



Federal Communications Commission
Washington, D.C. 20554

August 5, 2025

DA 25-693
In Reply Refer to:
1800B3-CEG
Released August 5, 2025

Heartland Educational Broadcasting Corporation
Sturgeon Bay LifeStyle Educational Radio
Visalia Life Education Foundation, Inc.
Winwood Lifestyle Educational Radio Corporation
Oxford Lifestyle Educational Radio
Lake Wales Educational Broadcasting Corporation
Lake Placid Spanish Educational Broadcasting Corporation
Lake Placid Educational Broadcasting Corporation
Sebring Educational Broadcast Corporation
c/o Donald E. Martin
Donald E. Martin, P.C.
P.O. Box 8433
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In re: **Heartland Educational Broadcasting Corporation**
New LPFM, Sebring, FL
Facility ID No. 788657
Application File No. 233123

Visalia Life Education Foundation, Inc.
New LPFM, Visalia, CA
Facility ID No. 788732
Application File No. 233019

Oxford Lifestyle Educational Radio
New LPFM, Oxford, WI
Facility ID No. 788447
Application File No. 232519

Lake Wales Educational Broadcasting Corporation
New LPFM, Lake Wales, FL
Facility ID No. 788287
Application File No. 232251

**Lake Placid Spanish Educational
Broadcasting Corporation**

New LPFM, Lake Placid, FL
Facility ID No. 788651
Application File No. 233145

**Lake Placid Educational
Broadcasting Corporation**

New LPFM, Lake Placid, FL
Facility ID No. 788291
Application File No. 232525

**Sebring Educational Broadcast
Corporation**

New LPFM, Sebring, FL
Facility ID No. 788300
Application File No. 232403

Petitions for Reconsideration

**Winwood Lifestyle Educational Radio
Corporation**

New LPFM, Rhinelander, WI
Facility ID No. 788242
Application File No. 232717

**Sturgeon Bay LifeStyle Educational
Radio**

New LPFM, Sturgeon Bay, WI
Facility ID No. 788483
Application File No. 233102

Informal Objections

Dear Petitioners, Applicants and Objector:

We have before us seven petitions for reconsideration (Petitions) filed by: Heartland Educational Broadcasting Corporation (Heartland),¹ Visalia Life Education Foundation, Inc. (Visalia),² Oxford Lifestyle Educational Radio (Oxford),³ Lake Wales Educational Broadcasting Corporation (Lake Wales),⁴ Lake Placid Spanish Educational Broadcasting Corporation (Lake Placid Spanish),⁵ Lake Placid Educational Broadcasting Corporation (Lake Placid),⁶ and Sebring Educational Broadcast Corporation

¹ Pleading File No. 258416 (filed Nov. 22, 2024) (Heartland Petition).

² Pleading File No. 258449 (filed Nov. 22, 2024) (Visalia Petition).

³ Pleading File No. 258431 (filed Nov. 22, 2024) (Oxford Petition).

⁴ Pleading File No. 258422 (filed Nov. 22, 2024) (Lake Wales Petition).

⁵ Pleading File No. 258332 (filed Nov. 21, 2024) (Lake Placid Spanish Petition).

⁶ Pleading File No. 258280 (filed Nov. 20, 2024) (Lake Placid Petition).

(Sebring)⁷ (collectively, Petitioners). Petitioners seek reconsideration of the Media Bureau (Bureau)’s October 23, 2024, dismissal of the above-referenced applications for new low power FM (LPFM) stations in communities in Florida, Wisconsin, and California (*Dismissal Letter*).⁸ We also have before us seven oppositions to the Petitions (Petition Oppositions) filed by Triangle Access Broadcasting, Inc. (Triangle).⁹

Also before us are two informal objections (Winwood and Sturgeon Bay Objections)¹⁰ filed by Triangle on February 6, 2024, seeking the dismissal of the above-referenced applications for construction permits for new LPFM stations filed by Winwood Lifestyle Educational Radio Corporation (Winwood)¹¹ and Sturgeon Bay Lifestyle Educational Radio (Sturgeon Bay).¹² In the *Dismissal Letter*, the Bureau held the Winwood and Sturgeon Bay Applications in abeyance and postponed analysis of the Winwood and Sturgeon Bay Objections because at that time Winwood and Sturgeon Bay were not tentative selectees in their respective mutually exclusive (MX) groups, so their Applications had not been accepted for filing.¹³ The Bureau does not review the merits of an informal objection until the subject application has been accepted for filing.¹⁴ On December 16, 2024, Winwood and Sturgeon Bay filed amendments to their Applications modifying their proposed channels.¹⁵ These amendments were accepted, so both Applications became singletons and the Winwood and Sturgeon Bay Objections became ripe for consideration. Winwood and Sturgeon Bay filed oppositions to Triangle’s objections (Winwood and Sturgeon Bay Oppositions),¹⁶ to which Triangle filed replies (Winwood and Sturgeon Bay Replies).¹⁷

For the reasons set forth below, we: (1) grant the Heartland, Visalia, Oxford, Lake Wales, Lake

⁷ Pleading File No. 258446 (filed Nov. 22, 2024) (Sebring Petition).

⁸ *Heartland Educational Broadcasting Corporation*, Letter Order, 39 FCC Rcd 11596 (MB Oct. 23, 2024) (*Dismissal Letter*).

⁹ Pleading File Nos. 258564 (filed Nov. 26, 2024) (Opposition to Heartland Petition); 258583 (filed Nov. 26, 2024) (Opposition to Visalia Petition); 258577 (filed Nov. 26, 2024) (Opposition to Oxford Petition); 258575 (filed Nov. 26, 2024) (Opposition to Lake Wales Petition); 258563 (filed Nov. 26, 2024) (Opposition to Lake Placid Spanish Petition); 258551 (filed Nov. 26, 2024) (Opposition to Lake Placid Petition); 258590 (filed Nov. 22, 2024) (Opposition to Sebring Petition) (collectively, Petition Oppositions).

¹⁰ Pleading File Nos. 238350 (Sturgeon Bay Objection) and 238351 (Winwood Objection).

¹¹ Application File No. 232717 (filed Dec. 13, 2023) (Winwood Application).

¹² Application File No. 233102 (filed Dec. 15, 2023) (Sturgeon Bay Application).

¹³ See *Dismissal Letter*, 39 FCC Rcd at 11602; see also *Commission Identifies Tentative Selectees in 93 Groups of Mutually Exclusive Applications Submitted in the December 2023 LPFM Window*, Public Notice, FCC 24-113 (Oct. 16, 2024) (*Tentative Selections Public Notice*); *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the December 2023, LPFM Filing Window; Opens Windows to Accept Settlements and Technical Amendments*, Public Notice, 39 FCC Rcd 2355 (MB 2024) (*MX Groups Public Notice*).

¹⁴ See, e.g., *Media Bureau Provides Guidance on the Processing of Schedule 318 Applications filed in the LPFM Window*, Public Notice, 39 FCC Rcd 966, 969-970 (MB 2024) (citing 47 CFR § 73.3587) (*LPFM Processing Public Notice*).

¹⁵ See Sturgeon Bay Application, attach. entitled “2024-11-17 Sturgeon Bay, WI - Request channel change to resolve MX.pdf”; Winwood Application, attach. entitled “2024-11-17 Request Channel Change due to MX group.pdf.”

¹⁶ Pleading File Nos. 261946 (filed Jan. 2, 2025) (Sturgeon Bay Opposition); 259455 (filed Dec. 17, 2024) (Winwood Opposition).

¹⁷ Pleading File Nos. 259873 (filed Dec. 20, 2024) (Winwood Reply); 262225 (filed Jan. 6, 2025) (Sturgeon Bay Reply).

Placid, Lake Placid Spanish, and Sebring Petitions; (2) reinstate and grant the Heartland, Visalia, Oxford, Lake Wales, Lake Placid Spanish, and Sebring Applications; (3) reinstate the Lake Placid Application; (4) deny the Winwood and Sturgeon Bay Objections; and (5) grant the Winwood and Sturgeon Bay Applications.

Background. During the 2023 LPFM filing window,¹⁸ Heartland,¹⁹ Sturgeon Bay, Visalia,²⁰ Grants Pass Lifestyle Educational Radio Corporation (Grants Pass),²¹ Desoto Educational Broadcasting Corporation (Desoto),²² Winwood, Oxford,²³ Lake Wales,²⁴ Lake Placid Spanish,²⁵ Lake Placid,²⁶ and Sebring²⁷ each filed an application for a new LPFM station (collectively, Applications). On February 2, 2024, Triangle filed informal objections to the Sebring, Lake Placid, and Lake Placid Spanish Applications.²⁸ Triangle objected to the Lake Placid and Lake Placid Spanish Applications on the basis that a recusal pledge submitted with the Lake Placid Spanish Application is invalid because Lake Placid Spanish is not a “multifaceted organization” in which a director could recuse themselves from certain activities.²⁹ It objected to the Sebring Application on the basis that one of Sebring’s directors was also listed as a director on the application of another LPFM application (Ignite Application).³⁰ On February 6,

¹⁸ See *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).

¹⁹ Application File No. 233123 (filed Dec. 15, 2023) (Heartland Application).

²⁰ Application File No. 233019 (filed Dec. 15, 2023) (Visalia Application).

²¹ Application File No. 233015 (filed Dec. 14, 2023) (Grants Pass Application).

²² Application File No. 232771 (filed Dec. 13, 2023) (Desoto Application).

²³ Application File No. 232519 (filed Dec. 12, 2023) (Oxford Application).

²⁴ Application File No. 232251 (filed Dec. 11, 2023) (Lake Wales Application).

²⁵ Application File No. 233145 (filed Dec. 15, 2023) (Lake Placid Spanish Application).

²⁶ Application File No. 232525 (filed Dec. 12, 2023) (Lake Placid Application).

²⁷ Application File No. 232403 (filed Dec. 11, 2023) (Sebring Application).

²⁸ Pleading File Nos. 238131 (Sebring Objection); 238051 (Lake Placid Objection); 238052 (Lake Placid Spanish Objection).

²⁹ Lake Placid Spanish Objection at 2 (citing *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2224-25, para. 49 (2000) (permitting an officer or director of an LPFM applicant to hold attributable interests in another broadcast licensee if “the duties and responsibilities . . . are wholly unrelated to the LPFM station and the officer or director recuses himself or herself from consideration of any matters affecting the LPFM station”)).

³⁰ See Application File No. 232388, filed on December 11, 2023, by Ignite Radio, Inc. (Ignite) (voluntarily withdrawn by applicant Feb. 16, 2024, and application dismissed. See *Actions*, Public Notice, Report No. PN-2-240221-01 (Feb. 21, 2024)).

2024, Triangle filed an “Informal Objection and Supplement” to all eleven Applications (Omnibus Objections).³¹

In the Omnibus Objections, Triangle contended that the eleven Applicants had a “common owner” because, under each Applicant’s articles of incorporation as filed in the State of Florida Division of Corporations database (Florida Corporations Database),³² a single entity—Heartland Inc.—had the power to appoint each Applicant’s directors (Heartland Inc. Provision).³³ In addition, Triangle argued, the Applicants shared a common registered agent for state incorporation purposes, Michael D. Palsgrove (Palsgrove).³⁴ For these reasons, according to Triangle, the Applications violated the prohibition on any single party holding an attributable interest in more than one LPFM authorization.³⁵ The Applicants did not file any pleadings during the eight months between the filing of the Omnibus Objections and the release of the *Dismissal Letter*, although Bureau staff informally advised them to do so if they wished to respond to the Omnibus Objections.³⁶ On February 16, 2024, Ignite withdrew the Ignite Application.

On October 23, 2024, the Bureau dismissed nine of the eleven Applications, finding that, because Heartland Inc. had the power to appoint each Applicant’s directors, the Applicants were commonly controlled by Heartland Inc. and Heartland Inc. was thus a real party in interest to the Applications.³⁷ The Bureau concluded that the Applications violated the section 73.855(a) prohibition on multiple attributable interests in LPFM applications because, as a real party in interest, Heartland Inc. held an attributable interest in each Application at the time of filing.³⁸ The Bureau deferred consideration of the Sturgeon Bay and Winwood Applications because they were mutually exclusive with other new LPFM applications and

³¹ Pleading File Nos. 238346 (Heartland Objection); 238350 (Sturgeon Bay Objection); 238352 (Visalia Objection); 238353 (Grants Pass Objection); 238344 (Desoto Objection); 238351 (Winwood Objection); 238349 (Oxford Objection); 238345 (Lake Wales Objection); 238348 (Lake Placid Spanish Supplement); 238347 (Lake Placid Supplement); 238343 (Sebring Supplement) (all filed Feb. 6, 2024).

³² Florida Department of State, Division of Corporations, <https://dos.fl.gov/sunbiz/> (last visited May 20, 2025).

³³ Omnibus Objections at 4.

³⁴ Omnibus Objections at 4-5; *see also* <https://dos.fl.gov/sunbiz/> (last visited May 20, 2025). The Bureau did not consider Triangle’s other arguments regarding attributable interests, such as a familial relationship between parties in interest to the Lake Placid and Lake Placid Spanish Applications, in light of its finding that all eleven entities were commonly controlled by Heartland Inc. *Dismissal Letter*, 39 FCC Rcd at 3, n.18.

³⁵ Omnibus Objections at 4 (citing 47 CFR §§ 73.855(a) (“No authorization for an LPFM station shall be granted to any party if the grant of that authorization will result in any such party holding an attributable interest in two or more LPFM stations”); 73.858 (providing that LPFM ownership and other interests will be attributed in accordance with section 73.3555, with certain exceptions not applicable here).

³⁶ On March 11, 2024, Palsgrove contacted Bureau staff by email. The staff advised Palsgrove that, because the applications are contested, the staff could not discuss the merits of the proceeding and that any pleadings addressing the merits of the Objections must be filed through LMS and served on all parties. Email from Alexander Sanjenis, Audio Division, FCC Media Bureau to Michael Palsgrove (Mar. 18, 2024, 15:28 EST).

³⁷ *Dismissal Letter*, 39 FCC Rcd at 11602-3. A real party in interest is a party not identified as a principal that has the ability to act as one, so that the party can affect station operations in such core areas as programming and personnel. *See, e.g., Lowrey Communications, L.P.*, Decision, 7 FCC Rcd 7139, 7147 (Rev. Bd. 1992), *aff’d*, Memorandum Opinion and Order, 8 FCC Rcd 6721(1993), *vacated and remanded per curiam on different grounds*, No. 93-1690, 1994 WL 475076 (D.C. Cir. 1994).

³⁸ *Dismissal Letter*, 39 FCC Rcd at 11603 (citing Instructions to FCC Form 2100, Schedule 318, Party to the Application Section and 47 CFR § 73.855).

therefore had not yet been accepted for filing.³⁹ Because it dismissed the Applications on other grounds, the Bureau did not address Triangle's argument regarding the family relationship of two Lake Placid and Lake Placid Spanish directors.⁴⁰ Finally, because the Ignite Application was withdrawn, the Bureau did not consider Triangle's arguments regarding the same director serving on the Sebring and Ignite boards.⁴¹

On November 20, 21, and 22, 2024, seven of the Applicants (the Petitioners) filed petitions for reconsideration of the dismissal of their Applications (the two remaining dismissed Applicants, Grants Pass and Desoto, did not file petitions for reconsideration). The Petitioners argue that Heartland Inc. could not have been a real party in interest to their applications because it does not exist and therefore had no control over their operations.⁴² They explain the role of Palsgrove as an "LPFM enthusiast" who "assist[ed] various LPFM applicants" by "helping them create Florida nonprofit corporations to be the applicant entities."⁴³ According to the Petitioners, Palsgrove created the Heartland Inc. Provision as a backup mechanism to replenish the Applicants' boards of directors should they become depleted in the future and was unaware that such a provision would violate any Commission rule.⁴⁴ Petitioners further state that their initial board members had not intended to include the Heartland Inc. Provision in their articles of incorporation, or for Heartland Inc. to be a party to their Applications, and committed to amend their respective articles of incorporation to provide that any new directors will be appointed by the existing board of directors.⁴⁵

On November 26, 2024, Triangle filed the Petition Oppositions. In the Petition Oppositions, Triangle argues that the Petitioners' argument that Heartland Inc. did not exist is procedurally impermissible because it could have been presented prior to the *Dismissal Letter* and does not rely on new or changed facts or circumstances.⁴⁶ Triangle further argues that had Heartland Inc. been created, it would have a legal right to appoint each Petitioners' directors and therefore exerted common control over the Petitioners at the end of the 2023 filing window, even if the articles of incorporation were later amended.⁴⁷ Triangle contends that if Heartland Inc. was never created, the Petitioners never had validly appointed boards, and therefore never had legal capacity to act in any manner, including filing the Applications or amending their articles of incorporation.⁴⁸ With respect to the Lake Placid and Lake Placid Spanish Applications specifically, Triangle reiterates its argument that Lake Placid and Lake Placid Spanish are commonly controlled due to a "close familial relationship between the parties to the applications" and an invalid recusal pledge in Lake Placid Spanish's application.

³⁹ *Dismissal Letter*, 39 FCC Rcd at 11598-9 (explaining that the Bureau does not review the merits of any informal objection until an application has been accepted for filing (citing *LPFM Processing Public Notice*, 39 FCC Rcd at 969-970 and 47 CFR § 73.3587)).

⁴⁰ *Dismissal Letter*, 39 FCC Rcd at 11598, n.18.

⁴¹ *Id.*

⁴² Petitions at 1, 3.

⁴³ Petitions at 1-2.

⁴⁴ Petitions at 2.

⁴⁵ Petitions at 2-3. The initial board of directors was designated as part of the incorporation process.

⁴⁶ Petition Oppositions at 2 (citing 47 CFR § 1.106(c)(1)).

⁴⁷ *Id.* at 2-3. We assume that Triangle intended to refer to the 2023 LPFM filing window, not the "2013 LPFM Filing Window."

⁴⁸ *Id.*

On December 16, 2024, Winwood and Sturgeon Bay filed amendments to their Applications, requesting modification of their proposed channels so they would no longer be in MX groups 108 and 109, respectively.⁴⁹ These amendments were accepted, so both Applications became singletons, making Triangle's Omnibus Objections with respect to these two Applications now ripe for consideration.

On December 17, 2024, Winwood filed the Winwood Opposition, and on January 2, 2025, Sturgeon Bay filed the Sturgeon Bay Opposition. In their Oppositions, Winwood and Sturgeon Bay make the same arguments advanced in the Petitions, namely, that (1) Heartland Inc. is not a real-party-in-interest to either of their applications because Heartland Inc. does not exist; (2) Palsgrove was unaware of the consequences of including the Heartland Inc. Provision; (3) the Winwood and Sturgeon Bay board members did not intend such a provision to be in their articles, or for Heartland Inc. to be a party to their applications; and (4) Winwood and Sturgeon Bay submitted amendments to their respective filings with the Florida Department of State to remove the Heartland Inc. Provision and provide that any new directors will be appointed by the existing board of directors.⁵⁰

On December 20, 2024, and January 6, 2025, respectively, Triangle filed the Winwood and Sturgeon Bay Replies, arguing again that Heartland Inc. had the sole power to appoint directors and therefore controlled the Applicants and that neither Winwood or Sturgeon Bay ever had a validly appointed board.⁵¹

In January and February of 2025, the Petitioners, Winwood, and Sturgeon Bay submitted supplements notifying the Commission that each had amended its Florida Corporations Database filing to appoint a new registered agent and remove the Heartland Inc. Provision from its articles of incorporation.⁵²

Discussion. *Petitions.* A petition for reconsideration which fails to rely on new facts or changed circumstances may be granted only if consideration of the facts or arguments relied on is required in the public interest or if the petitioner could not, through the exercise of ordinary diligence, have learned of the facts or arguments prior to its last opportunity to present them.⁵³ It is axiomatic that a party may not “sit back and hope that a decision will be in its favor and, when it isn't, to parry with an offer of more evidence.”⁵⁴ The Petitioners have not met this burden. They rely on facts and arguments that existed and that could have been made during their last opportunity to present them—i.e., during the eight months between the filing of the Informal Objections and the release of the *Dismissal Letter*. Therefore, the

⁴⁹ See Application File No. 233102 (Sturgeon Bay Application, amended Dec. 16, 2024), attach. entitled “2024-11-17 Sturgeon Bay, WI - Request channel change to resolve MX.pdf”; Application File No. 232717 (Winwood Application, amended Dec. 16, 2024), attach. entitled “2024-11-17 Request Channel Change due to MX group.pdf”.

⁵⁰ See Pleading File Nos. 259455 (Winwood Opposition, filed Dec. 17, 2024); 261946 (Sturgeon Bay Opposition, filed Jan. 2, 2025).

⁵¹ Winwood and Sturgeon Bay Replies at 2-3.

⁵² See Pleading File No. 266768 (filed Feb. 17, 2025) (Heartland Notification); Pleading File No. 2669942 (filed Feb. 21, 2025) (Sturgeon Bay Notification); Pleading File No. 266992 (filed Feb. 21, 2025) (Visalia Notification); Pleading File No. 232717 (filed Feb. 21, 2025) (Winwood Notification); Pleading File No. 266992 (filed Feb. 18, 2025) (Oxford Notification); Pleading File No. 262805 (filed Jan. 13, 2025) (Lake Wales Notification); Pleading File No. 266767 (filed Feb. 17, 2025) (Lake Placid Spanish Notification); Pleading File No. 266582 (filed Feb. 11, 2025) (Lake Placid Notification); Pleading File No. 265018 (filed Jan. 27, 2025) (Sebring Notification).

⁵³ 47 CFR § 1.106(c)(1).

⁵⁴ *Canyon Area Residents for the Environment*, Memorandum Opinion and Order, 14 FCC Rcd 8152, 8154 (1999) (quoting *Colorado Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941)).

Petitions are not procedurally acceptable under section 1.106(c)(1). However, for the reasons set forth below, we find it to be in the public interest to consider the issues presented in the Petitions under section 1.106(c)(2), as doing so will clarify and correct our real party in interest analysis.⁵⁵

Upon re-examination of the facts before us, we find that the evidence on record does not establish that the Heartland Inc. Provision, in these circumstances, violated the prohibition set out in section 73.855(a) on a single party holding an attributable interest in more than one LPFM authorization.⁵⁶ With certain enumerated exceptions not applicable here, LPFM interests are determined using the attribution standards set out in the notes to section 73.3555.⁵⁷ Section 73.3555 provides a list of specific situations that would lead to an attributable interest in a broadcast licensee or applicant, which does not include the power to appoint directors.⁵⁸

Because the power to appoint directors is not defined as a *de jure* attributable interest in section 73.3555, we consider whether the Heartland Inc. Provision created *de facto* control of the Applicants.⁵⁹ To determine whether an entity has *de facto* control of a broadcast applicant or licensee, the Commission looks beyond legal title and financial interests to see who holds operational control of the station—in particular, who establishes the policies governing the station’s programming, personnel, and finances.⁶⁰ Because these facts may not be available at the application stage, when considering whether an individual

⁵⁵ 47 CFR § 1.106(c)(2) (providing that a petition for reconsideration that relies on facts or arguments not previously presented may be granted if the Commission or designated authority determines that consideration of the facts or arguments relied on is required in the public interest).

⁵⁶ 47 CFR § 73.855(a).

⁵⁷ 47 CFR §§ 73.858 (providing that LPFM ownership and other interests will be attributed in accordance with section 73.3555 except for directors that recuse themselves from matters affecting the LPFM station and separately incorporated and independent local chapters of national organizations); 73.7000 (defining an attributable interest in the noncommercial educational service as: “An interest of an applicant, its parent, subsidiaries, their officers, and members of their governing boards that would be cognizable under the standards in the notes to § 73.3555.”).

⁵⁸ 47 CFR § 73.3555, Note 2.

⁵⁹ *The Helpline*, Letter Decision, 23 FCC Rcd 12665, 12670 (MB 2008) (citing *Piedmont Television of Springfield*, Letter Decision, 22 FCC Rcd 13910, 13913 (MB 2007) (“If [another entity] were found to be in *de facto* control of [subject TV station], that station would be attributed to it and it would be in violation of our local multiple ownership rules.”)). References to “*de facto* control” are ordinarily made in the context of operating broadcast stations (often matters involving unauthorized transfer of control under 47 U.S.C. § 310(d)), while the “real party in interest” terminology typically applies to parties to pending applications. The concern in either context is whether an applicant or licensee is, or will be, controlled in a manner that differs from the proposal before, or approved by, the Commission. *Univision Holdings*, Memorandum Opinion and Order, 7 FCC Rcd 6672, 6675 n.12 (1992) (*Univision*); see also *BBC License Subsidiary L.P.*, Memorandum Opinion and Order, 10 FCC Rcd 7926, n.20 (1995); *Hispanic Christian Community Network, Inc.*, Order to Show Cause Why A Cease and Desist Order Should Not Be Issued, Order to Show Cause Why an Order of Revocation Should Not Be Issued, Hearing Designation Order, Notice of Opportunity for Hearing, and Notice of Apparent Liability for Forfeiture, 38 FCC Rcd 7277, 7286, paras. 16-18 (MB 2023) (*Hispanic Christian*).

⁶⁰ See *Hispanic Christian*, 38 FCC Rcd at 7286, paras. 16-18. Other factors may also be relevant to a *de facto* control analysis, such as, in this case, the ability to elect the members of the applicant’s board of directors. See, e.g., *Univision*, 7 FCC Rcd at 6675, para. 15 (explaining that when determining *de facto* control, “The ability to elect the members of applicant’s Board of Directors is an important factor . . . The locus of control of finances, personnel and programming should also be considered.”) (citing *Metromedia, Inc.* 55 FCC.2d 300, 306, para. 8 (1984) (“[T]he facts of a particular situation (e.g., who has the power to direct the company’s operations; who determines the make-up of the Board of Directors), are relevant to determining where control is situated.”)).

or entity is a real party in interest to an application, the Commission focuses on whether it has an ownership interest or is or will be in a position to actually or potentially control the operation of the station.⁶¹ This inquiry is fact-specific and conducted on a case-by-case basis.⁶² The Commission has been clear that similarities in applications prepared by a third party, such as a consultant, do not demonstrate common control of applicants.⁶³

In this case Heartland Inc. had no ownership interest in the Applicants, so the real party in interest analysis centers around the second part of the real party in interest standard—i.e., whether Heartland Inc. was in a position to actually or potentially control the operation of the Applicant’s new LPFM stations. Triangle’s real party in interest argument relies almost entirely on the existence of the Heartland Inc. Provision, so we must consider whether the Heartland Inc. Provision conferred control to Heartland Inc.

The first factor we consider is the Applicants’ sworn statement that Heartland Inc. did not exist at the time of filing and was never formed afterward. While the definition of a real party in interest includes potential as well as actual control, we find that the fact of Heartland Inc.’s non-existence tends to militate against a finding that it was ever in a position to exercise present or future *de facto* control over the Applicants.⁶⁴

Secondly, we take into account that each Applicant had, since incorporation, a complete board of directors that was not appointed by Heartland Inc. There is no evidence to suggest that this initial slate of directors was not fully independent of third party control or otherwise empowered to set the policies for each stations’ programming, personnel, and finances. Moreover, there is no evidence that the existing directors were temporary, invalidly appointed,⁶⁵ or unable to appoint their own successors in the absence of the Heartland Inc. Provision. Therefore, although not dispositive, the existence of an existing independent board of directors tends to go against a finding that Heartland Inc. was in a position to exercise control over the Applicants at the time of filing, as such control would be contingent—at the very least—on the voluntary resignation of a majority of the current board.⁶⁶

Thirdly, we note that the Petitioners, Winwood, and Sturgeon Bay have notified the Bureau that they have eliminated the Heartland Inc. Provision from their respective articles of incorporation. The

⁶¹ *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556, 1564 (D.C. Cir. 1998) (“The Commission’s real party-in-interest inquiry typically focuses on whether a third person ‘has an ownership interest, or will be in a position to actually or potentially control the operation of the station.’”); *KOWL, Inc., South Lake Tahoe, Calif.*, Memorandum Opinion and Order, 49 FCC 2d 962 (1974) (“The test for determining whether a third person is a real party in interest is whether that person has an ownership interest, or is or will be in a position to actually or potentially control the operation of the station.”).

⁶² See, e.g., *Intermart Broadcasting Pocatello, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 8822, 8826, para. 7 (2008).

⁶³ *Vanguard Association of Sunbelt Colleges Corporation*, 2024 WL 755380 at 4 (MB Feb. 22, 2024) (citing *Mt. Zion Educ. Assoc.*, Letter Decision, 25 FCC Rcd 15088, 15091-92 (MB 2010); *Eternal World Television Network, Inc.*, Letter Decision, 24 FCC Rcd 4691, 4692 (MB 2009)).

⁶⁴ In addition, as Heartland Inc. did not exist, we have no data regarding its own corporate structure or attributable interests, which would be necessary for a complete picture of how it could potentially control an Applicant.

⁶⁵ The existing board of directors was appointed by Article VII of each Applicant’s articles of incorporation. We make no conclusions regarding state corporate law, but are not persuaded by Triangle’s argument that the initial directors as well as successor directors must be appointed under the Heartland Inc. Provision rather than under Article VII.

⁶⁶ In this respect, we note that the Applicants’ articles of incorporation do not provide Heartland Inc. with the power to dismiss current members of the board of directors.

Applicants' ready elimination of the Heartland Inc. Provision supports their contention that Heartland Inc. was never an integral part of their organizations or missions or potentially in a position to control their operations.

The final relevant circumstance is Palsgrove's sworn statement that he inserted the Heartland Inc. Provision as "an emergency backup plan" in the event that "the corporation's board dwindled nearly to the point of nonexistence."⁶⁷ Palsgrove attests that he did not intend to exercise control over any of the Applicants, that he offered to help incorporate the Applicants "as a friend and without compensation" and that he "has not participated in their business affairs or decision making or will do so in the future."⁶⁸ As the apparent drafter of the Heartland Inc. Provision, Palsgrove's statements regarding his present and future involvement with the Applicants does not support a conclusion that the Heartland Inc. Provision was intended to or likely would result in that entity's control of the Applicants.

In the totality of the circumstances, we conclude that Heartland Inc. did not have a prohibited attributable interest in multiple new LPFM applications under section 73.855(a) because it was not in a position to control the operation of the subject stations and therefore was not a real party in interest to the Applications. In coming to this conclusion, we take into account that Heartland Inc. never existed, that an independent initial board of directors controlled each Applicant from its incorporation, that the Heartland Inc. Provision was subsequently deleted, and that the drafter of the Heartland Inc. Provision denied any present or future participation in the stations' operations. Therefore, any exercise of *de facto* control would be contingent on the creation of Heartland Inc., the current board's retention of the Heartland Inc. Provision, and a majority of the current directors resigning. Given these highly attenuated circumstances, we conclude that Heartland Inc.'s initial relevance with respect to the Applications did not rise to the level of a real party in interest. We caution future LPFM applicants, however, that in slightly different circumstances, a similar provision in an applicant's organizational documents could easily lead to a finding of an impermissible attributable interest in multiple new LPFM applications.

Lake Placid and Lake Placid Spanish Applications. In addition to the Heartland Inc. Provision issue, Triangle argues that Lake Placid and Lake Placid Spanish are commonly controlled due to a "close familial relationship between the parties to the applications" and an invalid recusal pledge in Lake Placid Spanish's application.⁶⁹ Because we have found that Heartland Inc. is not a real party in interest, we must now consider Triangle's other arguments. Without establishing what their relationship actually is, Triangle assumes that Eric Cheshire, listed as a director in the Lake Placid Application and articles of incorporation, and Denise Cheshire, listed as a director in the Lake Placid Spanish articles of incorporation, are closely related.⁷⁰ Triangle further argues that a "Declaration of Recusal" purported to recuse Denise Cheshire from all matters involving the Lake Placid Spanish station is invalid because Lake Placid Spanish is not a "multifaceted organization" which would allow a director to recuse themselves from certain activities.⁷¹

⁶⁷ Petitions, attach. entitled "Declaration of Michael Palsgrove," at 1 (Palsgrove Declaration).

⁶⁸ Palsgrove Declaration at 1.

⁶⁹ Lake Placid Spanish Opposition at 3.

⁷⁰ Lake Placid Spanish Application, attach. entitled "Sunbiz—Detail by Entity Name.pdf" at 1.

⁷¹ See Lake Placid Spanish Application, attach. entitled, "Declaration of Recusal.pdf" (Cheshire Recusal) at 1; Lake Placid Spanish Objection at 2 (citing *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2224-25, para. 49 (2000) (permitting an officer or director of an LPFM applicant to hold attributable interests in another broadcast licensee if "the duties and responsibilities . . . are wholly unrelated to the LPFM station and the officer or director recuses himself or herself from consideration of any matters affecting the LPFM station"))).

The key threshold issue with this argument is that Triangle does not establish what the relationship between Eric and Denise Cheshire is, if any. The Commission has held a petitioner attempting to raise a real party-in-interest or attribution issue where family members are involved has a heavy burden, given the typical financial ties between family members.⁷² Even assuming that Eric and Denise Cheshire are “close relatives,” the existence of a family relationship alone is not sufficient to create a presumption of common control or attribution.⁷³ Triangle has not met its burden to demonstrate that these two parties were both related and acting in concert with each other.⁷⁴ Therefore, we deny the Lake Placid and Lake Placid Spanish Petitions on this basis, reinstate the Lake Placid and Lake Placid Spanish Applications, and grant the Lake Placid Spanish Application.⁷⁵

Sebring Application. In the Sebring Objection, Triangle asserts that the Sebring and Ignite Applications violated section 73.855(a) because the same individual, Luis Camps, served as a director on the boards of both applicants.⁷⁶ Neither Sebring or Ignite contest the factual basis for this argument. Under Note 2(g) of section 73.3555, a director has an attributable interest in any entity with which they are so associated.⁷⁷ Therefore, Luis Camps’ interest in the Sebring and Ignite Applications constitutes a prohibited attributable interest in two new LPFM applications. Under the *Procedures Public Notice*, where there are two conflicting applications, the Bureau will dismiss one.⁷⁸ In this case, the Ignite Application was dismissed, and that dismissal is now final.⁷⁹ Because there is no longer a need to dismiss one of these two applications, this issue is moot.

Winwood and Sturgeon Bay Applications. Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),⁸⁰ 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

⁷² See, e.g., *Kern Broadcasting Corporation*, Memorandum Opinion and Order, 10 FCC Rcd 6584, 6585-86, para. 9 (1995).

⁷³ *Id.* (citing *Petroleum v. Nasby Corp.*, Memorandum Opinion and Order, 11 FCC Rcd 3494, 3495 (1996) (“As we have long held, family relationship alone is insufficient to warrant an inference that family members are acting in concert.”); *Pressly Enterprises, LLC*, Memorandum Opinion and Order, 17 FCC Rcd 14079, 14087 (2002) (“existence of a familiar relationship is not sufficient by itself to cause each affected family member to have an attributable interest in the media holdings of his or her relatives”)).

⁷⁴ Because Triangle has not established a real party in interest issue based on family relationships, we need not reach the issue of whether the Cheshire Recusal was valid.

⁷⁵ We do not grant the Lake Placid Application because there is a discrepancy between the radiation center above ground level (RCAGL) of the proposed transmitting antenna (44 meters) and the overall structure height (OSH) of the proposed tower (9 meters). We direct Lake Placid to amend to correct this discrepancy in LMS so the RCAGL is less than or equal to the OSH and to notify Bureau staff when it has filed the amendment.

⁷⁶ Sebring Objection at 1-2; Sebring Application, attachs. entitled “IO-ExhA-IgniteArticles.pdf” and “IO-ExhB-SEBCArticles.pdf.”

⁷⁷ 47 CFR § 73.3555, Note 2(g).

⁷⁸ *Procedures Public Notice*, 38 FCC Rcd at 6664 (“For applicants subject to the one application filing limit, any additional applications filed in this window will be treated as a “conflicting” application and dismissed . . .”).

⁷⁹ See *Actions*, Public Notice, Report No. PN-2-240221-01 (MB Feb. 21, 2024).

⁸⁰ 47 U.S.C. § 309(d).

application would be *prima facie* inconsistent with the public interest.⁸¹ We find that Triangle has not met this burden with respect to the Winwood and Sturgeon Bay Applications for the same reasons that we grant the Petitions. Specifically, we find that Heartland Inc. was not a real party in interest in the Winwood and Sturgeon Bay Applications because the facts do not establish that it was in a position to exercise control over the relevant stations. Therefore, we deny the Sturgeon Bay and Winwood Objections and grant the Sturgeon Bay and Winwood Applications.

Conclusion/Action. For the reasons stated above, **IT IS ORDERED** that the petitions for reconsideration filed by: Heartland Educational Broadcasting Corporation on November 22, 2024 (Pleading File No. 258416); Visalia Life Education Foundation, Inc. on November 22, 2024 (Pleading File No. 258449); Oxford Lifestyle Educational Radio on November 22, 2024 (Pleading File No. 258431); Lake Wales Educational Broadcasting Corporation on November 22, 2024 (Pleading File No. 258422); Lake Placid Spanish Educational Broadcasting Corporation on November 21, 2024 (Pleading File No. 258332); Sebring Educational Broadcast Corporation on November 22, 2024 (Pleading File No. 258446); and Lake Placid Educational Broadcasting Corporation on November 22, 2024 (Pleading File No. 258280) **ARE GRANTED**.

IT IS FURTHER ORDERED that the applications for new LPFM stations filed by: Heartland Educational Broadcasting Corporation on Dec. 15, 2023 (Application File No. 233123); Visalia Life Education Foundation, Inc. on Dec. 15, 2023 (Application File No. 233019); Oxford Lifestyle Educational Radio on Dec. 12, 2023 (Application File No. 232519); Lake Wales Educational Broadcasting Corporation on Dec. 11, 2023 (Application File No. 232251); Lake Placid Spanish Educational Broadcasting Corporation on Dec. 15, 2023 (Application File No. 233145); and Sebring Educational Broadcast Corporation on Dec. 11, 2023 (Application File No. 232403) **ARE REINSTATED AND GRANTED**.

IT IS FURTHER ORDERED that the application for a new LPFM station filed by Lake Placid Educational Broadcasting Corporation on Dec. 12, 2023 (Application File No. 232525) **IS REINSTATED**.

IT IS FURTHER ORDERED that the informal objections filed by Triangle Access Broadcasting on February 6, 2024 (Pleading File Nos. 238350 and 238351) **ARE DENIED**.

⁸¹ 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).

IT IS FURTHER ORDERED that the applications for new LPFM stations filed by: Sturgeon Bay Lifestyle Educational Radio on Dec. 15, 2023 (Application File No. 233102) and Winwood Lifestyle Educational Radio Corporation on Dec. 13, 2023 (Application File No. 232717) **ARE GRANTED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau