**June 10, 2025**

 **DA 25-506**

In Reply Refer to:

 1800B3-DB

 Released: June 10, 2025

C Morozyuk

Lilith FM, Inc.

248 Doctor M.L.K. Jr. Blvd.

Daytona Beach, FL 32114

(sent via email)

**In re: Lilith FM, Inc.**

New LPFM, Daytona Beach, FL

Facility ID No. 788782

Application File No. 0000233130

 **Petition for Reconsideration**

Dear C Morozyuk:

We have before us a Petition for Reconsideration (Petition)[[1]](#footnote-2) filed by Lilith FM, Inc. (Petitioner) seeking reconsideration of the Media Bureau’s (Bureau) dismissal of the above captioned application for a construction permit for a new low power FM (LPFM) station at Daytona Beach, Florida.[[2]](#footnote-3) For the reasons set forth below, we affirm the Bureau’s dismissal of the Application and deny the Petition.

**Background**. The original Application, filed during the 2023 LPFM Filing Window,[[3]](#footnote-4) identified the applicant as “Lilith Inc.,” a “nonprofit educational institution or organization” that was incorporated on December 12, 2023.[[4]](#footnote-5) The Application included supporting documentation consisting of: (1) an exhibit titled “Incorporation Worksheet prepared on December 12, 2023;”[[5]](#footnote-6) (2) an undated screenshot of the Florida Department of State, Division of Corporations’ website titled “Florida Non-Profit Filing Payment” indicating “Lilith Inc” is “pending approval;”[[6]](#footnote-7) (3) an educational exhibit titled “Eligibility and Advancement of Educational Program;” and (4) a technical exhibit titled “Table 1- 74.807 Channel Study.”[[7]](#footnote-8)

On May 9, 2024, Bureau staff dismissed the Application for failure to demonstrate that “Lilith, Inc.” was incorporated or recognized under Florida state law as a valid nonprofit educational organization when it submitted the Application on December 15, 2023.[[8]](#footnote-9) Specifically, the Bureau determined that the “Incorporation Worksheet” bore no evidence indicating if or when it was filed and accepted by the State of Florida, and the undated website screenshot failed to establish whether “Lilith, Inc.” was incorporated and/or recognized under Florida state law at the time the Application was submitted.[[9]](#footnote-10) The Bureau also determined that the Florida Department of State business entity database showed no organization named “Lilith Inc” or “Lilith, Inc.,” but included a nonprofit corporation named “Lilith FM Inc” with directors matching the parties to the Application, and “an effective date” of December 20, 2023, five days after the Application was filed.[[10]](#footnote-11)

Petitioner now seeks reinstatement of the dismissed Application so it can provide documentation demonstrating that the applicant, now identified as “Lilith FM Inc.,” was recognized as a nonprofit educational organization under Florida state law at the time the Application was filed.[[11]](#footnote-12) Specifically, Petitioner submits an email from Lee Yarbrough (Mr. Yarbrough), Bureau Chief of the Florida Department of State, Division of Corporations, stating that “[T]he Articles of Incorporation for LILITH INC were submitted on 12/13/23. The filing was returned due to the name being unavailable on 12/15/23.”[[12]](#footnote-13) Petitioner states that it changed its name to “Lilith FM Inc.” because the original name “Lilith Inc.,” which was listed on the “Incorporation Worksheet,” was unavailable. [[13]](#footnote-14)

Petitioner also submits copies of two Florida statutes to support its claim that “Lilith FM Inc.” was recognized as a corporation by the State of Florida on December 15, 2023, the same day it filed the Application, based on the submission of the original articles of incorporation for “Lilith, Inc.” on December 13, 2023. The first cited statute provides that “[u]nless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed or on a date specified in the articles of incorporation, if such date is within 5 business days prior to the date of filing.”[[14]](#footnote-15) The second statute is cited to demonstrate that when a document is determined by the department to be deficient, the applicant may correct the document, and the official filing date of the corrected document would be the filing date that would have applied had the original document not been deficient.[[15]](#footnote-16)

Petitioner argues that Mr. Yarbrough’s reference to the “Articles of Incorporation for LILITH INC” as a “filing” affirms that the articles were filed on December 13, 2023, and even though the filing was returned to allow the name change, the State of Florida would still apply the filing date of the original (deficient) document to the corrected version reflecting the new name, “Lilith FM Inc.”[[16]](#footnote-17) Accordingly, Petitioner asserts that “Lilith FM Inc.” was organized in a form recognized by Florida state law on December 15, 2023, the day the Application was filed, and therefore the Application should be reinstated.[[17]](#footnote-18)

**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.[[18]](#footnote-19) Petitioner has not demonstrated any legal error in the Bureau’s dismissal of the Application, nor has it cited any precedent that warrants reinstatement.

 An LPFM applicant must meet basic eligibility requirements,[[19]](#footnote-20) and certify its eligibility to own and operate an LPFM station at the time it files its application.[[20]](#footnote-21)  This certification requires that the applicant be a nonprofit educational institution, corporation or entity recognized under state law.[[21]](#footnote-22) Each applicant must also submit an explanatory exhibit in connection with its application.[[22]](#footnote-23) An LPFM applicant’s status as a valid nonprofit organization at the time it files its application is fundamental to our determination of the applicant’s qualifications to hold an LPFM authorization.[[23]](#footnote-24) Applicants who fail to meet these requirements are subject to dismissal.[[24]](#footnote-25)

Here, Bureau staff correctly dismissed the Application because it failed to establish that the applicant, identified as “Lilith, Inc.,” was recognized as a nonprofit educational organization under Florida state law at the time it filed the Application.[[25]](#footnote-26) Petitioner now argues that the Application should be reinstated because the renamed corporation, “Lilith FM Inc.,” was organized in a form recognized by Florida state law at the time the Application was submitted.[[26]](#footnote-27)

The instructions to the FCC Form 2100, Schedule 318 application (LPFM Application) dictate that an applicant must, on the LPFM Application, “enter the exact legal name of the applicant entity. The name of the applicant must be stated exactly.”[[27]](#footnote-28) The initial Application identified the applicant as “Lilith, Inc.,”[[28]](#footnote-29) claimed that “Lilith, Inc.” was incorporated on December 12, 2023,[[29]](#footnote-30) but neglected to include documentation to support the claim. Petitioner now identifies the applicant as “Lilith FM Inc.,” and asserts that “Lilith FM Inc.” was organized in a form recognized by the State of Florida at the time the Application was filed.[[30]](#footnote-31) Petitioner includes copies of Florida statutes discussing incorporation procedures and timing of business filings to support its claim that the filing date of the original (deficient) Articles of Incorporation on December 13, 2023, should apply to the corrected version of the Articles of Incorporation now reflecting the name “Lilith FM Inc.”[[31]](#footnote-32)

According to the Florida Department of State business entity database, however, the Articles of Incorporation for “Lilith FM Inc.” display a department-stamped “filed date” of December 28, 2023, and an “effective date” of December 20, 2023, five days after the Application was filed with the Commission.[[32]](#footnote-33) Petitioner’s corrected Articles of Incorporation, filed with the Florida Department of State on December 28, 2023, clearly state in Article VIII that the effective date of the corporation is December 20, 2023.[[33]](#footnote-34) Petitioner does not explain or discuss why we should not accept this official document at face value. For document corrections, section 607.0123(3) of the Florida Statutes requires an applicant to request in writing at the time the corrected document is submitted, that the filing date of the original (deficient) document should apply to the corrected version.[[34]](#footnote-35) There is no indication here that Petitioner made such a request for the filing date of the original Articles of Incorporation for “Lilith, Inc.” to apply to the corrected version of the Articles of Incorporation for “Lilith FM Inc.” There also is no indication in the corrected Articles of Incorporation, or any other document, that the State of Florida recognized a filing date other than the date appearing on the corrected Articles of Incorporation. Further, there is no other evidence in the record to indicate that “Lilith FM Inc.” was in existence at the time the Application was filed.

Accordingly, we affirm the Bureau’s dismissal of the Application and deny the Petition.

**Conclusion***.*For the reasons set forth above, **IT IS ORDERED** that the Petition for Reconsideration filed by Lilith FM Inc. on June 9, 2024 (Pleading File No. 0000245977), IS DENIED.

 Sincerely,

 Albert Shuldiner

 Chief, Audio Division

 Media Bureau

cc (via electronic mail):

Robert J. Robbins

Technical Representative for Lilith FM Inc.

(sent via email)

1. Pleading File No. 0000245977 (filed June 9, 2024). The Petition is unopposed. [↑](#footnote-ref-2)
2. Application File No. 0000233130 (filed Dec. 15, 2023) (Application). The Application, as originally filed, identifies “Lilith Inc.” as the applicant. *See* Application, Applicant Information Section, Applicant Name, Type, and Contact Information questions. As discussed in more detail below, the instant Petition identifies the applicant name as “Lilith FM Inc.” *See* Petition at 1-2. Accordingly, we will consider the applicant to be “Lilith FM Inc.” [↑](#footnote-ref-3)
3. *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, 38 FCC Rcd 6660 (MB 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, 38 FCC Rcd 9589 (MB 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, 38 FCC Rcd 11882 (MB 2023). [↑](#footnote-ref-4)
4. *See* Application, Applicant Information Section, Applicant Name, Type, and Contact Information questions. Attachments to the Application contain conflicting information as to whether the entity was incorporated on December 12, 2023, or December 13, 2023. *See* Application at Attachs., “Lilith Inc. educational exhibit.pdf” (stating the date of incorporation is December 12, 2023) and “Articles of Incorporation Lilith Inc.pdf” (stating the corporation would begin on December 13, 2023). *See also* Application, Point System Factors / Tie Breakers Section, Involuntary Time-Share Information, Established Community Presence question (stating that Petitioner became a local entity on December 12, 2023). The Petition, in contrast, argues that Articles of Incorporation were initially submitted on December 13, 2023, and the corporation began on December 15, 2023. *See, e.g*., Petition at 1. [↑](#footnote-ref-5)
5. *Id*. at Attach., “Articles of Incorporation Lilith Inc. pdf”. [↑](#footnote-ref-6)
6. *Id*. [↑](#footnote-ref-7)
7. *See id.* at Attachs., “Articles of Incorporation Lilith Inc. pdf”, “Lilith Inc. educational exhibit”, and “Technical exhibit Lilith Inc.”. The title for the LPFM Channel Study is inaccurate and should read Table 1 – 73.807. [↑](#footnote-ref-8)
8. *See Actions*, Public Notice, Report No. PN-2-240513-01 (MB May 13, 2024) (*Dismissal Public Notice*); *Lilith, Inc.*, Letter Order, Ref. 1800B3-RDM (MB May 9, 2024) (*Letter Decision*). [↑](#footnote-ref-9)
9. *Letter Decision* at 2. [↑](#footnote-ref-10)
10. *Id*. at 2, n.11 and 12. [↑](#footnote-ref-11)
11. *Id*. at 1. [↑](#footnote-ref-12)
12. *Id*. at Attach. 1. [↑](#footnote-ref-13)
13. *See* Petition at 2. [↑](#footnote-ref-14)
14. *Id*. at 2, *citing* Fla. Stat. § 607.0203(1) (2023). [↑](#footnote-ref-15)
15. *Id*. at 2, *citing* Fla. Stat. § 607.0123(3) (2023) (“If a document is determined by the department to be incomplete and inappropriate for filing, the department may return the document to the person or corporation filing it, together with a brief written explanation of the reason for the refusal to file, in accordance with s. 607.0125(3). If the applicant returns the document with corrections in accordance with the rules of the department within 60 days after it was mailed to the applicant by the department and if at the time of return the applicant so requests in writing, the filing date of the document will be the filing date that would have been applied had the original document not been deficient, except as to persons who relied on the record before correction and were adversely affected thereby.”). [↑](#footnote-ref-16)
16. Petition at 1-2. [↑](#footnote-ref-17)
17. *Id*. at 2. [↑](#footnote-ref-18)
18. *See* 47 CFR § 1.106(c), (d). [↑](#footnote-ref-19)
19. *See* 47 CFR § 73.853; *Letter Decision*. [↑](#footnote-ref-20)
20. *See* Instructions for LPFM Application, Legal Certifications Section, Eligibility Certifications questions. *See also* LPFM Application, Legal Certifications Section, Eligibility Certifications questions. [↑](#footnote-ref-21)
21. *See* LPFM Application, Legal Certifications section, Eligibility Certifications questions; *Procedures Public Notice*, 38 FCC Rcd at 6665; 47 CFR § 73.503(a) (establishing the current eligibility rule for FM stations: “A noncommercial educational [(NCE)] FM broadcast station will be licensed only to a nonprofit educational organization and upon showing that the station will be used for the advancement of an educational program.”). [↑](#footnote-ref-22)
22. *See* LPFM Application, Legal Certifications Section, Eligibility Certifications questions. *See also Procedures Public Notice*, 38 FCC Rcd at 6665 (nonprofit educational organizations “also must submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation.”). [↑](#footnote-ref-23)
23. *Applications for Review of Decisions Regarding Six Applications for New Low Power FM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13395-96, para. 14 (2013). [↑](#footnote-ref-24)
24. *See Procedures Public Notice*, 38 FCC Rcdat 6665. [↑](#footnote-ref-25)
25. *See* *Dismissal Public Notice*; *Letter Decision*. [↑](#footnote-ref-26)
26. Petition at 2. Petitioner attempts to distinguish the *WTL Communications, Inc., et al.* case referenced in the *Letter Decision* in which the LPFM application was dismissed because the applicant was not incorporated until nearly three years after filing its application, from the instant situation where “Lilith FM Inc.” arguably was recognized under Florida state law as an existing corporation two days before the filing of its Application. *Id*. at 2, citing *WTL Communications Inc., et al.*, Memorandum Opinion and Order, 23 FCC Rcd 2475, 2478 (2008); *Letter Decision* at 2, n.13. We note that the cases referenced in the *Letter Decision* merely serve as examples of situations where the Commission has dismissed LPFM applications because the applicants were not incorporated as of the date they filed their applications. *See* *Letter Decision* at 2, n.13. Like those cases, the Bureau determined here that “Lilith, Inc.” was not incorporated or organized in a form recognized by Florida state law when it submitted the Application, and therefore found it ineligible to hold an LPFM license and dismissed the Application. *See* *Letter Decision*. [↑](#footnote-ref-27)
27. *See* Instructions to LPFM Application at 3, Applicant Information (explaining that “if the applicant is a corporation, the applicant should list the exact legal name.”). [↑](#footnote-ref-28)
28. Application, Applicant Information Section, Applicant Name, Type, and Contact Information questions. [↑](#footnote-ref-29)
29. *Id*. at Attach., “Lilith Inc. Educational Exhibit.pdf”. [↑](#footnote-ref-30)
30. *See* Petition at 2. Petitioner notes that “Lilith” was assigned employee identification number (EIN) 93-4872909 by the Internal Revenue Service (IRS) on December 15, 2023, and that this EIN existed prior to the Application’s submission on December 15, 2023. *Id*. at Attach. 4, Letter from Department of Treasury, IRS, to Lilith (Dec. 15, 2023) (IRS Letter). We find that the IRS Letter has no probative value here as it identifies “Lilith”, not “Lilith FM Inc.”, as the recipient of the EIN and does not otherwise establish that “Lilith FM Inc.” was recognized by the State of Florida as a nonprofit entity at the time the Application was filed. *See* IRS Letter. [↑](#footnote-ref-31)
31. *See id*. at Attachs., “The Florida Senate, 2023 Florida Statutes”, Fla. Stat. §§ 607.0203(1), 607.0123(3) (2023); *supra* note 15. [↑](#footnote-ref-32)
32. *See* Florida Department of State, Division of Corporations, Detail by Entity Name – “Lilith FM Inc”, https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=I nitial&searchNameOrder=LILITHFM%20N240000001240&aggregateId=domnp-n24000000124-bd15705f-d050- 48e9-9891-05ca0f8bc60e&searchTerm=lilith&listNameOrder=LILITH%20L040000266980 (last visited Apr. 17, 2025). [↑](#footnote-ref-33)
33. *See* Florida Department of State, Division of Corporations, <https://search.sunbiz.org/Inquiry/CorporationSearch/ConvertTiffToPDF?storagePath=COR%5C2024%5C0105%5C90330289.tif&documentNumber=N24000000124> (last visited Apr. 17, 2025). [↑](#footnote-ref-34)
34. Fla. Stat. § 607.0123(3). [↑](#footnote-ref-35)