways”;⁸ 4) claims that “Several 2013-window LPFM applications [] also experienced dismissals due to location typos per 73.807(c), but were reinstated and corrected with the grant of a Petition for Reconsideration”;⁹ and 5) argues that an amendment could correct the error and warrant reinstatement of the Application *nunc pro tunc*.¹⁰

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.¹¹ Petitioner has not demonstrated any legal error in the Bureau’s dismissal of the Application, nor has it cited any precedent that warrants reinstatement.

Each LPFM applicant must qualify as local to be eligible for a license.¹² The Bureau staff verifies localism certifications, and performs technical evaluations, based on the antenna location coordinates specified in the “Antenna Location Data” section of the application and does *not* review attachments or information specified elsewhere in the application to resolve discrepancies caused by typographical or other applicant errors.¹³

Although Petitioner certified in its Application that it qualifies as local,¹⁴ in the “Antenna Location Data” section of the Application it provided coordinates for its proposed antenna site that would position the station in the Atlantic Ocean off the coast of Bermuda, hundreds of miles removed from the United States and notably separated from its “jurisdiction” and desired service area of Selma, Alabama.

⁷ Petition at 1.

⁸ *Id.* at 2-3.

⁹ *Id.* at 7 (citing Application File Nos. BNPL-20131114AUD, BNPL-20131112ABV, and BNPL-20131114AVO (collectively, Reinstated 2013 LPFM Applications)).

¹⁰ *Id.* at 1.

¹¹ See 47 CFR § 1.106(c), (d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

¹² To qualify as local, a public safety radio service applicant, such as Petitioner, must have jurisdiction within the service area of the proposed station. See 47 CFR § 73.853(b)(3).

¹³ See *Roman Catholic Diocese of Portland*, Memorandum Opinion and Order, 29 FCC Rcd 15068 (2014) (*Diocese of Portland*) (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*, DA 23-642 at 7-8 (cautioning LPFM applicants of this practice).

¹⁴ Application at Community-Based Criteria. Petitioner, a public safety radio service applicant, certified that it has jurisdiction within the service area of its proposed LPFM station. Petitioner also certified that it satisfies the physical headquarters and/or board member localism requirements for nonprofit educational organization applicants.

The Bureau, therefore, properly dismissed the Application for failure to meet the localism requirements of section 73.853(b) of the Rules.¹⁵

While LPFM applicants are currently allowed to submit amendments to their applications, pursuant to section 73.871(c) of the Rules, the amendments must be minor.¹⁶ Importantly, minor amendments are limited to site relocations of 11.2 km (6.9 miles) or less.¹⁷ The amendment requested by the Petitioner – to modify its proposed transmitting antenna site longitude of 67 to 87 degrees – clearly exceeds the site relocation limit established in the Rules, and is therefore, prohibited. Moreover, we reject Petitioner’s argument that the initial error is attributable to a mistake by its consultant and difficulties with LMS’s user interface and should therefore be excused.¹⁸ The Commission has long held that errors of technical assistants and difficulties with filing systems are not excuses for failure to adhere to the Rules.¹⁹

Finally, we reject Petitioner’s reliance on the Reinstated 2013 LPFM Applications. The Commission previously noted that the Reinstated 2013 LPFM Applications were reinstated pursuant to the Bureau’s former practice to allow otherwise prohibited corrective amendments where an Antenna Site Registration (ASR) number or technical exhibit identified the intended location of the transmission antenna.²⁰ Here, the Application lacked either an ASR number or a technical exhibit, and the other data the Petitioner relies on, such as its corporate address, do not in any way identify the intended coordinates of the transmitting antenna site. Moreover, the Reinstated 2013 LPFM Applications predate *Diocese of Portland*, where the Commission clarified that it would, going forward, rely solely on Tech Box data and prohibit applicants from curing a location deficiency in an application with a prohibited amendment.²¹ Since *Diocese of Portland*, the Commission has repeatedly adhered to this practice.²²

¹⁵ Although the *Dismissal Public Notice* correctly held that Petitioner failed to satisfy the localism requirements for the LPFM service set forth in section 73.853(b) of the Rules, it cited specifically to subsections 73.853(b)(1) and (2). Because Petitioner certified that it is a public safety radio service applicant, the *Dismissal Public Notice* should have cited to subsection 73.853(b)(3) of the Rules. Petitioner did not raise this issue in its Petition. We clarify that Petitioner’s application was defective under section 73.853(b)(3) of the Rules because it lacked jurisdiction in the coverage area identified in the Application.

¹⁶ See 47 CFR § 73.871(c).

¹⁷ See *id.* § 73.871(c)(1).

¹⁸ Petition at 1-2, 6.

¹⁹ See *Roy E. Henderson*, Memorandum Opinion and Order, 33 FCC Rcd 3385, 3387-88, para. 6 (2018) (rejecting argument that licensee’s engineer was to blame for station’s unauthorized operations); *Whidbey Island Ctr. for the Arts*, Forfeiture Order, 25 FCC Rcd 8204, 8205, para. 6 and n.12 (MB 2010) (“the Commission has long held that ‘licensees are responsible for the acts and omissions of their employees and independent contractors’”); *Vista Services Corporation*, Forfeiture Order, 15 FCC Rcd 20646, 20650 para. 9, n.24 (2000) (“[e]mployers are routinely held liable for breach of statutory duties, even where the failings are those of an independent contractor”); *Robert J. and Katherine Bohn*, Forfeiture Order, 26 FCC Rcd 1188, 1190, para. 8 (MB 2011) (rejecting argument that lack of familiarity with filing system warranted reduction in proposed forfeiture).

²⁰ See *People of Progress*, Memorandum Opinion and Order, 29 FCC Rcd 15065, 15066, para. 4 and n.12 (2014) (*People of Progress*).

²¹ See *Diocese of Portland*, 29 FCC Rcd at 15068; see also *Christian Charities Deliverance Church*, Memorandum Opinion and Order, 30 FCC Rcd 10548, 10552, n.26 (2015) (citing *People of Progress* and *Diocese of Portland*).

²² 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*, Letter Order, DA 23-348 (MB Apr. 25, 2023) (same).

Conclusion. For the reasons set forth above, **IT IS ORDERED** that the Petition for Reconsideration filed by Selma Weather and Information Forum, on February 1, 2024 (Pleading File No. 0000237930), IS DENIED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau