



Federal Communications Commission
Washington, D.C. 20554

May 3, 2024

DA 24-422

In Reply Refer to:

1800B3-ARR

Released: May 3, 2024

City of Erie Cable TV Access Crop
d/b/a Community Access Media
c/o Jacob Jones
P.O. Box 142
Erie, PA 16501
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Re: **City of Erie Cable TV Access Crop
d/b/a Community Access Media**
New LPFM, Erie, Pennsylvania
Facility ID No. 781041
Application File No. 0000232129

Petition for Reconsideration

Dear Applicant:

We have before us a Petition for Reconsideration (Petition)¹ filed by City of Erie Cable TV Access Crop d/b/a Community Access Media (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 Erie, Pennsylvania.² For the reasons set forth below, we deny the Petition.

Background. Petitioner filed the Application during the 2023 LPFM Filing Window.³ On January 25, 2024, Bureau staff dismissed the Application for failure to meet the minimum distance spacing requirements enumerated in section 73.807(a)⁴ of the Commission's rules (Rules), with respect to the co-channel licenses of stations WEFR(FM), Erie, Pennsylvania, and WUBJ(FM), Jamestown, New York, and with respect to the second-adjacent channel license of station WMCE(FM), Erie, Pennsylvania. The staff also noted that an amendment was not permitted under section 73.870(c) of the Rules.⁵

¹ Pleading File No. 0000239426 (filed Feb. 18, 2024).

² Application File No. 0000232129 (filed Dec. 8, 2023, amended Dec. 11, 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 See 47 CFR § 73.807(a).

⁵ See *Broadcast Actions*, Public Notice, Report No. PN-2-240123-01 (MB Jan. 23, 2024) (citing 47 CFR § 73.870(c)) (*Dismissal Public Notice*). See also Application File Nos. BMLD-20130530AMM, BLED-20010308AAH, and 0000146816 (license applications for WEFR(FM), WUBJ(FM), and WMCE(FM)).

In the Petition, Petitioner seeks reinstatement of the Application so it can change the proposed Station channel to Channel 248, in order to comply with the section 73.807 spacing requirements.⁶ Specifically, Petitioner: 1) argues that while the Application Tech Box listed Channel 201 instead of its intended Channel 248, the Second Adjacent Waiver Request attached to the Application clearly identifies Channel 248; 2) states that when it amended the Application, it simply forgot to change the value of its channel selection; and 3) argues that its discussions with staff during the filing window and the fact that “it is widely known that” WEFR(FM) is licensed in Erie on Channel 201 shows that its selection of Channel 201 was an error.⁷ Finally, Petitioner 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 errors, and the Commission reinstated the applications.⁸

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.⁹ 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).¹⁰ 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.¹¹ 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.¹² 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*.”¹³

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.¹⁴ Bureau staff does *not* review attachments or information specified elsewhere in the application to resolve discrepancies caused by

⁶ Petition at 1.

⁷ *Id.* at 4.

⁸ *Id.* at 3 (citing Application File Nos. BNPL-20131114AUD, BNPL-20131112ABV, and BNPL-20131114AVO (collectively, Reinstated 2013 LPFM Applications)).

⁹ See 47 CFR § 1.106(c), (d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

¹⁰ 47 CFR § 73.807(a).

¹¹ *Id.*

¹² See *id.* § 73.870(c).

¹³ 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).

¹⁴ 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.¹⁵ Accordingly, here, the Bureau correctly dismissed the Application because the channel 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 stations WEFR(FM) and WUBJ(FM), and with respect to second-adjacent channel station WMCE(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 73.807.¹⁶ Additionally, typographical error claims cannot be used to justify filing an otherwise prohibited amendment.¹⁷

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.¹⁸ Petitioner has not demonstrated any basis to contravene the rules and established precedent and reinstate the Application.

Reinstated 2013 LPFM Applications. Finally, we reject Petitioner’s reliance on the Reinstated 2013 LPFM Applications. The Reinstated 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 did not conflict with the intended coordinates of the transmission antenna, or in cases that did not involve section 73.807 minimum distance spacing requirements.¹⁹ The Petitioner cannot rely on any of those exceptions in this case. The Application lacked an ASR number, and designates an incorrect proposed channel, rather than incorrect transmitter coordinates. 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 to determine technical acceptability and prohibit

¹⁵ 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).

¹⁶ See *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)).

¹⁷ *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*). Because we only rely on the Tech Box data to determine technical acceptability, we reject Petitioner’s arguments that its correspondence with the staff and the fact that WEFR(FM) is licensed in Erie on Channel 201 is “widely known,” demonstrate that its channel selection was a typographical error, and should therefore, be excused.

¹⁸ 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.”).

¹⁹ See *People of Progress*, 29 FCC Rcd at 15066, para. 4 and n.12.

applicants from curing a location deficiency in an application with a prohibited amendment.²⁰ Since *Diocese of Portland*, the Commission has repeatedly adhered to this practice.²¹

Conclusion. For the reasons set forth above, **IT IS ORDERED** that the Petition for Reconsideration filed by City of Erie Cable TV Access Crop d/b/a Community Access Media, on February 18, 2024 (Pleading File No. 0000239426) **IS DENIED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

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

²¹ 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).